

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 297

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO CORRECTIONS; ENACTING THE CORRECTIONS ADVISORY BOARD ACT; REQUIRING THE PUBLIC POSTING OF PROPOSED RULE CHANGES; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Corrections Advisory Board Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Corrections Advisory Board Act:

A. "abuse" means any act or failure to act by a department employee, subcontractor or volunteer that was performed or that was failed to be performed, knowingly, recklessly or intentionally, and that caused or may have caused harm, injury or death to an inmate, probationer or parolee;

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1 B. "board" means the corrections advisory board;

2 C. "corrections ombudsperson" means the corrections
3 ombudsperson and staff of the corrections ombudsperson;

4 D. "department" means the corrections department,
5 including any entity contracted to perform the duties of the
6 corrections department;

7 E. "family member" means a spouse, former spouse,
8 parent, present or former stepparent, present or former parent-
9 in-law, child, stepchild, sibling, stepsibling, grandparent,
10 grandparent-in-law, co-parent of a child or person with whom a
11 person has a continuing personal, dating or intimate
12 relationship;

13 F. "inmate" means an individual committed to the
14 physical custody of the department, including individuals
15 residing in a correctional institution or facility and
16 individuals received from another state agency, municipality,
17 county or state or the federal government;

18 G. "neglect" means a negligent act or omission by a
19 department employee, subcontractor of the department or
20 volunteer with the department that caused or may have caused
21 harm, injury or death to an inmate, probationer or parolee;

22 H. "parolee" means a person who has been convicted
23 of a crime and who has been released on parole pursuant to the
24 Probation and Parole Act;

25 I. "probationer" means a person who has been

1 convicted of a crime or received a conditional discharge or
2 deferred sentence and who has been released on probation
3 pursuant to the Probation and Parole Act; and

4 J. "secretary" means the secretary of corrections.

5 SECTION 3. [~~NEW MATERIAL~~] CORRECTIONS ADVISORY BOARD
6 CREATED--CORRECTIONS OMBUDSPERSON.--

7 A. The "corrections advisory board" is created and
8 shall have the following responsibilities:

9 (1) evaluating compliance with relevant
10 statutes, rules, policies and procedures pertaining to the
11 department;

12 (2) objectively reviewing the efficacy of
13 operational services and rehabilitative programming within the
14 department;

15 (3) identifying systemic issues and isolated
16 incidents within the department that have or may lead to
17 neglect or abuse of an inmate, probationer or parolee;

18 (4) identifying systemic issues and isolated
19 incidents within the department that impact the health, safety,
20 well-being and working conditions of department employees and
21 persons contracted to perform duties for the department; and

22 (5) hiring and overseeing the corrections
23 ombudsperson.

24 B. The corrections ombudsperson shall report
25 directly to the board and shall exercise the powers and duties

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1 of the corrections ombudsperson independently of the secretary.

2 SECTION 4. [NEW MATERIAL] CORRECTIONS ADVISORY BOARD--
3 APPOINTMENT--CORRECTIONS OMBUDSPERSON DUTIES--PROVIDING
4 RECOMMENDATIONS--REPORTING REQUIRED.--

5 A. The board shall consist of eleven members who
6 each serve staggered four-year terms and shall be appointed as
7 follows:

8 (1) the New Mexico legislative council shall
9 appoint four members, of which two shall be formerly
10 incarcerated persons no longer under supervision, one shall be
11 a medical professional who has served in a corrections setting
12 and one shall be a behavioral health professional who has
13 served in a corrections setting. The majority party and
14 minority party of the New Mexico legislative council shall each
15 appoint two of the members;

16 (2) the New Mexico sentencing commission shall
17 appoint one member who is a staff member or member of the New
18 Mexico sentencing commission focused on correctional research
19 and policy;

20 (3) the governor shall appoint two members, of
21 which one shall be a formerly incarcerated person and one shall
22 be a former corrections administrator who is at least two years
23 removed from the correctional administrator position;

24 (4) the administrative office of the courts
25 shall appoint one member who shall be an individual who has

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1 been impacted by a crime; provided that the person or persons
2 convicted of said crime are not under the supervision of the
3 department;

4 (5) the public defender department shall
5 appoint one member who is a staff member of the public defender
6 department; and

7 (6) the labor union representing the largest
8 number of security staff of the department shall appoint two
9 members, at least one of whom shall have corrections security
10 experience and is at least two years removed from the position.

11 B. The appointing authorities shall consider
12 geographic, gender, sexual orientation, ethnic and racial
13 diversity among the appointed members. Members appointed to
14 the board shall not include:

15 (1) a person with a family member who is
16 currently under the supervision of the department;

17 (2) a current employee or contractor of the
18 department;

19 (3) a person with a family member who is a
20 current employee or contractor of the department; or

21 (4) a person or a family member of a person
22 directly impacted by a crime committed by someone currently
23 under the supervision of the department.

24 C. Members shall serve for no more than two terms
25 after the effective date of this 2023 act. A partial term

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1 shall be counted as one full term.

2 D. When a member dies, resigns or no longer meets
3 the qualifications required for the member's original
4 selection, that position on the board becomes vacant. The
5 original appointing authority for the vacant position shall
6 appoint a successor for the remainder of the term in the same
7 manner as the original selection for that position was made.

8 E. A member shall not be removed except for
9 incompetence, neglect of duty or malfeasance in office;
10 provided, however, that no removal shall be made without notice
11 of hearing and an opportunity to be heard having first been
12 given to the member, and a removal shall be made only upon a
13 majority vote of the board.

14 F. The board shall elect a chair and may elect
15 officers as it deems necessary to carry out its duties.

16 G. A majority of appointed members constitutes a
17 quorum for the transaction of business. The vote of a majority
18 of appointed members is required for adoption of any action by
19 the board.

20 H. The board shall hire a corrections ombudsperson
21 for a term of six years through a competitive selection
22 process. The board may terminate the corrections ombudsperson
23 for cause. The corrections ombudsperson shall employ subject
24 matter experts and other employees to fulfill the duties of the
25 Corrections Advisory Board Act. The corrections ombudsperson

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1 and staff shall not be:

2 (1) a person with a family member who is
3 currently under the supervision of the department;

4 (2) a current employee or contractor of the
5 department;

6 (3) a person with a family member who is a
7 current employee or contractor of the department; or

8 (4) a person or a family member of a person
9 directly impacted by a crime committed by someone currently
10 under the supervision of the department.

11 I. The board shall meet monthly to conduct its
12 duties.

13 J. The board shall publish an annual report of its
14 key findings to be delivered to the governor, the New Mexico
15 legislative council, the other appointing authorities of the
16 board and the appropriate legislative interim committees
17 responsible for conducting hearings related to courts,
18 corrections and justice by November 15 of each year. The
19 report shall include the following:

20 (1) the budget and expenditures of the board;

21 (2) the number and types of complaints
22 received by the corrections ombudsperson; and

23 (3) recommendations of specific administrative
24 and statutory changes, if any.

25 K. Members of the board are entitled to

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1 compensation pursuant to the provisions of the Per Diem and
2 Mileage Act and shall receive no other perquisite, compensation
3 or allowance.

4 L. All members shall be subject to the Gift Act and
5 the Governmental Conduct Act.

6 SECTION 5. [NEW MATERIAL] DUTIES--INVESTIGATIONS--
7 COMPLAINTS.--

8 A. The corrections ombudsperson shall:

9 (1) maintain a website outlining the duties of
10 the board and the corrections ombudsperson;

11 (2) establish procedures to receive and
12 investigate complaints, including facilitating inmate,
13 probationer, parolee and department employee confidential
14 communication with the corrections ombudsperson; and

15 (3) report to the appropriate law enforcement
16 agency any activity that may be criminal in nature.

17 B. Prior to filing a complaint with the corrections
18 ombudsperson pursuant to this section, an individual under the
19 supervision of the department or a department employee need not
20 have pursued resolution of the complaint through internal
21 grievance, administrative or appellate procedures or other
22 administrative remedies within the department.

23 C. If the corrections ombudsperson does not
24 investigate a complaint, the corrections ombudsperson shall
25 notify the complainant of the decision not to investigate and

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1 the reasons for the decision.

2 D. The corrections ombudsperson shall not
3 investigate any complaint relating to an inmate's,
4 probationer's or parolee's underlying criminal conviction or
5 sentence.

6 E. The corrections ombudsperson shall not levy fees
7 for the submission or investigation of complaints.

8 F. The corrections ombudsperson shall remain
9 neutral and impartial and shall not act as an advocate for the
10 complainant or for the department.

11 G. At the conclusion of an investigation of a
12 complaint, the corrections ombudsperson shall document the
13 findings on the merits of each complaint. The corrections
14 ombudsperson shall communicate the findings, if any, to the
15 complainant. Upon request or affirmative written consent by
16 the complainant, the corrections ombudsperson shall share with
17 the department the investigation's findings and related
18 recommendations, if any. If written consent is not given, the
19 corrections ombudsperson shall share with the department a
20 summary of the findings of the investigation with all
21 identifying information redacted.

22 H. If, based on the findings of the investigation,
23 it is found that there is or continues to be an imminent threat
24 to inmate, probationer, parolee or employee health, safety or
25 welfare, the corrections ombudsperson shall report the findings

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1 to the board and the secretary or secretary's designee.

2 I. The provisions of the Corrections Advisory Board
3 Act function independently of any grievance process or
4 administrative remedies required by the department.

5 J. There shall be no retaliatory action taken for
6 submission of a complaint or participation in investigation of
7 a complaint. Evidence of such retaliatory action shall be
8 immediately submitted to the secretary.

9 SECTION 6. [NEW MATERIAL] ACCESS TO CORRECTIONS
10 OMBUDSPERSON--ACCESS TO FACILITIES--INMATES--RECORDS.--

11 A. The department shall establish mechanisms to
12 provide for free and confidential telephone and mail
13 communications between inmates and the corrections
14 ombudsperson.

15 B. The corrections ombudsperson shall be given
16 reasonable access to correctional facilities whenever necessary
17 to conduct a full investigation. Such access includes the
18 opportunity to interview any individual under the supervision
19 of the department, department employees and persons contracted
20 to perform duties of the department. Such access shall be
21 afforded, upon request by the corrections ombudsperson, when:

22 (1) an incident is reported or a complaint is
23 made; or

24 (2) the corrections ombudsperson determines
25 that an investigation is warranted based on media reports or

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1 other information.

2 C. The corrections ombudsperson shall be given
3 access to department facilities, including all areas that are
4 accessible to people under the supervision of the department,
5 department employees and persons contracted to perform duties
6 of the department. Access includes inspecting, viewing,
7 photographing, video recording and reviewing video footage and
8 recordings from facility cameras, as needed.

9 D. The corrections ombudsperson shall have the
10 right to access, inspect and copy all information, records or
11 documents in the possession or control of the department that
12 the corrections ombudsperson considers necessary in an
13 investigation pursuant to the Corrections Advisory Board Act.
14 The corrections ombudsperson shall only access restricted,
15 privileged or protected records after obtaining necessary
16 written releases from an individual under the supervision of
17 the department.

18 E. Following written notification from the
19 corrections ombudsperson for access to agency records and
20 receipt of necessary written releases for protected
21 information, the department shall provide the corrections
22 ombudsperson with access to the requested documentation no
23 later than fifteen business days after the written request for
24 the records. When the records requested by the corrections
25 ombudsperson pertain to an inmate, probationer, parolee or

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1 staff member death, threats of bodily harm, including sexual or
2 physical assaults, or the denial of necessary medical
3 treatment, the records shall be provided within five days
4 unless the information requested is part of an ongoing criminal
5 investigation or the corrections ombudsperson consents to an
6 extension of that time frame.

7 F. Upon notice and a request by the corrections
8 ombudsperson, a state or local government agency or entity that
9 has records that are relevant to a complaint or an
10 investigation conducted by the corrections ombudsperson shall
11 provide the corrections ombudsperson with access to those
12 records.

13 G. The corrections ombudsperson shall work with the
14 department to minimize disruption to the operations of the
15 department related to the corrections ombudsperson's
16 investigation and activities and shall comply with the
17 department's security processes; provided that those processes
18 do not impede the activities provided for in the Corrections
19 Advisory Board Act.

20 H. The department shall prominently display at
21 every departmental facility at which inmates, probationers or
22 parolees may be present information regarding the purpose of
23 and contact information for the corrections advisory board and
24 corrections ombudsperson, and the department shall include such
25 information in all inmate and employee handbooks.

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1 SECTION 7. ~~[NEW MATERIAL]~~ CIVIL IMMUNITY--RETALIATORY
2 ACTIONS.--

3 A. A civil action shall not be brought against any
4 employee of the board for good-faith performance of
5 responsibilities pursuant to the Corrections Advisory Board
6 Act.

7 B. Discriminatory, disciplinary and retaliatory
8 actions shall not be taken against a department employee,
9 subcontractor or volunteer, an inmate, probationer or parolee,
10 a family member of an inmate, probationer or parolee or
11 representative of an inmate, probationer or parolee for any
12 communication made, or information given or disclosed, to aid
13 the corrections ombudsperson in carrying out the correction
14 ombudsperson's responsibilities.

15 C. This section is not intended to infringe on the
16 rights of an employer to supervise, discipline or terminate an
17 employee for other non-retaliatory reasons.

18 SECTION 8. Section 12-8-2 NMSA 1978 (being Laws 1969,
19 Chapter 252, Section 2) is amended to read:

20 "12-8-2. DEFINITIONS.--As used in the Administrative
21 Procedures Act:

22 A. "agency" means any state board, commission,
23 department or officer that is authorized by law to make rules,
24 conduct adjudicatory proceedings, make determinations, grant
25 licenses, impose sanctions, grant or withhold relief or perform

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1 other actions or duties delegated by law and ~~[which]~~ that is
2 specifically placed by law under the Administrative Procedures
3 Act;

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

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

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

25 E. "party" means each person or agency named or

1 admitted as a party or properly seeking and entitled as of
2 right to be admitted as a party, whether for general or limited
3 purposes;

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

7 G. "rule" includes the whole or any part of every
8 regulation, standard, statement or other requirement of general
9 or particular application adopted by an agency to implement,
10 interpret or prescribe law or policy enforced or administered
11 by an agency, if the adoption or issuance of such rules is
12 specifically authorized by the law giving the agency
13 jurisdiction over such matters. It also includes any statement
14 of procedure or practice requirements specifically authorized
15 by the Administrative Procedures Act or other law, but it does
16 not include:

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

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

25 (3) regulations concerning only the

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1 management, confinement, discipline or release of inmates of
2 state [~~penal, correctional~~] public health or mental
3 institutions;

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

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

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

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

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

17 (1) prohibition, requirement, limitation or
18 other condition affecting the freedom of any person or [~~his~~]
19 the person's property;

20 (2) withholding of relief;

21 (3) imposition of any form of penalty;

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

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

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

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

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

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

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

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

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

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

20 SECTION 9. Section 14-4-2 NMSA 1978 (being Laws 1967,
21 Chapter 275, Section 2, as amended) is amended to read:

22 "14-4-2. DEFINITIONS.--As used in the State Rules Act:

23 A. "agency" means any agency, board, commission,
24 department, institution or officer of the state government
25 except the judicial and legislative branches of the state

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1 government;

2 B. "person" includes individuals, associations,
3 partnerships, companies, business trusts, political
4 subdivisions and corporations;

5 C. "proceeding" means a formal agency process or
6 procedure that is commenced or conducted pursuant to the State
7 Rules Act;

8 D. "proposed rule" means a rule that is provided to
9 the public by an agency for review and public comment prior to
10 its adoption, amendment or repeal, and for which there is
11 specific legal authority authorizing the proposed rule;

12 E. "provide to the public" means for an agency to
13 distribute rulemaking information by:

14 (1) posting it on the agency website, if any;

15 (2) posting it on the sunshine portal;

16 (3) making it available in the agency's
17 district, field and regional offices, if any;

18 (4) sending it by electronic mail to persons
19 who have made a written request for notice from the agency of
20 announcements addressing the subject of the rulemaking
21 proceeding and who have provided an electronic mail address to
22 the agency;

23 (5) sending it by electronic mail to persons
24 who have participated in the rulemaking and who have provided
25 an electronic mail address to the agency;

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1 (6) sending written notice that includes, at a
2 minimum, an internet and street address where the information
3 may be found to persons who provide a postal address; and

4 (7) providing it to the New Mexico legislative
5 council for distribution to appropriate interim and standing
6 legislative committees;

7 F. "rule" means any rule, regulation or standard,
8 including those that explicitly or implicitly implement or
9 interpret a federal or state legal mandate or other applicable
10 law and amendments thereto or repeals and renewals thereof,
11 issued or promulgated by any agency and purporting to affect
12 one or more agencies besides the agency issuing the rule or to
13 affect persons not members or employees of the issuing agency,
14 including affecting persons served by the agency. An order or
15 decision or other document issued or promulgated in connection
16 with the disposition of any case or agency decision upon a
17 particular matter as applied to a specific set of facts shall
18 not be deemed such a rule, nor shall it constitute specific
19 adoption thereof by the agency. "Rule" does not include rules
20 relating to the management, confinement, discipline or release
21 of ~~[inmates of]~~ any ~~[penal or]~~ individuals housed at any
22 charitable institution ~~[the New Mexico boys' school, the girls'~~
23 ~~welfare home]~~ or any hospital; rules made relating to the
24 management of any particular educational institution, whether
25 elementary or otherwise; or rules made relating to admissions,

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1 discipline, supervision, expulsion or graduation of students
2 from any educational institution; and

3 G. "rulemaking" means the process for adoption of a
4 new rule or the amendment, readoption or repeal of an existing
5 rule."

6 SECTION 10. Section 33-2-1 NMSA 1978 (being Laws 1955,
7 Chapter 149, Section 1, as amended) is amended to read:

8 "33-2-1. ADOPTION OF RULES.--

9 A. The corrections [division] department shall
10 adopt such rules concerning all [prisoners committed to the
11 penitentiary] inmates, probationers and parolees under the
12 supervision of the corrections department as shall best
13 accomplish their confinement and rehabilitation.

14 B. Before adoption of such rules, the corrections
15 department shall:

16 (1) provide forty-five days for public
17 comment. The department shall provide a reminder notice at
18 fifteen days from first notice;

19 (2) provide written notification of any
20 proposed rule change to individuals under the department's
21 supervision, including instructions on providing public
22 comment. Each department facility, including probation and
23 parole offices, shall post in a conspicuous manner information
24 regarding the proposed rule change, including instructions on
25 providing public comment; and

1 (3) publish public comments on the
2 department's website and retained in accordance with Section
3 14-16-12 NMSA 1978."

4 **SECTION 11. TEMPORARY PROVISION--INITIAL**

5 APPOINTMENTS.--Terms for the initial appointments to the
6 corrections advisory board on the effective date of this act
7 shall be as follows:

8 A. the New Mexico legislative council's first
9 appointments shall be made of two board members for two-year
10 terms and two board members for four-year terms;

11 B. the New Mexico sentencing commission's first
12 appointment shall be for a four-year term;

13 C. the governor's first appointments shall be made
14 of one board member for a two-year term and one board member
15 for a four-year term;

16 D. the administrative office of the court's first
17 appointment shall be made of one board member for a two-year
18 term;

19 E. the public defender department's first
20 appointment shall be for a four-year term; and

21 F. the labor union's first appointments shall be
22 made of one board member for a two-year term and one board
23 member for a four-year term.

24 **SECTION 12. APPROPRIATION.--Two hundred thousand dollars**
25 **(\$200,000) is appropriated from the general fund to the**

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1 department of finance and administration for expenditure in
2 fiscal year 2024 to establish and implement the provisions of
3 the Corrections Advisory Board Act. Any unexpended or
4 unencumbered balance remaining at the end of fiscal year 2024
5 shall revert to the general fund.

6 SECTION 13. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2023.