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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 that trigger a municipal special or regular
election as authorized in the Municipal Code or otherwise
authorized by law, shall comply with the terms of this
section, except as otherwise expressly provided by law.

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

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

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

4 (3) each page of the petition to be filed
5 contains the approval or facsimile approval of the municipal
6 or county clerk and the petition heading and penalty
7 statement are legible when submitted for filing.

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

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

12 (2) a heading that clearly conveys the
13 purpose for signing the petition if no particular form of
14 heading is required by law;

15 (3) a place for the person signing the
16 petition to write the date and the person's name (printed),
17 address and signature, unless other requirements are mandated
18 by law and then the petition shall comply with those
19 requirements; and

20 (4) a statement that any person knowingly
21 providing or causing to be provided any false information on
22 a petition, forging a signature or signing a petition when
23 that person knows that person is not a qualified elector in
24 the municipality is guilty of a fourth degree felony.

25 D. The requirements of Subsection B of this

1 section shall be deemed complied with if an original form of
2 petition is submitted to a municipal or county clerk for
3 approval prior to circulation and after approval by the clerk
4 that original form is reproduced by photocopying or other
5 similar means so that the form and clerk's approval are
6 unchanged from the original and are legible on each page of
7 the petition to be filed.

8 E. A petition filed with a municipal clerk, a
9 county clerk, a governing body or a board of county
10 commissioners shall include all individual pages of a
11 petition complying with the provisions of this section,
12 regardless of whether the pages are filed singly or in a
13 group. Pages complying with the provisions of this section
14 may be filed at different times so long as filing is within
15 the time period allowed by law for the filing of the
16 particular petition to be filed. If no time period is
17 established by law, petition signatures may not span a period
18 of time greater than sixty days from the date of the earliest
19 signature on the petition, and the petition shall be filed
20 within sixty-five days from the date of the earliest
21 signature on the petition.

22 F. Upon approval of a proposed petition as to
23 form, the municipal clerk shall notify the county clerk of
24 the approval, and the county clerk shall furnish a current
25 voter registration list of qualified electors entitled to

1 vote in municipal elections to the municipal clerk within
2 fourteen days of the notification.

3 G. When a petition is filed with a municipal
4 clerk, a county clerk, a governing body or a board of county
5 commissioners, the governing body or board of county
6 commissioners shall either certify the petition as valid or
7 order an examination of the petition and the names, addresses
8 and signatures on the petition.

9 H. When an examination of the petition and the
10 names, addresses and signatures on the petition is ordered,
11 the municipal clerk, county clerk, governing body or board of
12 county commissioners shall:

13 (1) resolve issues of residency and major
14 infractions in accordance with the rules set forth in the
15 Municipal Election Code;

16 (2) determine the minimum number of valid
17 names, addresses and signatures, as mandated by law, that
18 must be contained in the particular petition filed in order
19 for it to be declared a valid petition;

20 (3) examine the petition and the names,
21 addresses and signatures on the petition, purge from the
22 petition the signature of any person who is not shown as a
23 qualified elector of the municipality on the list of
24 registered voters provided by the county clerk, purge any
25 signature that is a forgery or that is illegible, purge any

1 signature that appears more than once or that cannot be
2 matched to the name, address and signature as shown on the
3 voter registration lists and the original affidavit of
4 registration, purge the signature of any person who has not
5 signed within the time limits set by law and purge the
6 signature of any person who does not meet the qualifications
7 for signing the petition as prescribed by law; and

8 (4) certify, no later than ten days after
9 the petition is filed or after the expiration of the period
10 within which the petition can be filed as prescribed by law,
11 whichever occurs last, whether the petition contains the
12 minimum number of valid names, addresses and signatures as
13 mandated by law.

14 I. Nothing in this section shall preclude a person
15 with a disability or an illiterate person from causing
16 another person to sign a petition on a person with a
17 disability's or an illiterate person's behalf, so long as the
18 person signing for the person with a disability or illiterate
19 person executes an affidavit acknowledged before a notary
20 public that the person is authorized to sign the petition for
21 the person with a disability or illiterate person. In order
22 for the signature on behalf of the person with a disability
23 or illiterate person to be counted and not purged, the
24 original affidavit shall be submitted along with the petition
25 containing the signature on behalf of the illiterate person

1 or person with a disability.

2 J. If the petition is certified as valid pursuant
3 to Subsection G of this section or is certified as containing
4 in excess of the minimum number of valid names, addresses and
5 signatures mandated by law, then such certification shall be
6 recorded as part of the minutes at the next meeting of the
7 governing body or the board of county commissioners.

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

12 (1) cause the names, addresses and
13 signatures that were purged from the petition to be posted in
14 the municipal or county clerk's office no later than on the
15 day the petition is certified;

16 (2) determine the total number of people
17 signing the petition, the number purged, the number that were
18 not purged and the minimum number of valid names, addresses
19 and signatures required by law for such a petition and post
20 this information along with and at the same time as the
21 posting required in Paragraph (1) of this subsection;

22 (3) publish once, pursuant to the provisions
23 of Subsection J of Section 3-1-2 NMSA 1978, within one week
24 of the certification, the information compiled pursuant to
25 Paragraphs (1) and (2) of this subsection; and

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

7 L. The following rules shall govern reinstatement
8 of purged signatures:

9 (1) within ten days after the petition is
10 certified as containing less than the minimum number of valid
11 names, addresses and signatures mandated by law, any person
12 whose signature has been purged from a petition may present
13 evidence to the clerk to show that the person's signature has
14 been wrongfully purged;

15 (2) if the clerk fails to reinstate that
16 person's signature within three days of demand, then that
17 person may, within ten days of the clerk's refusal to
18 reinstate, petition the district court for an order to
19 reinstate the person's signature on the petition. Upon a
20 prima facie showing by the petitioner of the right to have
21 that person's signature included upon the petition, the
22 district court shall issue an order to the municipal clerk,
23 county clerk, governing body or board of county commissioners
24 to require reinstatement of the signature of the petitioner;

25 (3) within ten days after receiving the

1 order of the district court, the municipal clerk, county
2 clerk, governing body or board of county commissioners shall
3 reinstate the signature of the petitioner on the petition or
4 show cause why the signature of the petitioner has not been
5 reinstated. Upon hearing, if the district court finds that
6 the person whose signature has been purged meets the
7 qualifications for signing the petition, the district court
8 shall make final its order of reinstatement to the municipal
9 clerk, county clerk, governing body or board of county
10 commissioners; and

11 (4) if a sufficient number of signatures are
12 reinstated by the clerk, the district court or both to make
13 the petition valid, then the reinstatement by the clerk or
14 the district court, whichever occurs last, shall be deemed
15 the date of certification of the validity of the petition for
16 the purposes of adopting election resolutions, calling
17 elections or for other matters as provided in the Municipal
18 Code or otherwise provided by law.

19 M. Any petition that contains an insufficient
20 number of signatures after all signatures have been
21 reinstated pursuant to Subsection L of this section is
22 invalid.

23 N. When a petition governed by this section is
24 filed with the municipal clerk or the governing body of a
25 municipality, the governing body or municipal clerk shall

1 perform or cause to be performed the duties required under
2 this section, except as otherwise prohibited by law. When a
3 petition governed by this section is required to be filed
4 with the county clerk or board of county commissioners, the
5 board of county commissioners or county clerk shall perform
6 or cause to be performed the duties required under this
7 section, except as otherwise prohibited by law.

8 O. Any person or any municipal or county official
9 knowingly violating the provisions of this section, knowingly
10 providing or causing to be provided any false information on
11 a petition or forging a signature or otherwise signing a
12 petition when that person knows the person is not a qualified
13 elector in the municipality is guilty of a fourth degree
14 felony.

15 P. The provisions of this section shall not be
16 binding upon a municipality to the extent such provisions are
17 inconsistent with or superseded by the terms and provisions
18 of:

19 (1) the charter of a municipality
20 incorporated by a special act;

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

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

1 (4) the charter of a combined municipal
2 organization.

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

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

10 "3-8-22. CONDUCT OF ELECTION--ELIGIBILITY FOR
11 ASSISTANCE--ORAL ASSISTANCE FOR LANGUAGE MINORITY VOTERS--AID
12 OR ASSISTANCE TO VOTER MARKING BALLOT--WHO MAY ASSIST
13 VOTER--TYPE OF ASSISTANCE.--

14 A. A voter may request assistance in voting only
15 if the voter is:

- 16 (1) visually impaired;
17 (2) a person with a physical disability;
18 (3) unable to read or write; or
19 (4) a member of a language minority who is
20 unable to read well enough to exercise the elective
21 franchise.

22 B. When a voter who is eligible for assistance
23 requires assistance in marking a paper ballot or recording a
24 vote on a voting machine, the voter shall announce this fact
25 in an audible tone before receiving the paper ballot or

1 before entering the voting machine.

2 C. The voter's request for assistance shall be
3 noted next to the voter's name in the signature roster and
4 shall be initialed by the presiding judge.

5 D. After noting the voter's request for assistance
6 in the signature roster, the voter shall be allowed to
7 receive assistance in marking a paper ballot or recording a
8 vote on a voting machine.

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

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

22 G. A person who accompanies the voter into the
23 voting booth or voting machine may assist the voter in
24 marking and folding a paper ballot or recording a vote on the
25 voting machine. A member of the precinct board who assists a

1 voter shall not disclose the name of any candidate or
2 questions for whom any voter voted.

3 H. Oral assistance shall be made available to
4 assist language minority voters who cannot read sufficiently
5 well to exercise the elective franchise. "Language minority"
6 means a person who is Native American or of Spanish heritage,
7 and "inability to read well enough to exercise the elective
8 franchise" means inability to read the languages in which the
9 ballot is printed or the inability to understand instructions
10 for operating the voting machine.

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

24 J. Each municipal clerk shall compile and maintain
25 a list of standby election translators to serve in those

1 precincts on election day when the appointed election
2 translator is unavailable for such service."

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

7 "3-21-1. ZONING--AUTHORITY OF COUNTY OR MUNICIPALITY.--

8 A. For the purpose of promoting health, safety,
9 morals or the general welfare, a county or municipality is a
10 zoning authority and may regulate and restrict within its
11 jurisdiction the:

12 (1) height, number of stories and size of
13 buildings and other structures;

14 (2) percentage of a lot that may be
15 occupied;

16 (3) size of yards, courts and other open
17 space;

18 (4) density of population; and

19 (5) location and use of buildings,
20 structures and land for trade, industry, residence or other
21 purposes.

22 B. The county or municipal zoning authority may:

23 (1) divide the territory under its
24 jurisdiction into districts of such number, shape, area and
25 form as is necessary to carry out the purposes of Sections

1 3-21-1 through 3-21-14 NMSA 1978; and

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

8 C. All state-licensed or state-operated community
9 residences for persons with a mental or developmental
10 disability and serving ten or fewer persons may be considered
11 a residential use of property for purposes of zoning and may
12 be permitted use in all districts in which residential uses
13 are permitted generally, including particularly residential
14 zones for single-family dwellings.

15 D. A board of county commissioners of the county
16 in which the greatest amount of the territory of the
17 petitioning village, community, neighborhood or district lies
18 may declare by ordinance that a village, community,
19 neighborhood or district is a "traditional historic
20 community" upon petition by twenty-five percent or more of
21 the registered qualified electors of the territory within the
22 village, community, neighborhood or district requesting the
23 designation. The number of registered qualified electors
24 shall be based on county records as of the date of the last
25 general election.

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

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

11 "3-51-46. PASSENGER MOTOR VEHICLE OF A PERSON WITH A
12 DISABILITY--PARKING PRIVILEGE.--Passenger motor vehicles
13 owned by and carrying a person with a disability and
14 displaying special registration plates, or passenger motor
15 vehicles carrying persons with severe mobility impairment and
16 displaying parking placards, issued pursuant to Section 66-3-
17 16 NMSA 1978, shall be permitted to park for unlimited
18 periods of time in parking zones restricted as to length of
19 time parking is normally permitted and are exempt from
20 payment of any parking fee of the state or its political
21 subdivisions. The provisions of this section shall prevail
22 over any other law, rule or local ordinance but do not apply
23 to zones where stopping, standing or parking is prohibited,
24 zones reserved for special types of vehicles, zones where
25 parking is prohibited during certain hours of the day in

1 order to facilitate traffic during those hours when parking
2 is prohibited and zones subject to similar regulation because
3 parking presents a traffic hazard."

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

6 "3-60-26. POWERS OF MUNICIPALITY.--Every municipality
7 shall have all the powers necessary or convenient to carry
8 out and effectuate the purposes and provisions of the
9 Community Development Law, including but not necessarily
10 limited to the following powers:

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

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

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

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

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

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

1 bonds at less than redemption price. All bonds so redeemed
2 or purchased shall be canceled;

3 E. to borrow money subject to those procedures and
4 limitations as may be provided in the constitution of New
5 Mexico or the Municipal Code and to apply for and accept
6 advances, loans, grants, contributions and any other form of
7 financial assistance from the federal government, the state,
8 the county or other public body or from any sources, public
9 or private, for the purposes of the Community Development
10 Law; and to give security as may be required and subject to
11 the provisions and limitations of general law except as may
12 otherwise be provided by the Community Development Law and to
13 enter into and carry out contracts in connection therewith.

14 A municipality may include in any contract for financial
15 assistance with the federal government for a community
16 development project conditions imposed pursuant to federal
17 law and that the municipality may deem reasonable or
18 appropriate and that are not inconsistent with the purposes
19 of the Community Development Law;

20 F. within its area of operation, to make all plans
21 necessary for the carrying out of the purposes of the
22 Community Development Law and to contract with any person,
23 public or private, in making and carrying out the plans and
24 to adopt or approve, modify and amend the plans. The plans
25 may include, without limitation:

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

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

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

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

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

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

23 G. to prepare plans and provide reasonable
24 assistance for the relocation of families displaced from a
25 community development area to the extent essential for

1 acquiring possession of and clearing the area or its parts to
2 permit the carrying out of the community development project;

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

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

1 J. to acquire real property, in addition to power
2 elsewhere conferred in the Community Development Law, that is
3 appropriate for the preservation or restoration of historic
4 sites; the beautification of urban land; the conservation of
5 open spaces, natural resources and scenic areas; the
6 provision of recreational opportunities; or is to be used for
7 public purposes; and

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

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

22 (2) special projects directed to the removal
23 of material and architectural barriers that restrict the
24 mobility and accessibility of elderly persons and persons
25 with disabilities;

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

8 (4) payment of the nonfederal share of any
9 federal grant-in-aid program to the municipality that will be
10 a part of a community development project;

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

16 (6) payment of reasonable administrative
17 costs and carrying charges related to the planning and
18 execution of community development plans and projects.

19 Payments made by the municipality or community
20 development agency under the terms of a contract for
21 reconstruction or rehabilitation of private property shall be
22 made from a special fund created for that purpose and shall
23 not be paid directly to the property owner but shall instead
24 be paid to the contractor by the municipality or agency from
25 such fund upon proper authorization of the property owner and

1 notification that the terms of the contract have been
2 fulfilled. However, all such rehabilitation contracts shall
3 be between the property owner and contractor after a sealed
4 bidding procedure and award of contract approved by the
5 municipality have taken place."

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

8 "9-7-4.1. COMPREHENSIVE STRATEGIC PLAN FOR HEALTH.--

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

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

19 C. The department shall include the legislature,
20 health care providers, consumer and patient advocates, health
21 care financing organizations, managed care organizations,
22 major insurers in the state, the human services department,
23 the children, youth and families department, the aging and
24 long-term services department, pharmaceutical manufacturers
25 and other stakeholders in its development of the

1 comprehensive strategic plan for health so as to give
2 geographic representation to all areas of the state. The
3 department shall ensure that public participation and public
4 input are integrated into the planning process. The
5 department shall convene regional meetings on the proposed
6 plan to allow public review and comment, including oral and
7 written testimony, pursuant to the Open Meetings Act.

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

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

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

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

1 (3) key indicators of and barriers to health
2 care coverage and access, with specific emphasis on reducing
3 the number of uninsured New Mexicans;

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

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

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

16 (7) workforce initiatives to identify,
17 recruit and retain health care professionals;

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

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

24 (10) programs, services and activities
25 designed to address the needs of persons who have a

1 disability, are elderly or have special needs;

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

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

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

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

18 "9-8-13. AUTHORITY TO CONDUCT SOCIAL SERVICES.--

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

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

24 (a) children placed for adoption;

25 (b) homeless, dependent and neglected

1 children;

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

4 (d) children with a physical or mental
5 disability who may need such services;

6 (2) establish, administer and supervise
7 social 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
11 Child Placement Agency Licensing Act and inspect and require
12 reports from all private institutions, boarding homes,
13 shelter care homes, group homes, foster homes and other
14 facilities providing assistance, care or other direct
15 services to children or aged, blind, disabled or other
16 dependent persons.

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

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

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

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

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

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

25 Section 8. Section 21-2-6 NMSA 1978 (being Laws 1978,

1 Chapter 54, Section 1, as amended) is amended to read:

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

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

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

10 (2) the public education commission;

11 (3) the public education department;

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

14 (5) the secretary of labor;

15 (6) the tourism department;

16 (7) the apprenticeship council;

17 (8) the economic development department;

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

20 (10) the secretary of finance and
21 administration or the secretary's designee;

22 (11) persons familiar with the education
23 needs of persons with a disability and persons disadvantaged
24 by economic, racial or ethnic status;

25 (12) representatives of business, industry,

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
7 concerned with the types of post-secondary education
8 enumerated in Subparagraphs (a) through (e) of Paragraph (1)
9 of Subsection A of Section 21-2-2 NMSA 1978, the state
10 commission shall directly involve the public education
11 commission and the public education department in all
12 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
21 exclusively to the care and instruction of persons of either
22 sex who are residents within the state and between the ages
23 of five years and the age of majority and who are deaf or
24 hard-of-hearing; provided that the board of regents, in its
25 discretion, may admit residents of this state who have

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

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

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

22 D. The board of regents, for the purpose of
23 creating a source of teachers of the deaf, may pay tuition
24 and other necessary expenses of graduates of New Mexico
25 colleges desiring to take training to teach the deaf in

1 out-of-state training centers and intending to make the
2 teaching of the deaf in New Mexico their profession.

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

19 Section 10. Section 21-21G-3 NMSA 1978 (being Laws
20 1988, Chapter 111, Section 3, as amended) is amended to read:

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

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

1 B. "award recipient" means a student awarded a
2 graduate scholarship;

3 C. "department" means the higher education
4 department;

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

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

11 F. "groups underrepresented in graduate education"
12 means women, minorities, persons with a visual impairment or
13 other physical disability and other groups who have
14 traditionally been underrepresented in the specific area of
15 graduate study or profession for which the scholarship is
16 awarded."

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

19 "22-14-1. DEFINITIONS.--As used in Sections 22-14-2
20 through 22-14-16 NMSA 1978:

21 A. "vocational education" means vocational or
22 technical training or retraining conducted as part of a
23 program designed to enable an individual to engage in a
24 remunerative occupation. Vocational education may provide
25 but is not limited to guidance and counseling, vocational

1 instruction, training for vocational education instructors,
2 transportation and training material and equipment;

3 B. "person with a disability" means a person with
4 a physical or mental disability that constitutes a
5 substantial handicap to employment but that is of such a
6 nature that vocational rehabilitation may be reasonably
7 expected to enable the person to engage in a remunerative
8 occupation;

9 C. "vocational rehabilitation" means services or
10 training necessary to enable a person with a disability to
11 engage in a remunerative occupation. Vocational
12 rehabilitation may provide but is not limited to medical or
13 vocational diagnosis, vocational guidance, counseling and
14 placement, rehabilitation training, physical restoration,
15 transportation, occupational licenses, customary occupational
16 tools or equipment, maintenance and training material and
17 equipment; and

18 D. "federal aid funds" means funds, gifts or
19 grants received by the state under any federal aid for
20 vocational education or vocational rehabilitation."

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

23 "22-14-16. ADMISSION TO STATE EDUCATIONAL
24 INSTITUTIONS--EXEMPTION FROM CERTAIN FEES.--Upon written
25 request of the department, all state educational institutions

1 shall accept for admission, without any charge for any fees
2 except tuition charges, a person with a disability meeting
3 the standards of the institution."

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

6 "24-1G-4. TELEHEALTH COMMISSION CREATED--POWERS AND
7 DUTIES--MEMBERSHIP.--

8 A. The "New Mexico telehealth commission" is
9 created. The commission is administratively attached to the
10 department of health, which shall work in conjunction with
11 the New Mexico health policy commission, in accordance with
12 the Executive Reorganization Act.

13 B. The commission shall consist of no more than
14 twenty-five members with members, one-third of whom shall be
15 from rural areas, chosen from the following categories, all
16 of whom shall be appointed by and serve at the pleasure of
17 the governor:

- 18 (1) health care facilities;
- 19 (2) health care practitioners;
- 20 (3) health care workforce educators;
- 21 (4) telehealth technology experts;
- 22 (5) the telecommunications industry;
- 23 (6) the business community;
- 24 (7) health care insurance providers or other
25 health care payers;

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

18 C. The commission shall:

- 19 (1) identify how telehealth can be used to
20 increase access to care and implement state comprehensive
21 health plans;
22 (2) identify barriers to telehealth
23 utilization and expansion, including payment, infrastructure,
24 training and workforce availability;
25 (3) inventory the state's telehealth assets,

1 map available telecommunications infrastructure and examine
2 the financial impact of failing to develop the state's
3 telehealth capacities;

4 (4) coordinate public and private sector
5 initiatives to enhance networking, portal development and
6 connectivity and to expand telehealth and telecommunications
7 capacity;

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

11 (6) identify specific actions to increase
12 collaborative efforts and public-private partnerships to
13 increase the use of telehealth for health care access
14 development, patient outcome improvement, patient and
15 workforce education and health care practitioner recruitment
16 and development;

17 (7) develop and disseminate specific
18 telehealth standards and guidelines to ensure quality of
19 care, positive health outcomes, appropriate use of technology
20 and protection of privacy and confidentiality;

21 (8) review and comment on initiatives,
22 projects or grant applications to ensure telehealth standards
23 and guidelines are met and maximum collaboration and
24 cooperation across the state is encouraged;

25 (9) meet at least once each quarter at the

1 call of the chair or vice chair, who shall be designated by
2 the governor from among the membership; and

3 (10) report annually to the governor and the
4 legislature on the state of the telehealth system and the
5 adequacy and allocation of telehealth services throughout the
6 state, providing the governor and the legislature with
7 specific recommendations for improving telehealth and related
8 service systems.

9 D. A majority of the members of the commission
10 constitutes a quorum for the transaction of business."

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

13 "24-2-1. AUTHORITY TO CONDUCT SERVICES FOR CHILDREN
14 WITH A DISABILITY.--The public health division of the
15 department of health has authority to establish, administer
16 and supervise activities to children who have a physical
17 disability or whose condition may become a disability. The
18 public health division also may supervise the administration
19 of those services to children with a disability that are not
20 administered directly by it."

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

23 "24-9A-1. DEFINITIONS.--As used in the Maternal, Fetal
24 and Infant Experimentation Act:

25 A. "viability" means that stage of fetal

1 development when the unborn child is potentially able to live
2 outside the mother's womb, albeit with artificial aid;

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

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

6 D. "clinical research" means any biomedical or
7 behavioral research involving human subjects, including the
8 unborn, conducted according to a formal procedure. The term
9 is to be construed liberally to embrace research concerning
10 all physiological processes in human beings and includes
11 research involving human in vitro fertilization, but shall
12 not include diagnostic testing, treatment, therapy or related
13 procedures conducted by formal protocols deemed necessary for
14 the care of the particular patient upon whom such activity is
15 performed and shall not include human in vitro fertilization
16 performed to treat infertility; provided that this procedure
17 shall include provisions to ensure that each living
18 fertilized ovum, zygote or embryo is implanted in a human
19 female recipient, and no physician may stipulate that a woman
20 must abort in the event the pregnancy should produce a child
21 with a disability. Provided that emergency medical
22 procedures necessary to preserve the life or health of the
23 mother or the fetus shall not be considered to be clinical
24 research;

25 E. "subject at risk", "subject" or "at risk" means

1 any person who may be exposed to the likelihood of injury,
2 including physical or psychological injury, as a consequence
3 of participation as a subject in:

4 (1) any research, development or related
5 activity that departs from the application of those
6 established and accepted methods deemed necessary to meet the
7 person's needs;

8 (2) controlled research studies necessary to
9 establish accepted methods designed to meet the person's
10 needs; or

11 (3) research activity that poses a
12 significant risk to the subject;

13 F. "significant risk" means an activity that is
14 likely to cause disfigurement or loss or impairment of the
15 function of any member or organ;

16 G. "fetus" means the product of conception from
17 the time of conception until the expulsion or extraction of
18 the fetus or the opening of the uterine cavity, but shall not
19 include the placenta, extraembryonic membranes, umbilical
20 cord, extraembryonic fluids and their resident cell types and
21 cultured cells;

22 H. "live-born infant" means an offspring of a
23 person that exhibits heartbeat, spontaneous respiratory
24 activity, spontaneous movement of voluntary muscles or
25 pulsation of the umbilical cord if still attached to the

1 infant ex utero; provided the Maternal, Fetal and Infant
2 Experimentation Act does not apply to a fetus or infant
3 absent the characteristics set forth in this subsection;

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

7 J. "born" means the time the head or any other
8 part of the body of the fetus emerges from the vagina or the
9 time the uterine cavity is opened during a caesarean section
10 or hysterotomy; and

11 K. "in vitro fertilization" means any
12 fertilization of human ova that occurs outside the body of a
13 female, either through admixture of donor human sperm and ova
14 or by any other means."

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

17 "27-1-2. POWERS OF HUMAN SERVICES DEPARTMENT.--

18 A. The human services department is an agency of
19 the state and shall at all times be under the exclusive
20 control of this state. The management and control of the
21 human services department is vested in the secretary of human
22 services.

23 B. Subject to the constitution of New Mexico, the
24 human services department has the power to:

25 (1) sue and, with the consent of the

1 legislature, be sued;

2 (2) adopt and use a corporate seal;

3 (3) have succession in its corporate name;

4 (4) make contracts as authorized in Chapter
5 27 NMSA 1978 to carry out the purposes of that chapter;

6 (5) adopt, amend and repeal bylaws, rules
7 and regulations;

8 (6) purchase, lease and hold real and
9 personal property necessary or convenient for the carrying
10 out of its powers and duties, to exercise the right of
11 eminent domain to acquire such real property in the same
12 manner as the state now exercises that right and to dispose
13 of any property acquired in any manner;

14 (7) have such powers as may be necessary or
15 appropriate for the exercise of the powers specifically
16 conferred upon it in Chapter 27 NMSA 1978;

17 (8) receive and have custody for protection
18 and administration, disburse, dispose of and account for
19 funds, commodities, equipment, supplies and any kind of
20 property given, granted, loaned or advanced to the state for
21 public assistance, public welfare, social security or any
22 other similar purpose;

23 (9) enter into reciprocal agreements with
24 public welfare agencies of other states relative to the
25 provision for relief or assistance to transients and

1 nonresidents;

2 (10) establish and administer programs of
3 old age assistance and aid to dependent children and persons
4 with a visual impairment;

5 (11) establish and administer a program of
6 services for children with a disability or who have a
7 condition that may lead to a disability, and to supervise the
8 administration of those services that are not administered
9 directly by it;

10 (12) establish, extend and strengthen public
11 welfare services for children; and

12 (13) establish and administer a program for
13 general relief."

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

16 "27-1-3. ACTIVITIES OF HUMAN SERVICES DEPARTMENT.--The
17 department shall be charged with the administration of all
18 the welfare activities of the state as provided in Chapter 27
19 NMSA 1978, except as otherwise provided for by law. The
20 department shall, except as otherwise provided by law:

21 A. administer old age assistance, aid to dependent
22 children, assistance to persons with a visual impairment or
23 other physical disability and general relief;

24 B. administer all aid or services to children with
25 a disability, including the extension and improvement of

1 services for children with such a disability, insofar as
2 practicable under conditions in this state, provide for
3 locating children who have a disability or a condition that
4 may become a disability, provide corrective and any other
5 services and care and facilities for diagnosis,
6 hospitalization and after-care for such children and
7 supervise the administration of those services that are not
8 administered directly by the department;

9 C. administer and supervise all child welfare
10 activities, service to children placed for adoption, service
11 and care of homeless, dependent and neglected children,
12 service and care for children in foster family homes or in
13 institutions because of dependency or delinquency and care
14 and service to a child who because of a physical or mental
15 disability may need such service;

16 D. formulate detailed plans, make rules and
17 regulations and take action deemed necessary or desirable to
18 carry out the provisions of Chapter 27 NMSA 1978 and that is
19 not inconsistent with the provisions of that chapter;

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

1 F. assist other departments, agencies and
2 institutions of local, state and federal governments when so
3 requested, cooperate with such agencies when expedient in
4 performing services in conformity with the purposes of
5 Chapter 27 NMSA 1978 and cooperate with medical, health,
6 nursing and welfare groups, any state agency charged with the
7 administration of laws providing for vocational
8 rehabilitation of persons with a physical disability and
9 organizations within the state;

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

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

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

21 J. administer such other public welfare functions
22 as may be assumed by the state after June 19, 1987;

23 K. carry on research and compile statistics
24 relative to the entire public welfare program throughout the
25 state, including all phases of dependency, defectiveness,

1 delinquency and related problems, and develop plans in
2 cooperation with other public and private agencies for the
3 prevention as well as treatment of conditions giving rise to
4 public welfare problems; and

5 L. inspect and require reports from all private
6 institutions, boarding homes and agencies providing
7 assistance, care or other direct services to persons who are
8 elderly, who have a visual impairment, who have a physical or
9 developmental disability or who are otherwise dependent.

10 Nothing contained in this section shall be construed to
11 authorize the department to establish or prescribe standards
12 or regulations for or otherwise regulate programs or services
13 to children in group homes as defined in Section 9-8-13 NMSA
14 1978."

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

18 "27-2B-5. WORK REQUIREMENTS--WORK PARTICIPATION
19 RATES.--

20 A. The following qualify as work activities:

21 (1) unsubsidized employment, including
22 self-employment;

23 (2) subsidized private sector employment,
24 including self-employment;

25 (3) subsidized public sector employment;

1 (4) work experience, including work
2 associated with the refurbishing of publicly assisted housing
3 if sufficient private sector employment is not available;

4 (5) on-the-job training;

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

7 (7) community service programs;

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

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

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

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

21 (12) the provision of child care services to
22 a participant who is participating in a community service
23 program.

24 B. The department shall recognize community
25 service programs and job training programs that are operated

1 by an Indian nation, tribe or pueblo.

2 C. The department may not require a participant to
3 work more than four hours per week over the work requirement
4 rate set pursuant to the federal act.

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

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

15 (1) participating in parenting classes,
16 money management classes or life skills training;

17 (2) participating in a certified alcohol or
18 drug addiction program;

19 (3) in the case of a homeless benefit group,
20 finding a home;

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

1 weeks; and

2 (5) in the case of a participant who does
3 not speak English, participating in a course in English as a
4 second language.

5 F. Subject to the availability of funds, the
6 department in cooperation with the labor department, Indian
7 affairs department and other appropriate state agencies may
8 develop projects to provide for the placement of participants
9 in work activities, including the following:

10 (1) participating in unpaid internships with
11 private and government entities;

12 (2) refurbishing publicly assisted housing;

13 (3) volunteering at a head start program or
14 a school;

15 (4) weatherizing low-income housing; and

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

21 G. If a participant is engaged in full-time
22 post-secondary education studies or an activity set out in
23 Paragraphs (9) through (11) of Subsection A of this section,
24 the participant shall engage in another work activity at the
25 same time. Additionally, for two-parent families that

1 receive federally funded child-care assistance, the
2 participant's spouse shall engage in a work activity set out
3 in Paragraphs (1) through (5) and (7) of Subsection A of this
4 section unless the participant suffers from a temporary or
5 complete disability that bars the participant from engaging
6 in a work activity or the participant is barred from engaging
7 in a work activity because the participant provides sole care
8 for a person with a disability.

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

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

16 (1) a participant barred from engaging in a
17 work activity because the participant has a temporary or
18 permanent disability;

19 (2) a participant over age sixty;

20 (3) a participant barred from engaging in a
21 work activity because the participant provides the sole care
22 for a person with a disability;

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

1 (5) a single custodial parent caring for a
2 child under six years of age if the parent is unable to
3 obtain child care for one or more of the following reasons:

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

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

11 (c) unavailability of appropriate and
12 affordable formal child-care arrangements as defined by the
13 children, youth and families department;

14 (6) a pregnant woman during her last
15 trimester of pregnancy;

16 (7) a participant prevented from working by
17 a temporary emergency or a situation that precludes work
18 participation for thirty days or less;

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

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

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

5 "27-2B-6. DURATIONAL LIMITS.--

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

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

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

23 D. For the purposes of this section, a participant
24 has been battered or subjected to extreme cruelty if the
25 participant can demonstrate by reliable medical,

1 psychological or mental reports, court orders or police
2 reports that the participant has been subjected to and
3 currently is affected by:

4 (1) physical acts that result in physical
5 injury;

6 (2) sexual abuse;

7 (3) being forced to engage in nonconsensual
8 sexual acts or activities;

9 (4) threats or attempts at physical or
10 sexual abuse;

11 (5) mental abuse; or

12 (6) neglect or deprivation of medical care
13 except when the deprivation is based by mutual consent on
14 religious grounds.

15 E. For the purposes of this section, a hardship
16 exception applies to a person who demonstrates through
17 reliable medical, psychological or mental reports, social
18 security administration records, court orders, police reports
19 or department records that the person is a person:

20 (1) who is barred from engaging in a work
21 activity because the person has a temporary or permanent
22 disability;

23 (2) who is the sole provider of home care to
24 a family member who is ill or has a disability;

25 (3) whose ability to be gainfully employed

1 is affected by domestic violence;

2 (4) whose application for supplemental
3 security income is pending in the application or appeals
4 process and who:

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

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

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

12 F. Pursuant to the federal act, the department
13 shall not count a month of receipt of cash assistance or
14 services toward the sixty-month durational limit if during
15 the time of receipt the participant:

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

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

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

25 "27-4-2. DEFINITIONS.--As used in the Special Medical

1 Needs Act:

2 A. "department" or "division" means the income
3 support division of the human services department;

4 B. "board" means the division;

5 C. "aged person" means a person who has attained
6 the age of sixty-five years and does not have a spouse
7 financially able, according to regulations of the division,
8 to furnish support;

9 D. " person with a disability" means a person who
10 has attained the age of eighteen years and is determined to
11 have a permanent and total disability, according to
12 regulations of the division; and

13 E. "blind person" means a person who is determined
14 to be blind according to regulations of the division."

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

17 "27-4-3. PERSONS WITH SPECIAL NEEDS.--

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

25 B. Such medical condition shall be certified by an SB 289
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1 individual licensed under state law to practice medicine or
2 osteopathy. The medical care shall be reviewed and approved
3 according to regulations of the division."

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

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

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

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

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

22 (1) is not a current or former employee of
23 the fiscal intermediary;

24 (2) has not received training or instruction
25 from the fiscal intermediary with respect to providing

1 personal care services to a person with a disability, not
2 including administrative paper work;

3 (3) has been hired by and received training
4 or instruction from the consumer or the consumer's authorized
5 representative to provide personal care to the consumer; and

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

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

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

21 D. As used in this section:

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

25 (2) "fiscal intermediary" means a provider

1 that furnishes administrative assistance for a consumer who
2 selects a consumer-directed, rather than consumer-delegated,
3 personal care program;

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

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

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

14 "28-7-2. POLICY.--It is the policy of this state to
15 encourage and enable persons who are blind, visually impaired
16 or who have another physical disability to participate fully
17 in the social and economic life of the state and to engage in
18 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. Persons who are blind, visually impaired or who
23 have another physical disability have the same right as
24 others to the full and free use of the streets, highways,
25 sidewalks, walkways, public buildings, public facilities and

1 other public places.

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

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

18 D. The attorney general, district attorney or any
19 person with a disability may file an action in the judicial
20 district when a building has been built or altered and the
21 work has not been accomplished in accordance with the current
22 uniform building code, other applicable publications and
23 established handicapped standards. The building official
24 shall notify those applying for a permit that they shall
25 comply with established standards. Any interested person may

1 appeal the granting or denial of a waiver to the district
2 court where the building is located. If the court finds that
3 the building owner was required to comply with handicap
4 access standards of the uniform building code and has failed
5 to comply with such standards within a reasonable period of
6 time, then the party filing action shall recover the court
7 costs, attorney fees and appropriate injunctive relief to
8 remedy the violation."

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

11 "28-7-5. INTERFERENCE WITH RIGHTS OF BLIND--PENALTY.--
12 A person, firm or corporation or the agent of a person, firm
13 or corporation who denies or interferes with admittance to or
14 enjoyment of the public facilities enumerated in Section
15 28-7-3 NMSA 1978 or otherwise interferes with the rights of a
16 blind or visually impaired person or a person who has a
17 physical disability enumerated in the White Cane Law is
18 guilty of a misdemeanor."

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

21 "28-7-6. ANNUAL PROCLAMATION OF WHITE CANE SAFETY DAY
22 BY GOVERNOR.--Each year, the governor shall take suitable
23 public notice of October 15 as white cane safety day. The
24 governor shall issue a proclamation in which the governor:

25 A. comments upon the significance of the white

1 cane;

2 B. calls upon the citizens of the state to observe
3 the provisions of the White Cane Law and to take precautions
4 necessary to the safety of persons with a disability;

5 C. reminds the citizens of the state of the
6 policies with respect to persons with a disability declared
7 in the White Cane Law and urges the citizens to cooperate in
8 giving effect to them; and

9 D. emphasizes the need of the citizens to be aware
10 of the presence of persons with a disability in the community
11 and to keep streets, highways, sidewalks, walkways, public
12 buildings, public facilities, other public places, places of
13 public accommodation, amusement and resort and other places
14 to which the public is invited safe and functional and to
15 offer assistance to persons with a disability upon
16 appropriate occasions."

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

19 "28-7-7. POLICY OF STATE ON EMPLOYMENT OF PERSONS WITH
20 A DISABILITY.--It is the policy of this state that a person
21 who is blind, visually impaired or who has another physical
22 disability shall be employed in the state service, the
23 service of the political subdivisions of the state, the
24 public schools and all other employment supported in whole or
25 in part by public funds on the same terms and conditions as

1 others, unless it is shown that the particular disability
2 prevents the performance of the work involved."

3 Section 29. Section 28-10-3.1 NMSA 1978 (being Laws
4 1995, Chapter 95, Section 1, as amended) is amended to read:

5 "28-10-3.1. FULL-SERVICE GASOLINE STATIONS--DECAL
6 DISPLAY--SERVICE TO PERSON WITH A DISABILITY.--

7 A. The governor's commission on disability shall
8 design and produce a decal for display in full-service
9 gasoline stations signifying that the gasoline station will
10 provide gasoline pumping, window washing, fluid checks and
11 other services provided at its full-service island to any
12 properly permitted or certified driver with a disability at a
13 self-service island.

14 B. Any full-service gasoline station providing the
15 services described in Subsection A of this section may
16 request and shall receive the decal upon application to the
17 governor's commission on disability.

18 C. No gasoline station shall display the decal
19 issued by the governor's commission on disability unless it
20 provides full service to any driver with a disability at a
21 self-service island.

22 D. A gasoline station owner or operator who
23 displays a decal signifying that the station will provide
24 additional services to drivers with a disability at a
25 self-service island and who fails to provide that service

1 shall be subject to revocation of the decal for display
2 according to this section."

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

5 "28-10-5. DISABILITY FUND CREATED.--

6 A. There is created in the state treasury a
7 "disability fund". All funds, gifts, donations, bequests and
8 other income of the governor's commission on disability shall
9 be deposited by the director of the commission in the fund
10 and shall be appropriated to the commission to further the
11 purpose of Sections 28-10-1 through 28-10-8.1 NMSA 1978 or
12 for the purposes stated by the donor or grantor of the funds.

13 B. Distributions made to the disability fund from
14 the housing modification for persons with a disability
15 permanent fund shall constitute a separate account in the
16 fund and are appropriated to the governor's commission on
17 disability for the purpose of carrying out a residential
18 accessibility modification program.

19 C. Money in the disability fund shall not revert
20 but shall be used only as provided in Sections 28-10-1
21 through 28-10-8.1 NMSA 1978."

22 Section 31. Section 28-10-5.1 NMSA 1978 (being Laws
23 2001, Chapter 226, Section 1) is amended to read:

24 "28-10-5.1. HOUSING MODIFICATION FOR PERSONS WITH A
25 DISABILITY PERMANENT FUND--INVESTMENT--DISTRIBUTION.--

1 A. The "housing modification for persons with a
2 disability permanent fund" is created in the state treasury.
3 The fund shall consist of money appropriated to the fund and
4 any gifts, donations or bequests made to the fund. Money in
5 the fund shall be invested by the state investment officer as
6 land grant permanent funds are invested pursuant to Chapter
7 6, Article 8 NMSA 1978, and earnings from investment of the
8 fund shall be credited to the fund. Money in the fund shall
9 not revert at the end of any fiscal year and shall not be
10 expended for any purpose, except that an annual distribution
11 shall be made to the fund for persons with a disability in
12 accordance with Subsection B of this section.

13 B. On July 1 of fiscal year 2002 and on July 1 of
14 each fiscal year thereafter, an annual distribution shall be
15 made from the housing modification for persons with a
16 disability permanent fund to the disability fund in an amount
17 equal to three hundred thousand dollars (\$300,000) until that
18 amount is less than an amount equal to five percent of the
19 average of the year-end market values of the housing
20 modification for persons with a disability permanent fund for
21 the immediately preceding five calendar years. Thereafter,
22 the amount of the annual distribution shall be five percent
23 of the average of the year-end market values of the housing
24 modification for persons with a disability permanent fund for
25 the immediately preceding five calendar years."

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

3 "28-10-9. SHORT TITLE.--Sections 28-10-9 through
4 28-10-12 NMSA 1978 may be cited as the "Disability Employment
5 Act"."

6 Section 33. Section 28-10-10 NMSA 1978 (being Laws
7 1969, Chapter 129, Section 2) is amended to read:

8 "28-10-10. DEFINITION.--As used in the Disability
9 Employment Act, "persons with a disability" includes persons
10 with a mental or physical disability."

11 Section 34. Section 28-10-11 NMSA 1978 (being Laws
12 1969, Chapter 129, Section 3) is amended to read:

13 "28-10-11. STATE POLICY.--In order to further the
14 efforts of New Mexico in alleviating the problems of persons
15 with a disability, full consideration shall be given to the
16 employment of such persons in state government in positions
17 in which they meet the necessary performance requirements or
18 in positions in which performance requirements can be
19 modified to take advantage of their abilities without
20 detriment to the state service."

21 Section 35. Section 28-10-12 NMSA 1978 (being Laws
22 1969, Chapter 129, Section 4) is amended to read:

23 "28-10-12. PERSONNEL BOARD--RULES.--The personnel board
24 shall establish rules and procedures consistent with the
25 state policy of employment of persons with a disability. The

1 rules and procedures shall be adopted after consultation with
2 appropriate vocational rehabilitation agencies, state
3 institutions, interested private associations and
4 organizations and interested individuals. Any rules or
5 procedures adopted by the personnel board shall provide that:

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

8 (1) the person with a disability has the
9 ability to perform the duties of the position sought;

10 (2) the person with a disability is
11 physically qualified to do the work without hazard to that
12 person or to others; and

13 (3) the person with a disability is socially
14 competent in a work environment and, either independently or
15 with continuing help as has been provided, in
16 after-working-hours living;

17 B. there are suitable periods of probation or
18 trial employment for persons with a disability before the
19 employment becomes permanent under the provisions of the
20 Personnel Act; and

21 C. the processes set forth in this section for
22 establishing the eligibility of persons with a disability are
23 construed to meet the requirements of competitive entrance
24 examinations under the provisions of the Personnel Act."

25 Section 36. Section 30-16-12 NMSA 1978 (being Laws

1 1963, Chapter 303, Section 16-12) is amended to read:

2 "30-16-12. FALSELY REPRESENTING ONESELF AS
3 INCAPACITATED.--Falsely representing oneself as disabled
4 consists of a person falsely representing the person's own
5 self to be blind, visually impaired, deaf or having a
6 physical disability for the purpose of obtaining money or
7 other thing of value.

8 Whoever commits falsely representing oneself as disabled
9 is guilty of a petty misdemeanor."

10 Section 37. Section 31-18B-2 NMSA 1978 (being Laws
11 2003, Chapter 384, Section 2) is amended to read:

12 "31-18B-2. DEFINITIONS.--As used in the Hate Crimes
13 Act:

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

15 B. "gender identity" means a person's
16 self-perception, or perception of that person by another, of
17 the person's identity as a male or female based upon the
18 person's appearance, behavior or physical characteristics
19 that are in accord or opposed to the person's physical
20 anatomy, chromosomal sex or sex at birth;

21 C. "disability" means that the person has a
22 physical or mental disability that substantially limits one
23 or more of that person's functions, such as caring for
24 oneself, performing manual tasks, walking, seeing, hearing,
25 speaking, breathing, learning and working;

1 D. "motivated by hate" means the commission of a
2 crime with the intent to commit the crime because of the
3 actual or perceived race, religion, color, national origin,
4 ancestry, age, handicapped status, gender, sexual orientation
5 or gender identity of the victim, whether or not the
6 offender's belief or perception was correct; and

7 E. "sexual orientation" means heterosexuality,
8 homosexuality or bisexuality, whether actual or perceived."

9 Section 38. Section 31-18B-3 NMSA 1978 (being Laws
10 2003, Chapter 384, Section 3) is amended to read:

11 "31-18B-3. HATE CRIMES--NONCAPITAL FELONIES,
12 MISDEMEANORS OR PETTY MISDEMEANORS COMMITTED BECAUSE OF THE
13 VICTIM'S ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL
14 ORIGIN, ANCESTRY, AGE, DISABILITY, GENDER, SEXUAL ORIENTATION
15 OR GENDER IDENTITY--ALTERATION OF BASIC SENTENCE.--

16 A. When a separate finding of fact by the court
17 or jury shows beyond a reasonable doubt that an offender
18 committed a noncapital felony motivated by hate, the basic
19 sentence of imprisonment prescribed for the offense in
20 Section 31-18-15 NMSA 1978 may be increased by one year. An
21 increase in the basic sentence of imprisonment pursuant to
22 the provisions of this subsection shall be in addition to an
23 increase in a basic sentence prescribed for the offense in
24 Section 31-18-17 NMSA 1978. A sentence imposed pursuant to
25 the provisions of this subsection may include an alternative

1 sentence that requires community service, treatment,
2 education or any combination thereof. The court may suspend
3 or defer any or all of the sentence or grant a conditional
4 discharge, unless otherwise provided by law.

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

22 C. If the case is tried before a jury and if a
23 prima facie case has been established showing that in the
24 commission of the offense the offender was motivated by hate,
25 the court shall submit the issue to the jury by special

1 interrogatory. If the case is tried by the court and if a
2 prima facie case has been established showing that in the
3 commission of the offense the offender was motivated by hate,
4 the court shall decide the issue and shall make a separate
5 finding of fact regarding the issue. If the court or jury
6 determines that the offender is guilty of the crime and finds
7 beyond a reasonable doubt that the offender was motivated by
8 hate, the court shall include that determination in the
9 judgment and sentence.

10 D. When a petty misdemeanor or a misdemeanor is
11 motivated by hate, the basic sentence of imprisonment
12 prescribed for the offense in Section 31-19-1 NMSA 1978 may
13 include an alternative sentence that requires community
14 service, treatment, education or any combination thereof.
15 The court may suspend or defer any or all of the sentence or
16 grant a conditional discharge, unless otherwise provided by
17 law."

18 Section 39. Section 32A-5-44 NMSA 1978 (being Laws
19 1993, Chapter 77, Section 171) is amended to read:

20 "32A-5-44. ELIGIBILITY FOR SUBSIDIZED ADOPTIONS.--

21 A. The social services division of the human
22 services department may make payments to adoptive parents or
23 to medical vendors on behalf of a child placed for adoption
24 by the division or by an agency when the division determines
25 that:

- 1 (1) the child is difficult to place; and
2 (2) the adoptive family is capable of
3 providing the permanent family relationship needed by the
4 child in all respects, except that the needs of the child are
5 beyond the economic resources and ability of the family.

6 B. As used in Sections 32A-5-43 through 32A-5-45
7 NMSA 1978, a "difficult to place child" means a child who has
8 a mental, physical or emotional disability or who is in
9 special circumstances by virtue of age, sibling relationship
10 or racial background."

11 Section 40. Section 32A-6-2 NMSA 1978 (being Laws
12 1995, Chapter 207, Section 2, as amended) is amended to read:

13 "32A-6-2. DEFINITIONS.--As used in the Children's
14 Mental Health and Developmental Disabilities Act:

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

23 B. "clinician" means a physician, licensed
24 psychologist, licensed independent social worker or licensed
25 professional clinical counselor;

1 C. "consistent with the least drastic means
2 principle" means that the habilitation or treatment and the
3 conditions of habilitation or treatment for the child,
4 separately and in combination:

5 (1) are no more harsh, hazardous or
6 intrusive than necessary to achieve acceptable treatment
7 objectives for the child;

8 (2) involve no restrictions on physical
9 movement and no requirement for residential care, except as
10 reasonably necessary for the administration of treatment or
11 for the protection of the child or others from physical
12 injury; and

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

15 D. "convulsive treatment" means any form of
16 mental health treatment that depends upon creation of a
17 convulsion by any means, including electroconvulsive
18 treatment and insulin coma treatment;

19 E. "developmental disability" means a severe
20 chronic disability that:

21 (1) is attributable to a mental or physical
22 impairment or a combination of mental or physical
23 impairments;

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

1 (3) is expected to continue indefinitely;
2 (4) results in substantial functional
3 limitations in three or more of the following areas of major
4 life activities:

- 5 (a) self-care;
- 6 (b) receptive and expressive language;
- 7 (c) learning;
- 8 (d) mobility;
- 9 (e) self-direction;
- 10 (f) capacity for independent living; or
- 11 (g) economic self-sufficiency; and

12 (5) reflects a person's need for a
13 combination and sequence of special, interdisciplinary or
14 generic treatments or other supports and services that are of
15 lifelong or extended duration and that are individually
16 planned or coordinated;

17 F. "evaluation facility" means a community mental
18 health or developmental disability program, a medical
19 facility having psychiatric or developmental disability
20 services available or, if none of the foregoing is reasonably
21 available or appropriate, the office of a licensed physician
22 or a licensed psychologist, any of which shall be capable of
23 performing a mental status examination adequate to determine
24 the need for involuntary treatment;

25 G. "experimental treatment" means any mental

1 health or developmental disabilities treatment that presents
2 significant risk of physical harm, but does not include
3 accepted treatment used in the competent practice of medicine
4 and psychology and supported by scientifically acceptable
5 studies;

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

10 I. "habilitation" means the process by which
11 professional persons and their staff assist a child with a
12 developmental disability in acquiring and maintaining those
13 skills and behaviors that enable the child to cope more
14 effectively with the demands of the child's own person and of
15 the child's environment and to raise the level of the child's
16 physical, mental and social efficiency. "Habilitation"
17 includes programs of formal, structured education and
18 treatment;

19 J. "likelihood of serious harm to oneself" means
20 that it is more likely than not that in the near future the
21 child will attempt to commit suicide or will cause serious
22 bodily harm to the child's self by violent or other
23 self-destructive means, including grave passive neglect;

24 K. "likelihood of serious harm to others" means
25 that it is more likely than not that in the near future the

1 child will inflict serious, unjustified bodily harm on
2 another person or commit a criminal sexual offense, as
3 evidenced by behavior causing, attempting or threatening such
4 harm, which behavior gives rise to a reasonable fear of such
5 harm from the child;

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

10 M. "mental health or developmental disabilities
11 professional" means a physician or other professional who, by
12 training or experience, is qualified to work with persons who
13 have a mental disorder or a developmental disability;

14 N. "physician" or "licensed psychologist", when
15 used for the purpose of hospital admittance or discharge,
16 means a physician or licensed psychologist who has been
17 granted admitting privileges at a hospital licensed by the
18 department of health, if such privileges are required;

19 O. "psychosurgery" means those operations
20 currently referred to as lobotomy, psychiatric surgery and
21 behavioral surgery and all other forms of brain surgery if
22 the surgery is performed for the following purposes:

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

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

4 (3) treatment of abnormal brain function or
5 abnormal brain tissue in order to modify thoughts, feelings,
6 actions or behavior when the abnormality is not an
7 established cause for those thoughts, feelings, actions or
8 behavior.

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

11 P. "residential treatment or habilitation
12 program" means diagnosis, evaluation, care, treatment or
13 habilitation rendered inside or on the premises of a mental
14 health or developmental disabilities facility, hospital,
15 clinic, institution, supervisory residence or nursing home
16 when the individual resides on the premises and where one or
17 more of the following measures is available for use:

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

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

22 (3) a facility or program designed for the
23 purpose of restricting the child's ability to exit
24 voluntarily; or

25 (4) the involuntary emergency administration SB 289
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1 of psychotropic medication; and

2 Q. "treatment" means any effort to accomplish a
3 significant change in the mental or emotional condition or
4 behavior of the child."

5 Section 41. Section 32A-16-4 NMSA 1978 (being Laws
6 1989, Chapter 290, Section 4, as amended) is amended to read:

7 "32A-16-4. POWERS AND DUTIES OF THE BOARD.--The child
8 development board shall:

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

11 B. consider and adopt licensure requirements,
12 policies and procedures for individuals working in licensed
13 or registered health facilities with children from birth to
14 age five; provided that such licensure requirements shall not
15 apply to individuals working in group homes pursuant to
16 Section 9-8-13 NMSA 1978;

17 C. consider and make recommendations to the
18 public education department regarding additional licensure
19 requirements for public school personnel working with public
20 school children up to age eight;

21 D. work with other state agencies to promote a
22 uniform and comprehensive method of licensing child care
23 personnel;

24 E. develop and adopt policies and procedures for
25 the office of child development;

1 F. develop levels of licensure for nonpublic
2 school personnel depending upon the age of children served,
3 the training facility used and the program in which the
4 individual is employed;

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

9 H. develop and adopt program criteria for
10 state-funded preschool programs serving children from birth
11 to age five; provided that criteria shall not apply to
12 programs serving children who have a developmental delay or
13 are at risk for developing a delay, birth through two years,
14 and programs serving children who have a developmental delay,
15 three through five years; and

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

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

20 "43-1-3. DEFINITIONS.--As used in the Mental Health
21 and Developmental Disabilities Code:

22 A. "aversive stimuli" means anything that,
23 because it is believed to be unreasonably unpleasant,
24 uncomfortable or distasteful to the client, is administered
25 or done to the client for the purpose of reducing the

1 frequency of a behavior, but does not include verbal
2 therapies, physical restrictions to prevent imminent harm to
3 self or others or psychotropic medications that are not used
4 for purposes of punishment;

5 B. "client" means any patient who is requesting
6 or receiving mental health services or any person requesting
7 or receiving developmental disabilities services or who is
8 present in a mental health or developmental disabilities
9 facility for the purpose of receiving such services or who
10 has been placed in a mental health or developmental
11 disabilities facility by the person's parent or guardian or
12 by any court order;

13 C. "code" means the Mental Health and
14 Developmental Disabilities Code;

15 D. "consistent with the least drastic means
16 principle" means that the habilitation or treatment and the
17 conditions of habilitation or treatment for the client,
18 separately and in combination:

19 (1) are no more harsh, hazardous or
20 intrusive than necessary to achieve acceptable treatment
21 objectives for the client;

22 (2) involve no restrictions on physical
23 movement and no requirement for residential care except as
24 reasonably necessary for the administration of treatment or
25 for the protection of the client or others from physical

1 injury; and

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

4 E. "convulsive treatment" means any form of
5 mental health treatment that depends upon creation of a
6 convulsion by any means, including but not limited to
7 electroconvulsive treatment and insulin coma treatment;

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

9 G. "department" or "division" means the
10 behavioral health services division of the department of
11 health;

12 H. "developmental disability" means a disability
13 of a person that is attributable to mental retardation,
14 cerebral palsy, autism or neurological dysfunction that
15 requires treatment or habilitation similar to that provided
16 to persons with mental retardation;

17 I. "evaluation facility" means a community mental
18 health or developmental disability program, a medical
19 facility having psychiatric or developmental disability
20 services available, including the New Mexico behavioral
21 health institute at Las Vegas, the Los Lunas medical center
22 or, if none of the foregoing is reasonably available or
23 appropriate, the office of a licensed physician or a
24 certified psychologist, any of which shall be capable of
25 performing a mental status examination adequate to determine

1 the need for involuntary treatment;

2 J. "experimental treatment" means any mental
3 health or developmental disabilities treatment that presents
4 significant risk of physical harm, but does not include
5 accepted treatment used in competent practice of medicine and
6 psychology and supported by scientifically acceptable
7 studies;

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

12 L. "habilitation" means the process by which
13 professional persons and their staff assist a client with a
14 developmental disability in acquiring and maintaining those
15 skills and behaviors that enable the person to cope more
16 effectively with the demands of the person's self and
17 environment and to raise the level of the person's physical,
18 mental and social efficiency. "Habilitation" includes but is
19 not limited to programs of formal, structured education and
20 treatment;

21 M. "likelihood of serious harm to oneself" means
22 that it is more likely than not that in the near future a
23 person will attempt to commit suicide or will cause serious
24 bodily harm to the person's self by violent or other
25 self-destructive means, including but not limited to grave

1 passive neglect;

2 N. "likelihood of serious harm to others" means
3 that it is more likely than not that in the near future a
4 person will inflict serious, unjustified bodily harm on
5 another person or commit a criminal sexual offense, as
6 evidenced by behavior causing, attempting or threatening such
7 harm, which behavior gives rise to a reasonable fear of such
8 harm from the person;

9 O. "mental disability" means substantial disorder
10 of a person's emotional processes, thought or cognition that
11 grossly impairs judgment, behavior or capacity to recognize
12 reality, but does not mean developmental disability;

13 P. "mental health or developmental disabilities
14 professional" means a physician or other professional who by
15 training or experience is qualified to work with persons with
16 a mental disability or a developmental disability;

17 Q. "physician" or "certified psychologist", when
18 used for the purpose of hospital admittance or discharge,
19 means a physician or certified psychologist who has been
20 granted admitting privileges at a hospital licensed by the
21 department of health, if such privileges are required;

22 R. "psychosurgery":

23 (1) means those operations currently
24 referred to as lobotomy, psychiatric surgery and behavioral
25 surgery and all other forms of brain surgery if the surgery

1 is performed for the purpose of the following:

2 (a) modification or control of
3 thoughts, feelings, actions or behavior rather than the
4 treatment of a known and diagnosed physical disease of the
5 brain;

6 (b) treatment of abnormal brain
7 function or normal brain tissue in order to control thoughts,
8 feelings, actions or behavior; or

9 (c) treatment of abnormal brain
10 function or abnormal brain tissue in order to modify
11 thoughts, feelings, actions or behavior when the abnormality
12 is not an established cause for those thoughts, feelings,
13 actions or behavior; and

14 (2) "psychosurgery" does not include
15 prefrontal sonic treatment in which there is no destruction
16 of brain tissue;

17 S. "residential treatment or habilitation
18 program" means diagnosis, evaluation, care, treatment or
19 habilitation rendered inside or on the premises of a mental
20 health or developmental disabilities facility, hospital,
21 clinic, institution or supervisory residence or nursing home
22 when the client resides on the premises; and

23 T. "treatment" means any effort to accomplish a
24 significant change in the mental or emotional condition or
25 behavior of the client."

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

3 "43-1-4. LEGAL REPRESENTATION OF CLIENTS.--

4 A. Clients shall be represented by counsel at all
5 proceedings under the code and shall be entitled to obtain
6 advice of counsel at any time regarding their status under
7 the code.

8 B. The court shall appoint counsel to represent a
9 client who has not retained counsel and is unable to do so.
10 When appointing counsel, the court shall give preference to
11 nonprofit organizations offering representation to persons
12 with a mental illness or a developmental disability. A
13 client shall be liable for the cost of legal representation
14 unless the client is indigent."

15 Section 44. Section 43-1-19 NMSA 1978 (being Laws
16 1977, Chapter 279, Section 18, as amended) is amended to
17 read:

18 "43-1-19. DISCLOSURE OF INFORMATION.--

19 A. Except as otherwise provided in the code, no
20 person shall, without the authorization of the client,
21 disclose or transmit any confidential information from which
22 a person well acquainted with the client might recognize the
23 client as the described person, or any code, number or other
24 means that can be used to match the client with confidential
25 information regarding the client.

1 B. Authorization from the client shall not be
2 required for the disclosure or transmission of confidential
3 information in the following circumstances:

4 (1) when the request is from a mental health
5 or developmental disability professional or from an employee
6 or trainee working with a person with a mental disability or
7 developmental disability, to the extent that the practice,
8 employment or training on behalf of the client requires
9 access to such information is necessary;

10 (2) when such disclosure is necessary to
11 protect against a clear and substantial risk of imminent
12 serious physical injury or death inflicted by the client on
13 the client's self or another;

14 (3) when the disclosure of such information
15 is to the primary caregiver of the client and the disclosure
16 is only of information necessary for the continuity of the
17 client's treatment in the judgment of the treating physician
18 or certified psychologist who discloses the information; or

19 (4) when such disclosure is to an insurer
20 contractually obligated to pay part or all of the expenses
21 relating to the treatment of the client at the residential
22 facility. The information disclosed shall be limited to data
23 identifying the client, facility and treating or supervising
24 physician and the dates and duration of the residential
25 treatment. It shall not be a defense to an insurer's

1 obligation to pay that the information relating to the
2 residential treatment of the client, apart from information
3 disclosed pursuant to this section, has not been disclosed to
4 the insurer.

5 C. No authorization given for the transmission or
6 disclosure of confidential information shall be effective
7 unless it:

8 (1) is in writing and signed; and

9 (2) contains a statement of the client's
10 right to examine and copy the information to be disclosed,
11 the name or title of the proposed recipient of the
12 information and a description of the use that may be made of
13 the information.

14 D. The client has a right of access to
15 confidential information and has the right to make copies of
16 any information and to submit clarifying or correcting
17 statements and other documentation of reasonable length for
18 inclusion with the confidential information. The statements
19 and other documentation shall be kept with the relevant
20 confidential information, shall accompany it in the event of
21 disclosure and shall be governed by the provisions of this
22 section to the extent they contain confidential information.
23 Nothing in this subsection shall prohibit the denial of
24 access to such records when a physician or other mental
25 health or developmental disabilities professional believes

1 and notes in the client's medical records that such
2 disclosure would not be in the best interests of the client.
3 In any such case, the client has the right to petition the
4 court for an order granting such access.

5 E. Where there exists evidence that the client
6 whose consent to disclosure of confidential information is
7 sought is incapable of giving or withholding valid consent
8 and the client does not have a guardian or treatment guardian
9 appointed by a court, the person seeking such authorization
10 shall petition the court for the appointment of a treatment
11 guardian to make a substitute decision for the client, except
12 that if the client is less than fourteen years of age, the
13 client's parent or guardian is authorized to consent to
14 disclosure on behalf of the client.

15 F. Information concerning a client disclosed
16 under this section shall not be released to any other person,
17 agency or governmental entity or placed in files or
18 computerized data banks accessible to any persons not
19 otherwise authorized to obtain information under this
20 section.

21 G. Nothing in the code shall limit the
22 confidentiality rights afforded by federal statute or
23 regulation."

24 Section 45. Section 50-4-21 NMSA 1978 (being Laws
25 1955, Chapter 200, Section 2, as amended) is amended to read:

1 "50-4-21. DEFINITIONS.--As used in the Minimum Wage
2 Act:

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

4 B. "employer" includes any individual,
5 partnership, association, corporation, business trust, legal
6 representative or any organized group of persons employing
7 one or more employees at any one time, acting directly or
8 indirectly in the interest of an employer in relation to any
9 employee, but shall not include the United States, the state
10 or any political subdivision thereof; and

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

13 (1) any individual employed in domestic
14 service in or about a private home;

15 (2) any individual employed in a bona fide
16 executive, administrative or professional capacity and
17 forepersons, superintendents and supervisors;

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

20 (4) any individual engaged in the activities
21 of an educational, charitable, religious or nonprofit
22 organization where the employer-employee relationship does
23 not, in fact, exist or where the services rendered to such
24 organizations are on a voluntary basis. The employer-
25 employee relationship shall not be deemed to exist with

1 respect to any individual being served for purposes of
2 rehabilitation by a charitable or nonprofit organization,
3 notwithstanding the payment to the individual of a stipend
4 based upon the value of the work performed by the individual;

5 (5) salespersons or employees compensated
6 upon piecework, flat rate schedules or commission basis;

7 (6) students regularly enrolled in primary
8 or secondary schools working after school hours or on
9 vacation;

10 (7) registered apprentices and learners
11 otherwise provided by law;

12 (8) persons eighteen years of age or under
13 who are not students in a primary, secondary, vocational or
14 training school;

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

17 (10) persons employed by ambulance services;

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

20 (12) seasonal employees of any employer
21 obtaining and holding a valid certificate issued annually by
22 the director of the labor and industrial division of the
23 labor department. The certificate shall state the job
24 designations and total number of employees to be exempted.

25 In approving or disapproving an application for a certificate

1 of exemption, the director shall consider the following:

2 (a) whether such employment shall be
3 at an educational, charitable or religious youth camp or
4 retreat;

5 (b) that such employment will be of a
6 temporary nature;

7 (c) that the individual will be
8 furnished room and board in connection with such employment,
9 or if the camp or retreat is a day camp or retreat, the
10 individual will be furnished board in connection with such
11 employment;

12 (d) the purposes for which the camp or
13 retreat is operated;

14 (e) the job classifications for the
15 positions to be exempted; and

16 (f) any other factors that the
17 director deems necessary to consider;

18 (13) any employee employed in agriculture:

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

23 (b) if such employee is the parent,
24 spouse, child or other member of the employer's immediate
25 family; for the purpose of this subsection, employer shall

1 include the principal stockholder of a family corporation;

2 (c) if such employee: 1) is employed
3 as a hand-harvest laborer and is paid on a piece-rate basis
4 in an operation that has been, and is customarily and
5 generally recognized as having been, paid on a piece-rate
6 basis in the region of employment; 2) commutes daily from the
7 employee's permanent residence to the farm on which the
8 employee is so employed; and 3) has been employed in
9 agriculture less than thirteen weeks during the preceding
10 calendar year;

11 (d) if such employee, other than an
12 employee described in Subparagraph (c) of this paragraph:
13 1) is sixteen years of age or under and is employed as a
14 hand-harvest laborer, is paid on a piece-rate basis in an
15 operation that has been, and is generally recognized as
16 having been, paid on a piece-rate basis in the region of
17 employment; 2) is employed on the same farm as the employee's
18 parent or person standing in the place of the parent; and
19 3) is paid at the same piece-rate as employees over age
20 sixteen are paid on the same farm; or

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

23 (14) employees of charitable, religious or
24 nonprofit organizations who reside on the premises of group
25 homes operated by such charitable, religious or nonprofit

1 organizations for persons who have a mental, emotional or
2 developmental disability."

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

5 "50-4-23. PERSONS WITH A DISABILITY--MINIMUM WAGE--
6 DIRECTOR POWERS AND DUTIES.--

7 A. The director of the labor and industrial
8 division of the labor department, to the extent necessary in
9 order to prevent curtailment of opportunities for employment,
10 shall, by regulation, provide for the employment under
11 special certificates of individuals, including individuals
12 employed in agriculture, whose earning or productive capacity
13 is impaired by physical or mental disability or injury or any
14 other disability, at wages that are lower than the minimum
15 wage applicable under Section 50-4-22 NMSA 1978, but not less
16 than fifty percent of such wage.

17 B. The director, pursuant to regulations and upon
18 certification of any state agency administering or supervising
19 the administration of vocational rehabilitation services, may
20 issue special certificates that allow the holder thereof to
21 work at wages that are less than those required by Subsection
22 A of this section and that are related to the workers'
23 productivity, for the employment of:

24 (1) workers with a disability who are
25 engaged in work that is incidental to training or evaluation

1 programs; and

2 (2) persons with multiple disabilities and
3 other persons whose earning capacity is so severely impaired
4 that they are unable to engage in competitive employment.

5 C. The director may, by regulation or order,
6 provide for the employment of persons with a disability in
7 work activities centers under special certificates at wages
8 that are less than the minimums applicable under Section
9 50-4-22 NMSA 1978, or less than that prescribed in Subsection
10 A of this section, and that constitute equitable compensation
11 for such persons. As used in this subsection, "work
12 activities centers" means centers planned and designed
13 exclusively to provide therapeutic activities for persons
14 with a disability whose physical or mental disability is so
15 severe as to make their productive capacity inconsequential.

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

24 Section 47. Section 58-18-3.1 NMSA 1978 (being Laws
25 1982, Chapter 86, Section 3, as amended) is amended to read:

1 "58-18-3.1. ADDITIONAL DEFINITIONS--MULTIPLE-FAMILY
2 DWELLINGS, TRANSITIONAL AND CONGREGATE HOUSING FACILITIES.--

3 As used in the Mortgage Finance Authority Act:

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

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

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

1 D. "project mortgage loan" means a mortgage loan
2 made to a sponsor to finance project costs of a
3 multiple-family dwelling or transitional or congregate
4 housing facility; and

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

14 Section 48. Section 60-13-44 NMSA 1978 (being Laws
15 1967, Chapter 199, Section 52, as amended) is amended to
16 read:

17 "60-13-44. TRADE BUREAUS--STANDARDS--CONFLICTS.--

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

25 B. The mechanical bureau shall recommend to the

1 commission minimum standards for the installation of all
2 fixtures, consumers' gas pipe, appliances and materials
3 installed in the course of a mechanical installation. The
4 recommendations shall be in substantial conformity with codes
5 and standards that are developed through an open, balanced
6 consensus process. Manufacturers may choose the independent
7 certification organization they wish to certify their
8 products if the certification organization is accredited by
9 the American national standards institute or other
10 accreditation organization selected by the commission.

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

1 manufacturers.

2 D. The general construction bureau shall
3 recommend to the commission additional specifications for any
4 public building constructed in the state through expenditure
5 of state, county or municipal funds, bonds and other
6 revenues, which specifications shall embody standards making
7 the building accessible to persons who have a physical
8 disability, and the specifications shall conform
9 substantially with those contained in a nationally recognized
10 standard for making public facilities accessible to persons
11 with a physical disability that is developed through an open,
12 balanced consensus process. All orders and rules recommended
13 by the general construction bureau and adopted by the
14 commission under the provisions of this section shall be
15 printed and distributed to all licensed contractors,
16 architects and engineers and to the governor's commission on
17 disability. The orders and rules shall take effect on a date
18 fixed by the commission, which shall not be less than thirty
19 days after their adoption by the commission, and shall have
20 the force of law.

21 E. The general construction bureau shall have the
22 right of review of all specifications of public buildings and
23 the responsibility to ensure compliance with the adopted
24 standards.

25 F. All political subdivisions of the state are

1 subject to the provisions of codes adopted and approved under
2 the Construction Industries Licensing Act. Such codes
3 constitute a minimum requirement for the codes of political
4 subdivisions.

5 G. The trade bureaus within their respective
6 jurisdictions shall recommend to the commission standards
7 that are developed through an open, balanced consensus
8 process for the installation or use of electrical wiring, the
9 installation of all fixtures, consumers' gas pipe, appliances
10 and materials installed in the course of mechanical
11 installation and the construction, alteration or repair of
12 all buildings intended for use by persons with a physical
13 disability or persons requiring special facilities to
14 accommodate the aged. The recommendations shall give due
15 regard to physical, climatic and other conditions peculiar to
16 New Mexico.

17 H. The trade bureaus within their respective
18 jurisdictions shall recommend to the commission standards for
19 the construction, alteration, repair, use or occupancy of
20 manufactured commercial units, modular homes and
21 premanufactured homes. The recommendations shall
22 substantially embody the applicable provisions or standards
23 for the safety to life, health, welfare and property approved
24 by the nationally recognized standards association and
25 developed through an open, balanced consensus process and

1 shall give due regard to physical, climatic and other
2 conditions peculiar to New Mexico. Wherever existing state
3 codes or standards conflict with the codes and standards
4 adopted by the commission under the provisions of this
5 subsection, the provisions of the applicable New Mexico
6 building codes adopted pursuant to the Construction
7 Industries Licensing Act and the LPG and CNG Act in effect at
8 the applicable time shall exclusively apply and control,
9 except for codes and standards for mobile housing units.

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

20 J. The commission shall review all
21 recommendations made under the provisions of this section and
22 shall by rule adopt standards and codes that substantially
23 comply with the requirements of this section that apply to
24 the recommendations of the trade bureaus."

25 Section 49. Section 66-7-352.2 NMSA 1978 (being Laws

1 1983, Chapter 45, Section 2) is amended to read:

2 "66-7-352.2. LEGISLATIVE INTENT.--The policy and
3 intent of the legislature is declared to be as follows:

4 A. that the legislature finds there is a
5 significant safety hazard for persons with a physical
6 disability crossing through parking lots and that this hazard
7 is greatly reduced when parking is provided adjacent to a
8 building entrance;

9 B. that many commercial and governmental
10 establishments now provide reserved parking for persons with
11 a disability, ensuring full and equal opportunity for persons
12 with a disability to maintain independence and self-respect;
13 and

14 C. that ultimately society will benefit from the
15 increased interaction of persons with a disability with the
16 mainstream that these parking spaces will provide."

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