

AN ACT

RELATING TO THE MERGER OF THE STATE CORPORATION COMMISSION AND THE NEW MEXICO PUBLIC UTILITY COMMISSION; PROVIDING THE STATUTORY FRAMEWORK TO CARRY OUT THE PROVISIONS OF ARTICLE 11, SECTIONS 1 AND 2 OF THE CONSTITUTION OF NEW MEXICO THAT CREATED THE PUBLIC REGULATION COMMISSION; HARMONIZING CERTAIN STATUTORY PROVISIONS RELATING TO REGULATION BY THE COMMISSION; ABOLISHING THE NEW MEXICO PUBLIC UTILITY COMMISSION; ABOLISHING THE INSURANCE BOARD AND THE FIRE BOARD; TRANSFERRING PERSONNEL, PROPERTY, CONTRACTUAL AGREEMENTS, RULES AND STATUTORY REFERENCES.

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

Section 1. SHORT TITLE.--Sections 1 through 20 of this act may be cited as the "Public Regulation Commission Act".

Section 2. DEFINITIONS.--As used in the Public Regulation Commission Act:

- A. "commission" means the public regulation commission;
- B. "commissioner" means a person elected or appointed to the public regulation commission; and
- C. "person" means an individual, corporation, firm, partnership, association, joint venture or similar legal entity.

Section 3. PUBLIC REGULATION COMMISSION. --

A. The "public regulation commission", created in Article 11, Section 1 of the constitution of New Mexico, is composed of five commissioners elected from districts as provided in that article and the Public Regulation Commission Apportionment Act.

B. The commission shall annually elect one of its members chairman, who shall preside at hearings. In the absence of the chairman, the commission may appoint any other member to preside.

Section 4. COMMISSION--GENERAL POWERS AND DUTIES. --

A. The commission shall administer and enforce the laws with which it is charged and has every power conferred by law.

B. The commission may:

(1) subject to legislative appropriation, appoint and employ such professional, technical and clerical assistance as it deems necessary to assist it in performing its powers and duties;

(2) delegate authority to subordinates as it deems necessary and appropriate, clearly delineating such delegated authority and any limitations;

(3) retain competent attorneys to handle the legal matters of the commission and give advice and counsel in regard to any matter connected with the duties of the

commission and, in the discretion of the commission, to represent the commission in any legal proceeding;

(4) organize into organizational units as necessary to enable it to function most efficiently, subject to provisions of law requiring or establishing specific organizational units;

(5) take administrative action by issuing orders not inconsistent with law to assure implementation of and compliance with the provisions of law for which the commission is responsible and to enforce those orders by appropriate administrative action and court proceedings;

(6) conduct research and studies to improve the commission's operations or the provision of services to the citizens of New Mexico;

(7) conduct investigations as necessary to carry out the commission's responsibilities;

(8) apply for and accept grants and donations in the name of the state to carry out its powers and duties;

(9) enter into contracts to carry out its powers and duties;

(10) adopt such reasonable administrative, regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties;

(11) cooperate with tribal and pueblo

governments on topics over which the commission and the other governments have jurisdiction and conduct joint investigations, hold joint hearings and issue joint or concurrent orders as appropriate; and

(12) apply to the district court for injunctions to prevent violations of any laws that it administers or rules or orders adopted pursuant to those laws.

C. The commission shall:

(1) prepare an annual budget for submission to the legislature;

(2) provide for surety bond coverage for all employees of the commission as provided in the Surety Bond Act and pay the costs of such bonds;

(3) adopt rules to streamline the resolution of cases before it when appropriate by:

(a) the use of hearing examiners;

(b) the taking of evidence with the least delay practicable;

(c) limiting repetitious testimony;

and

(d) adopting procedures for resolving cases in ways other than by trial-type hearings when appropriate, including consent calendars, conferences, settlements, mediation, arbitration and other alternative

dispute resolution methods and the use of staff decisions;  
and

(4) provide a toll-free telephone number and publish it and the commission's general telephone number in local telephone directories.

D. A majority of the commission constitutes a quorum for the transaction of business; provided, however, that a majority vote of the commission is needed for a final decision of the commission.

Section 5. CHIEF OF STAFF-- DIVISION DIRECTORS-- OTHER STAFF. --

A. The commission shall appoint a "chief of staff" who is responsible for the day-to-day operations of the commission staff under the general direction of the commission. The chief of staff shall serve at the pleasure of the commission.

B. With the consent of the commission, the chief of staff shall appoint division directors. Appointments shall be made without reference to party affiliation and solely on the ground of fitness to perform the duties of their offices.

C. Each director, with the consent of the chief of staff, shall employ such professional, technical and support staff as necessary to carry out the duties of his division. Employees shall be hired solely on the ground of

their fitness to perform the job for which they are hired. Division staff are subject to the provisions of the Personnel Act.

Section 6. COMMISSION--DIVISIONS.--The commission shall include the following organizational units:

- A. the administrative services division;
- B. the consumer relations division;
- C. the insurance division;
- D. the legal division;
- E. the transportation division; and
- F. the utility division.

Section 7. ADMINISTRATIVE SERVICES DIVISION--CHIEF CLERK.--

A. The chief of staff shall appoint a "chief clerk" who shall record the judgments, rules, orders and other proceedings of the commission and make a complete index to the judgments, rules, orders and other proceedings; issue and attest all processes issuing from the commission and affix the seal of the commission to them; and preserve the seal and other property belonging to the commission.

B. The chief clerk shall direct the administrative services division, including the "corporations bureau" and the following functions:

- (1) case docketing;
- (2) budget and accounting;

- (3) personnel services;
- (4) procurement; and
- (5) information systems services.

C. The corporations bureau shall perform the functions of the corporations department of the former state corporation commission.

Section 8. CONSUMER RELATIONS DIVISION. --

A. The consumer relations division shall:

- (1) receive and investigate nondocketed consumer complaints and assist consumers in resolving, in a fair and timely manner, complaints against a person under the authority of the commission, including mediation and other methods of alternative dispute resolution; provided, however, that assistance pursuant to this paragraph does not include legal representation of a private complainant in an adjudicatory proceeding;

- (2) work with the consumer protection division of the attorney general's office, the governor's constituent services office and other state agencies as needed to ensure fair and timely resolution of complaints;

- (3) advise the commission on how to maximize public input into commission proceedings, including ways to eliminate language, disability and other barriers;

- (4) identify, research and advise the commission on consumer issues;

(5) assist the commission in the development and implementation of consumer policies and programs; and

(6) perform such other duties as prescribed by the commission.

B. All complaints received by the division with regard to quality or quantity of service provided by a regulated entity or its competitors shall be recorded by the division for the purpose of determining general concerns of consumers. A report of consumer complaints and their status shall be included in the commission's annual report.

Section 9. INSURANCE DIVISION. --

A. The director of the insurance division is the "superintendent of insurance" and shall have all the powers and duties prescribed to him in the New Mexico Insurance Code.

B. The insurance division shall consist of such bureaus as the superintendent of insurance determines for the orderly conduct of business, including the fire marshal bureau. The superintendent of insurance may organize the firefighter's training academy as part of the fire marshal bureau or may organize it as a separate bureau.

Section 10. LEGAL DIVISION. --

A. The commission shall set minimum requirements for the director of the legal division, including membership in the New Mexico bar and administrative and supervisory



experience.

B. The legal division shall:

(1) provide legal counsel for the commission in matters not involving advice on contested proceedings before the commission; and

(2) provide legal counsel to all divisions, including the legal component of the staff that represents the public interest in matters before the commission.

Section 11. TRANSPORTATION DIVISION. -- The transportation division shall serve as staff to the commission for the following functions, as provided by law:

- A. motor carrier regulation and enforcement;
- B. railroad safety enforcement;
- C. pipeline safety; and
- D. ambulance standards.

Section 12. UTILITY DIVISION. --

A. The utility division shall serve as staff to the commission in the regulation of electric, natural gas, renewable energy sources, telecommunications and water and wastewater systems as provided by law.

B. The commission shall set minimum educational and experience requirements for the director of the utility division.

C. The utility division shall represent the public interest in utility matters before the commission and

may present testimony and evidence and cross-examine witnesses.

D. The utility division shall perform the functions of the telecommunications department of the former state corporation commission and staff functions, not including advisory functions, of the former New Mexico public utility commission.

E. Utility division staff shall not have ex parte communications with commissioners or a hearing examiner assigned to a utility case.

Section 13. ADVISORY STAFF. --

A. The chief of staff may hire, with the consent of the commission, advisory staff with expertise in regulatory law, engineering, economics and other professional or technical disciplines to advise the commission on any matter before the commission. The chief of staff may hire on a temporary, term or contract basis such other experts or staff as the commission requires for a particular case.

B. Advisory staff shall:

- (1) analyze case records;
- (2) analyze recommended decisions;
- (3) advise the commission on policy issues;
- (4) assist the commission in the development of rules;
- (5) assist the commission in writing final

orders; and

(6) perform such other duties as required by the chief of staff.

Section 14. HEARING EXAMINERS. --

A. The commission may appoint a commissioner or a hearing examiner to preside over any matter before the commission, including rulemakings, adjudicatory hearings and administrative matters.

B. Except as provided in the New Mexico Insurance Code, a hearing examiner shall provide the commission with a recommended decision on the matter assigned to him, including findings of fact and conclusions of law. The recommended decision shall be provided to the parties, and they may file exceptions to the decision prior to the final decision of the commission.

Section 15. COMMISSION RULES--PROCEDURES FOR ADOPTION. --

A. Unless otherwise provided by law, no rule affecting a person outside the commission shall be adopted, amended or repealed except after public notice and public hearing before the commission or a hearing examiner designated by the commission.

B. Notice of the subject matter of the rule, the action proposed to be taken, the manner in which interested persons may present their views and the method by which

copies of the proposed rule, amendment or repealing provisions may be obtained shall be published at least once at least sixty days prior to the hearing date and mailed at least sixty days prior to the hearing date to all persons who have made a written request for advance notice. For each rule, amendment or repealing provision that affects only one or a limited number of municipalities, towns, villages or counties, notice shall be published in the largest circulation newspaper published and distributed locally in those areas as well as in a newspaper of general circulation in the state. For each rule, amendment or repealing provision that affects the entire state, notice shall be published in three newspapers of general circulation in the state. Additional notice may be made by posting on the internet or by using other alternative methods of informing interested persons.

C. If the commission finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, the commission may dispense with notice and public hearing and adopt, amend or suspend the rule as an emergency. The commission's finding of why an emergency exists shall be incorporated in the emergency rule, amendment or suspension filed with the state records center. Upon adoption of an emergency rule that is intended to remain in

effect for longer than sixty days, notice shall be given within seven days of filing the rule as required in this section for proposed rules.

D. The commission shall issue a rule within eighteen months following the publication of that proposed rule or it shall be deemed to be withdrawn. The commission may propose the same or revised rule in a subsequent rulemaking.

E. All rules shall be filed in accordance with the State Rules Act and shall be effective fifteen days after filing unless a longer time is provided by the rule.

Section 16. RECORD OF PROCEEDINGS. -- Unless otherwise provided by law, the commission may by rule provide that oral proceedings before the commission may be taken by any means that provides a full and complete record, including tape recording or stenography. The commission by rule shall determine when tape recordings are transcribed. A party to the proceeding may request a copy of a tape recording or a written transcript if one is provided. The commission may charge a reasonable fee for a copy of a proceeding. Copy costs shall be determined by the commission by rule and money collected shall be deposited in the general fund.

Section 17. EX PARTE COMMUNICATIONS. --

A. A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party

or his representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking or adjudication.

C. Notwithstanding the provisions of Subsections A and B of this section, the following ex parte communications are permitted:

(1) where circumstances require, ex parte communications for procedural or administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are allowed if the commissioner or hearing examiner reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner or hearing examiner makes provision to promptly notify all other parties of the substance of the ex parte communication;

(2) a commissioner may consult with another commissioner or with advisory staff whose function is to advise the commission in carrying out the commissioner's rulemaking or adjudicative responsibilities;

(3) a hearing examiner may consult with the commission's advisory staff; and

(4) a commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in the rulemaking or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

D. A commissioner or hearing examiner who receives or who makes or knowingly causes to be made a communication prohibited by this section shall disclose it to all parties and give other parties an opportunity to respond.

E. Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner or hearing examiner in violation of this section, the commissioner or hearing examiner may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the violation of this section.

Section 18. RECUSAL OF COMMISSIONER OR HEARING EXAMINER. - -

A. A commissioner or hearing examiner shall recuse himself in any adjudicatory proceeding in which he is unable to make a fair and impartial decision or in which there is reasonable doubt about whether he can make a fair

and impartial decision, including:

(1) when he has a personal bias or prejudice concerning a party or its representative or has prejudged a disputed evidentiary fact involved in a proceeding prior to hearing. For the purposes of this paragraph, "personal bias or prejudice" means a predisposition toward a person based on a previous or ongoing relationship, including a professional, personal, familial or other intimate relationship, that renders the commissioner or hearing examiner unable to exercise his functions impartially;

(2) when he has a pecuniary interest in the outcome of the proceeding other than as a customer of a party;

(3) when in previous employment he served as an attorney, adviser, consultant or witness in the matter in controversy; or

(4) when, as a candidate for office, he announced how he would rule on the adjudicatory proceeding or a factual issue in the adjudicatory proceeding.

B. If a commissioner or hearing examiner fails to recuse himself when it appears that grounds exist, a party shall promptly notify the commissioner or hearing examiner of the apparent grounds for recusal. If the commissioner or hearing examiner declines to recuse himself upon request of a party, he shall provide a full explanation in support of his



refusal to recuse himself.

**Section 19. PROHIBITED ACTS-- CANDIDATES-- COMMISSIONERS  
AND EMPLOYEES.--**

A. As used in this section, in addition to the definitions provided in Section 2 of the Public Regulation Commission Act:

(1) "affiliated interest" means a person who directly controls or is controlled by or is under common control with a regulated entity, including an agent, representative, attorney, employee, officer, owner, director or partner of an affiliated interest. For the purposes of this definition, "control" includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote of ten percent or more of the person's voting securities;

(2) "intervenor" means a person who is intervening as a party in an adjudicatory matter or commenting in a rulemaking pending before the commission or has intervened in an adjudicatory or rulemaking matter before the commission within the preceding twenty-four months, including an agent, representative, attorney, employee, officer, owner, director, partner or member of an intervenor;

(3) "pecuniary interest" includes owning or controlling securities; serving as an officer, director,

partner, owner, employee, attorney or consultant; or otherwise benefiting from a business relationship.

“Pecuniary interest” does not include an investment in a mutual fund or similar third-party-controlled investment, pension or disability benefits or an interest in capital credits of a rural electric cooperative or telephone cooperative because of current or past patronage; and

(4) "regulated entity" means a person whose charges for services to the public are regulated by the commission and includes any direct or emerging competitors of a regulated entity and includes an agent, representative, attorney, employee, officer, owner, director or partner of the regulated entity.

B. In addition to the requirements of the Financial Disclosure Act and the Governmental Conduct Act, candidates for the commission, commissioners and employees of the commission shall comply with the requirements of this section and Sections 17 and 18 of the Public Regulation Commission Act, as applicable.

C. A candidate for election to the public regulation commission shall not solicit or accept:

(1) anything of value, either directly or indirectly, from a person whose charges for services to the public are regulated by the commission. For the purposes of this paragraph, "anything of value" includes money, in-kind

contributions and volunteer services to the candidate or his campaign organization, but does not include pension or disability benefits; or

(2) more than five hundred dollars (\$500) per election from any other person.

D. A commissioner or employee of the commission shall not:

(1) accept anything of value from a regulated entity, affiliated interest or intervenor. For the purposes of this paragraph, a commissioner may accept allowable campaign contributions when campaigning for reelection. For the purposes of this paragraph, "anything of value" does not include:

(a) the cost of refreshments totaling no more than five dollars (\$5.00) a day or refreshments at a public reception or other public social function that are available to all guests equally;

(b) inexpensive promotional items that are available to all customers of the regulated entity, affiliated interest or intervenor; or

(c) pension or disability benefits received from a regulated entity, affiliated interest or intervenor;

(2) have a pecuniary interest in a regulated entity, affiliated interest or intervenor, and if a pecuniary

interest in an intervenor develops, the commissioner or employee shall divest himself of that interest or recuse himself from the proceeding with the intervenor interest; or

(3) solicit any regulated entity, affiliated interest or intervenor to appoint a person to a position or employment in any capacity.

E. After leaving the commission:

(1) a former commissioner shall not be employed or retained in a position that requires appearances before the commission by a regulated entity, affiliated interest or intervenor within two years of his separation from the commission;

(2) a former employee shall not appear before the commission representing a party to an adjudication or a participant in a rulemaking within one year of ceasing to be an employee; and

(3) a former commissioner or employee shall not represent a party before the commission or a court in a matter that was pending before the commission while the commissioner or employee was associated with the commission and in which he was personally and substantially involved in the matter.

F. The attorney general or a district attorney may institute a civil action in the district court for Santa Fe county or, in his discretion, the district court for the

county in which a defendant resides if a violation of this section has occurred or to prevent a violation of this section. A civil penalty may be assessed in the amount of two hundred fifty dollars (\$250) for each violation, not to exceed five thousand dollars (\$5,000).

Section 20. COMMISSION REPORTS. -- By December 1 of each year, the commission shall report to the legislature and the governor regarding its activities for the previous year in sufficient detail to disclose the workings of the commission and the impact of regulation on the industries regulated by the commission. The report may include suggestions and recommended changes in law, as the commission deems appropriate, that would be in the public interest.

Section 21. Section 8-1-1 NMSA 1978 (being Laws 1971, Chapter 260, Section 1, as amended) is amended to read:

"8-1-1. COMPENSATION OF ELECTIVE STATE OFFICERS. --

A. Annual compensation of elective state officers shall be paid as follows:

governor . . . . .	\$90,000
secretary of state . . . . .	65,000
state auditor . . . . .	65,000
state treasurer . . . . .	65,000
attorney general . . . . .	72,500
commissioner of public lands . . . . .	72,500
public regulation commissioner . . . . .	72,500.

B. Any person succeeding to the office of governor as provided in Article 5, Section 7 of the constitution of New Mexico shall receive the salary of the office. Every person serving as acting governor during the incapacity or absence of the governor from the state, other than the secretary of state, shall receive one hundred fifty dollars (\$150) as compensation for each day's service as acting governor.

C. All compensation under this section shall be paid from the general fund, except that the amount paid to the commissioner of public lands shall be paid from the state lands maintenance fund."

Section 22. A new section of Chapter 8, Article 5 NMSA 1978 is enacted to read:

"ATTORNEY GENERAL--CONSUMER REPRESENTATION BEFORE COMMISSION.--

A. The attorney general shall represent residential and small business consumers in matters before the public regulation commission as the attorney general deems appropriate.

B. The attorney general:

(1) shall research, study and analyze residential and small business consumer interests;

(2) shall prepare and present briefs, arguments, proposed rates or orders and intervene or appear

on behalf of residential and small business consumers before the public regulation commission as a party in interest;

(3) may accept grants and donations in the name of the state to carry out the provisions of this section;

(4) may cooperate with tribal and pueblo governments in New Mexico to ensure that the interests of Indian residential and small business consumers are being represented appropriately before the public regulation commission; and

(5) shall report by December 1 of each year to the legislature and the governor on the activities of his office on behalf of residential and small business consumers. "

Section 23. Section 53-5-1 NMSA 1978 (being Laws 1959, Chapter 181, Section 1) is amended to read:

"53-5-1. SHORT TITLE. -- Chapter 53, Article 5 NMSA 1978 may be cited as the "Corporate Reports Act". "

Section 24. Section 53-7-18 NMSA 1978 (being Laws 1983, Chapter 312, Section 1) is amended to read:

"53-7-18. SHORT TITLE. -- Sections 53-7-18 through 53-7-46 NMSA 1978 may be cited as the "Business Development Corporation Act". "

Section 25. Section 53-8-1 NMSA 1978 (being Laws 1975, Chapter 217, Section 1, as amended) is amended to read:

"53-8-1. SHORT TITLE. --Chapter 53, Article 8 NMSA 1978 may be cited as the "Nonprofit Corporation Act". "

Section 26. Section 53-8-2 NMSA 1978 (being Laws 1975, Chapter 217, Section 2, as amended) is amended to read:

"53-8-2. DEFINITIONS. --As used in the Nonprofit Corporation Act, unless the context otherwise requires:

A. "corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of the Nonprofit Corporation Act, except a foreign corporation;

B. "foreign corporation" means a nonprofit corporation organized under laws other than the laws of New Mexico for a purpose for which a corporation may be organized under the Nonprofit Corporation Act;

C. "nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its members, directors or officers;

D. "articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;

E. "bylaws" means the code of rules adopted for the regulation or management of the affairs of the corporation, irrespective of the name by which such rules are designated;

F. "member" means one having membership rights in



a corporation in accordance with the provisions of its articles of incorporation or bylaws;

G. "board of directors" means the group of persons vested with the management of the affairs of the corporation, irrespective of the name by which such group is designated;

H. "insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs;

I. "commission" or "corporation commission" means the public regulation commission or its delegate;

J. "address" means:

(1) the mailing address and the street address, if within a municipality; or

(2) the mailing address and a rural route number and box number, if any, or the geographical location, using well-known landmarks, if outside a municipality;

K. "duplicate original" means a document that is signed or executed in duplicate;

L. "delivery" means:

(1) if personally served, the date documentation is received by the corporations bureau of the commission; and

(2) if mailed to the commission, the date of the postmark plus three days, upon proof thereof by the party

delivering the documentation; and

M "person" includes individuals, partnerships, corporations and other associations."

Section 27. Section 53-11-1 NMSA 1978 (being Laws 1967, Chapter 81, Section 1, as amended) is amended to read:

"53-11-1. SHORT TITLE. -- Sections 53-11-1 through 53-18-12 NMSA 1978 is the general corporation law of New Mexico and may be cited as the "Business Corporation Act"."

Section 28. Section 53-11-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 2, as amended) is amended to read:

"53-11-2. DEFINITIONS. -- As used in the Business Corporation Act, unless the text otherwise requires:

A. "corporation" or "domestic corporation" means a corporation for profit subject to the provisions of the Business Corporation Act, except a foreign corporation;

B. "foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose for which a corporation may be organized under the Business Corporation Act;

C. "articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;

D. "shares" means the units into which the proprietary interests in a corporation are divided;

E. "subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation;

F. "shareholder" means one who is a holder of record of shares in a corporation;

G. "authorized shares" means the shares of all classes which the corporation is authorized to issue;

H. "annual report" means the corporate report required by the Corporate Reports Act;

I. "distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrance of indebtedness, by a corporation to or for the benefit of any of its shareholders in respect of any of its shares, whether by dividend or by purchase redemption or other acquisition of its shares, or otherwise;

J. "franchise tax" means the franchise tax imposed by the Corporate Income and Franchise Tax Act;

K. "fees" means the fees imposed by Section 53-2-1 NMSA 1978;

L. "commission" means the public regulation commission or its delegate;

M "address" means:

(1) the mailing address and the street address, if within a municipality; or

(2) the mailing address and a rural route

number and box number, if any, or the geographical location, using well-known landmarks, if outside a municipality;

N. "duplicate original" means a document that is signed or executed in duplicate;

O. "delivery" means:

(1) if personally served, the date on which the documentation is received by the corporations bureau of the commission; and

(2) if mailed, the date of the postmark plus three days, upon proof thereof by the party delivering the documentation; and

P. "person" includes individuals, partnerships, corporations and other associations."

Section 29. Section 53-19-1 NMSA 1978 (being Laws 1993, Chapter 280, Section 1) is amended to read:

"53-19-1. SHORT TITLE. -- Chapter 53, Article 19 NMSA 1978 may be cited as the "Limited Liability Company Act". "

Section 30. Section 53-19-2 NMSA 1978 (being Laws 1993, Chapter 280, Section 2) is amended to read:

"53-19-2. DEFINITIONS. -- As used in the Limited Liability Company Act:

A. "articles of organization" means the original or restated articles filed pursuant to the Limited Liability Company Act and any amendments to those articles, including articles of merger or consolidation;

B. "corporation" means an organization incorporated under the laws of New Mexico or a foreign corporation;

C. "commission" means the public regulation commission or its designee;

D. "court" means a court having jurisdiction in the case;

E. "event of dissociation" means an event that causes a person to cease to be a member of a limited liability company;

F. "foreign corporation" means a corporation that is organized under the laws of another state or a foreign country;

G. "foreign limited liability company" means a person that is:

- (1) an unincorporated association;
- (2) organized under the laws of another state or foreign country;
- (3) organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the person; and
- (4) is not required to be registered or organized under the laws of New Mexico other than the Limited Liability Company Act;

H. "foreign limited partnership" means a limited partnership formed under the laws of another state or a foreign country;

I. "limited liability company" or "domestic limited liability company" means an organization formed pursuant to the provisions of the Limited Liability Company Act;

J. "limited liability company interest" means a member's or assignee's right to receive distributions and a return of capital from the limited liability company. A member's or assignee's limited liability company interest does not include rights the member or assignee has on account of other matters, such as a right to receive accrued salary for services the member or assignee rendered to, repayment of a loan the member or assignee made to or indemnification by the limited liability company;

K. "limited partnership" means a limited partnership under the laws of New Mexico or a foreign limited partnership;

L. "manager" means, with respect to a limited liability company that has included a statement in its articles of organization that it is to be managed by a manager, the person designated as manager in accordance with the articles of organization or an operating agreement;

M "member" means a person who has been admitted

to membership in a limited liability company and who has not dissociated from that company;

N. "membership interest" or "interest" means a member's limited liability company interest and his rights to participate in management and control of the limited liability company;

O. "operating agreement" means a written agreement providing for the conduct of the business and affairs of a limited liability company and that agreement as amended in writing;

P. "person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity; and

Q. "state" means a state, territory or possession of the United States, the District of Columbia or the commonwealth of Puerto Rico. "

Section 31. Section 59A-1-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 4) is amended to read:

"59A-1-4. COMMISSION. -- "Corporation commission" or "commission" means the public regulation commission. "

Section 32. Section 59A-1-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 7) is amended to read:

"59A-1-7. INSURANCE DEPARTMENT. -- "Insurance department", "insurance division" or "division" means the

insurance division of the commission."

Section 33. Section 59A-1-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 12) is amended to read:

"59A-1-12. SUPERINTENDENT. -- "Superintendent" means the superintendent of insurance or the superintendent's duly authorized representative acting in official capacity."

Section 34. Section 59A-2-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 19) is amended to read:

"59A-2-1. INSURANCE DIVISION CREATED. --

A. The insurance division is created within the commission.

B. All powers relating to state supervision of insurance, insurance rates and rate practices, together with collection of insurance licenses, taxes or fees, and all records pertaining to such supervision are under control of the commission through the division."

Section 35. Section 59A-2-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 20) is amended to read:

"59A-2-2. SUPERINTENDENT--APPOINTMENT--REMOVAL. --The superintendent of insurance shall be chief officer of the insurance division. The superintendent shall be appointed and may be removed for cause at any time by the commission."

Section 36. Section 59A-2-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 22, as amended) is amended to read:



"59A-2-4. STAFF. -- With the chief of staff's approval, the superintendent may designate an employee of the insurance division as chief deputy superintendent who shall be acting superintendent when the office of superintendent is vacant or the superintendent is unable to perform the duties of that office because of mental or physical disability. "

Section 37. Section 59A-4-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 45) is amended to read:

"59A-4-1. SCOPE OF ARTICLE. -- Except as otherwise expressly provided as to particular matters in the Insurance Code, the provisions of Chapter 59A, Article 4 NMSA 1978 as to investigations and hearings by the superintendent shall apply as to all persons and operations subject to licensing or supervision under the Insurance Code. "

Section 38. Section 59A-52-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 947) is amended to read:

"59A-52-1. STATE FIRE MARSHAL CREATED. -- The position of "state fire marshal" is created as the bureau chief of the fire marshal bureau of the insurance division. "

Section 39. Section 59A-52-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 948) is amended to read:

"59A-52-2. STATE FIRE MARSHAL TO ADMINISTER ARTICLE. -- The state fire marshal shall administer the provisions of Chapter 59A, Article 52 NMSA 1978. "

Section 40. Section 59A-52-3 NMSA 1978 (being Laws

1984, Chapter 127, Section 949) is amended to read:

"59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER EMPLOYEES--QUALIFICATIONS OF DEPUTY.--The state fire marshal may, with the approval of the superintendent, appoint or remove a deputy state fire marshal and other employees to assist in the execution of the marshal's duties; provided, however, that the state fire marshal and any deputy state fire marshal appointed by the state fire marshal shall be experienced in fire prevention and fire fighting and have completed a course of training by actual attendance at a fire-training school."

Section 41. Section 59A-52-21 NMSA 1978 (being Laws 1984, Chapter 127, Section 967) is amended to read:

"59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND MODIFICATIONS.--Any person aggrieved by any order of the state fire marshal, his deputy or authorized officer or his designated agent may appeal to the commission within ten days from the date of the service of such order. The commission shall hear such party within twenty days after receipt of an appeal request and shall give not less than ten days' written notice of the hearing. Within fifteen days after such hearing, the commission shall file its decision and, unless by its authority the order is revoked or modified, it shall be complied with within the time fixed in the decision, with such time to be not less than thirty days."

Section 42. Section 59A-52-23 NMSA 1978 (being Laws 1984, Chapter 127, Section 969) is amended to read:

"59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS. -- After expiration of time for an administrative appeal, and if no such appeal has been taken, the state fire marshal may commence an action in the district court for Santa Fe county to enforce the cease and desist order by injunction or other appropriate remedy as the district court may adjudge. The commission may likewise commence an action in the district court for Santa Fe county to enforce its decision rendered on appeal from the cease and desist order of the state fire marshal."

Section 43. Section 59A-53-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 977, as amended) is amended to read:

"59A-53-6. APPEAL AND REVIEW OF DETERMINATION. -- The marshal shall promptly notify each incorporated city, town, village and county fire district affected of his determination of needs, and an incorporated city, town, village or county fire district may appeal from the determination of the marshal to the commission, within ten days after the determination of needs. The commission shall review the determination of the marshal in such informal and summary proceedings as it deems proper and shall certify to the state treasurer annually, on or before the last day of

June, the results of all appeals from the determinations of the marshal. The certification by the commission, or by the marshal if no appeal is taken, shall be final and binding on all concerned and not subject to any further review. "

Section 44. Section 59A-53-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 978, as amended) is amended to read:

"59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND. --

A. Annually on or before the last day of July, the state treasurer shall distribute from the money in the fire protection fund, to each incorporated municipality and to each county fire district, the amount the marshal or the commission, as the case may be, has certified to him. Payment shall be made to the treasurer of any incorporated municipality and to the county treasurer of the county in which any county fire district is located for credit to the county fire district.

B. The state treasurer is authorized to redirect a distribution to the New Mexico finance authority in the amount the marshal or the commission, as the case may be, has certified to him pursuant to an ordinance or a resolution passed by the municipality or county and a written agreement of the municipality or county in which any county fire district is located and the New Mexico finance authority. "

Section 45. Section 62-3-3 NMSA 1978 (being Laws 1967,

Chapter 96, Section 3, as amended) is amended to read:

"62-3-3. DEFINITIONS. -- Unless otherwise specified, when used in the Public Utility Act:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances where a person is an officer, director, partner, trustee or person of similar status or function or owns directly or indirectly or has a beneficial interest in ten percent or more of any class of securities of a person;

B. "commission" means the public regulation commission;

C. "commissioner" means a member of the commission;

D. "municipality" means a municipal corporation organized under the laws of the state, and H-class counties;

E. "person" means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, corporation or lessee, trustee or receiver appointed by any court. "Person" does not mean a class A county as described in Section 4-36-10 NMSA 1978 or a class B county as described in Section 4-36-8 NMSA 1978. "Person" does not mean a municipality as defined in this section

unless the municipality has elected to come within the terms of the Public Utility Act as provided in Section 62-6-5 NMSA 1978. In the absence of voluntary election by a municipality to come within the provisions of the Public Utility Act, the municipality shall be expressly excluded from the operation of that act and from the operation of all its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or other evidences of indebtedness issued, executed or assumed by a utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or mixed or liquefied petroleum gas for light, heat or power or other uses; but the term "public utility" or "utility" shall not

include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than consumers who receive their supply through any pipeline system operating under municipal authority or franchise and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses; or

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses; provided that the terms "public utility" or "utility" as used in the Public Utility Act do not include any utility owned or operated by a class A county as described in Section 4-36-10

NMSA 1978 either directly or through a corporation owned by or under contract with such a county;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by a utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "service" or "service regulation" means every rule, regulation, practice, act or requirement relating to the service or facility of a utility;

J. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to a public utility with which it is affiliated or by a public utility to its affiliated interest;

K. "Class II transaction" means:

(1) the formation after May 19, 1982 of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the utility the owner of ten percent or more of the voting



securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, acquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided, however, that a public utility may honor all agreements entered into by such utility prior to May 19, 1982; or

(4) the divestiture by a public utility of any affiliated interest that is a corporate subsidiary of the public utility;

L. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility; and

M "public utility holding company" means an affiliated interest that controls a public utility through the direct or indirect ownership of voting securities of that public utility."

Section 46. Section 62-3-4 NMSA 1978 (being Laws 1967, Chapter 96, Section 4, as amended) is amended to read:

"62-3-4. LIMITATIONS AND EXCEPTIONS. --

A. The term "public utility" or "utility", when used in the Public Utility Act, shall not include:

(1) any person not otherwise a public utility who furnishes the service or commodity only to himself, his employees or tenants, when such service or commodity is not resold to or used by others, or who engages in the retail distribution of natural gas for vehicular fuel; or

(2) a corporation engaged in the business of operating a railroad and that does not primarily engage in the business of selling the service or commodity but that only incidentally to its railroad business or occasionally furnishes the service or commodity to another under a separate limited or revocable agreement or sells to a utility or municipality for resale, or that sells the service or commodity to another railroad, the state or federal government or a governmental agency, or that sells or gives for a consideration under revocable agreements or permits quantities of water out of any surplus of water supply acquired and held by it primarily for railroad purposes; and such railroad corporation shall not be subject to any of the provisions of the Public Utility Act.

B. The business of any public utility other than of the character defined in Subsection G of Section 62-3-3 NMSA 1978 is not subject to provisions of the Public Utility Act. "

Chapter 191, Section 1, as amended) is amended to read:

"62-4-1. JOINT HEARINGS AND ORDERS. --The commission, in the discharge of its duties under the Public Utility Act, may make joint investigations, hold joint hearings within or without the state and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state, the United States or any New Mexico Indian nation, tribe or pueblo. In the holding of such investigations or hearings or in the making of such order, the commission may function under agreements or compacts between states to regulate interstate commerce. The commission, in the discharge of its duties under the Public Utility Act, may also negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of congress, for cooperative efforts in certifying the construction, operation and maintenance of major utility facilities in accord with the purposes of the Public Utility Act and for the enforcement of the respective state laws regarding same. "

Section 48. Section 62-8-7 NMSA 1978 (being Laws 1991, Chapter 251, Section 1) is amended to read:

"62-8-7. CHANGE IN RATES. --

A. At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable

shall be upon the utility.

B. Unless the commission otherwise orders, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

C. Whenever there is filed with the commission by any public utility a complete application as prescribed by commission rule proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go

into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served upon the utility; or the commission by its order shall direct the utility to file new rates respecting such service that are designed to produce annual revenues no greater than those determined by the commission in its order to be just and reasonable. Those rates shall thereafter be observed until changed, as provided by the Public Utility Act.

E. Except as otherwise provided by law, any increase in rates or charges for the utility commodity based upon cost factors other than taxes or cost of fuel, gas or purchased power, filed for after April 4, 1991 shall be permitted only after notice and hearing as provided by this

section. The commission shall enact rules governing the use of tax, fuel, gas or purchased power adjustment clauses by utilities that enable the commission to consider periodically at least the following:

(1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes;

(2) the specific adjustment mechanism to recover tax, gas, fuel or purchased power costs;

(3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

(4) the proper adjustment period to be employed.

F. The commission may eliminate or condition a particular adjustment clause if it finds such elimination or condition is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable

rates to all customer classes; provided, however, that no such elimination or condition shall be ordered unless such elimination or condition will not place the affected utility at a competitive disadvantage. The commission rules shall also provide for variances and may provide for separate examination of a utility's adjustment clause based upon that utility's particular operating characteristics.

G. Whenever there is filed with the commission a schedule proposing new rates by a rural electric cooperative organized under the Rural Electric Cooperative Act, the rates shall become effective as proposed by the rural electric cooperative without a hearing. However, the cooperative shall give written notice of the proposed rates to its affected patrons at least thirty days prior to the filing with the commission, and the commission shall suspend the rates and conduct a hearing concerning the reasonableness of any proposed rates filed by a rural electric cooperative pursuant to Subsections C and D of this section upon the filing with the commission of a protest setting forth grounds for review of the proposed rates signed by one or more members of the rural electric cooperative and if the commission determines there is just cause for reviewing the proposed rates on one or more of the grounds of the protest. The protest shall be filed no later than twenty days after the filing with the commission of the schedule proposing the

new rates. The hearing and review shall be limited to the issues set forth in the protest and for which the commission may find just cause for the review, which issues shall be contained in the notice of hearing. The provisions of this subsection shall not be construed to affect commission authority or procedure to regulate the sale, furnishing or delivery by wholesale suppliers of electricity to rural electric cooperatives pursuant to Section 62-6-4 NMSA 1978. In addition to the adjustments permitted by Subsections E and F of this section, the commission may authorize rate schedules of rural electric cooperatives to recover, without notice and hearing, changes in the cost of debt capital incurred pursuant to securities the issuance of which are approved by the commission. For the purposes of this subsection, a member of a rural electric cooperative is a member as defined by the Rural Electric Cooperative Act."

Section 49. Section 62-15-1 NMSA 1978 (being Laws 1939, Chapter 47, Section 1) is amended to read:

"62-15-1. SHORT TITLE. -- Chapter 62, Article 15 NMSA 1978 may be cited as the "Rural Electric Cooperative Act". "

Section 50. Section 63-7-1 NMSA 1978 (being Laws 1912, Chapter 78, Section 1, as amended) is amended to read:

"63-7-1. PUBLIC REGULATION COMMISSION--TERMS DEFINED--OFFICE--ORGANIZATION.--The terms "commission" and "clerk" or "chief clerk" where used in this article shall mean,



respectively, the public regulation commission and the chief clerk of the commission. The office of the commission shall be located in the city of Santa Fe, New Mexico. "

Section 51. Section 63-7-23 NMSA 1978 (being Laws 1995, Chapter 175, Section 1) is amended to read:

"63-7-23. TELECOMMUNICATIONS--ADMINISTRATIVE FINES.--

A. For purposes of this section:

(1) "commission" means the public regulation commission; and

(2) "telecommunications provider" means any telegraph company, telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular service company or pay telephone provider regulated in whole or in part by the commission under law, including the Telephone and Telegraph Company Certification Act, the New Mexico Telecommunications Act, the Cellular Telephone Services Act and Sections 63-9E-1 and 63-9E-3 NMSA 1978.

B. The commission may impose an administrative fine on a telecommunications provider for any act or omission that the provider knew or should have known was a violation of any applicable law or rule or order of the commission.

C. An administrative fine of not more than one thousand dollars (\$1,000) may be imposed for each violation or each of multiple violations arising out of the same facts,

up to a maximum of twenty-five thousand dollars (\$25,000) or an administrative fine of not more than one thousand dollars (\$1,000) may be imposed for each day of a continuing violation arising out of the same facts, up to a maximum of twenty-five thousand dollars (\$25,000). Notwithstanding any other provision of this subsection, the commission may impose an administrative fine not to exceed twenty-five thousand dollars (\$25,000) for a single violation:

(1) that results in substantial harm to the customers of the telecommunications provider or substantial harm to the public interest; or

(2) for failure to obtain a certificate of public convenience and necessity required by law or for operation outside the scope of that certificate.

D. The commission shall initiate a proceeding to impose an administrative fine by giving written notice to the provider that the commission has facts as set forth in the notice that, if not rebutted, may lead to the imposition of an administrative fine under this section and that the telecommunications provider has an opportunity for a hearing. The commission may only impose an administrative fine by written order that, in the case of contested proceedings, shall be supported by a preponderance of the evidence.

E. The commission may initiate a proceeding to impose an administrative fine within two years from the date

of the commission's discovery of the violation, but in no event shall a proceeding be initiated more than five years after the date of the violation. This limitation shall not run against any act or omission constituting a violation under this section for any period during which the telecommunications provider has fraudulently concealed the violation.

F. The commission shall consider mitigating and aggravating circumstances in determining the amount of administrative fine imposed.

G. For purposes of establishing a violation, the act or omission of any officer, agent or employee of a telecommunications provider, within the scope of such person's authority, duties or employment, shall be deemed the act or omission of the telecommunications provider.

H. Any telecommunications provider or other person aggrieved by an order assessing an administrative fine may appeal the order to the supreme court of New Mexico. A notice of appeal shall be filed within thirty days after the entry of the commission's order. Notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken.

I. The commission shall promulgate procedural rules for the implementation of this section."

Section 52. A new section of Chapter 63, Article 7 NMSA 1978 is enacted to read:

"COMMISSION POWERS AND DUTIES--TRANSPORTATION AND TRANSMISSION COMPANIES AND COMMON CARRIERS--TELEPHONE AND TELEGRAPH COMPANIES. --

A. With respect to transportation and transmission companies and common carriers, the commission shall:

(1) fix, determine, supervise, regulate and control all charges and rates of railway, express, telegraph, telephone, sleeping car and other transportation and transmission companies and common carriers within the state;

(2) determine any matters of public convenience and necessity with respect to matters subject to its regulatory authority as provided by law;

(3) require railway companies and other common carriers to provide and maintain adequate equipment, depots, stockpens, station buildings, agents and facilities for the accommodation of shippers and passengers and for receiving and delivering freight and express and to provide and maintain necessary crossings, culverts, sidings and other facilities for convenience and safety whenever in the commission's judgment the public interest demands;

(4) require railway companies, transportation companies and common carriers to provide such

reasonable safety appliances and use such reasonable safety practices as may be necessary and proper for the safety of employees and the public as required by federal or state laws and rules;

(5) change, amend and rescind rates;

(6) enforce its rules through administrative sanctions and in the courts; and

(7) carry out all other duties and have all other powers provided by law.

B. In fixing rates of telephone and telegraph companies, due consideration shall be given to the earnings, investments and expenditures as a whole within the state. The commission shall include in that consideration the earnings, investments and expenditures derived from or related to the sale of directory advertising and other directory listing services.

C. The commission may subpoena witnesses and documents, enforce its subpoenas through any court and, through the court, punish for contempt.

D. The commission has the power, after notice and hearing of record, to determine and decide any question and to issue orders relating to its powers and duties.

E. An interested party may appeal from a final order of the commission by filing a notice of appeal with the supreme court asking for review of the order within thirty

days of the final order. The appellant shall pay to the commission any costs of preparing and transmitting the record to the court.

F. The pendency of an appeal shall not automatically stay the order appealed from. The appellant may seek to obtain a stay from the commission or the supreme court.

G. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. The supreme court shall affirm the commission's order unless it is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

H. In the case of a failure or refusal of any person to comply with an order of the commission within the time prescribed in the order or within thirty days after the order is entered, whichever is later, unless a stay has been granted, the commission shall seek enforcement of the order in the district court. The enforcement hearing shall be held on an expedited basis. At the hearing, the sole question shall be whether the person has failed to comply with or

violated the order. "

Section 53. Section 63-9-1 NMSA 1978 (being Laws 1965, Chapter 292, Section 1) is amended to read:

"63-9-1. SHORT TITLE. --Chapter 63, Article 9 NMSA 1978 may be cited as the "Telephone and Telegraph Company Certification Act". "

Section 54. Section 63-9-2 NMSA 1978 (being Laws 1965, Chapter 292, Section 2, as amended) is amended to read:

"63-9-2. DEFINITIONS. --As used in the Telephone and Telegraph Company Certification Act:

A. "commission" means the public regulation commission;

B. "telephone company" means a company, corporation, partnership, individual or others, not engaged solely in interstate business, furnishing mobile telephone service or radio paging;

C. "public utility telephone service" means making and offering mobile telephone or radio paging service to or for the public generally and being ready, willing and able to furnish such service with adequate equipment; and

D. "certificated area" means the geographical area that a telephone company is authorized to serve by a certificate of public convenience and necessity and that is defined on the map as part of the certificate. "

Section 55. Section 63-9-4 NMSA 1978 (being Laws 1965,

Chapter 292, Section 4) is amended to read:

"63-9-4. CERTIFICATE FOR OPERATIONS. -- A telephone company furnishing public telephone or telegraph service, including any telephone cooperative operating in the state, shall file with the commission an application for a certificate of public convenience and necessity. The commission shall grant a certificate only to the extent of territory served and shall define such area on a map. Operations for which no application has been made are unlawful."

Section 56. Section 63-9-9 NMSA 1978 (being Laws 1965, Chapter 292, Section 9) is amended to read:

"63-9-9. NONDUPLICATION IN CERTIFICATED AREAS. --

A. It is unlawful to construct, own, operate, manage, lease or control any plant or equipment for the furnishing of telephone or telegraph service in any certificated area granted to another telephone company unless public convenience and necessity require the second plant or equipment.

B. Any person, corporation, municipal corporation, partnership or association proposing to construct or operate the second plant or equipment shall first file an application with the commission, to which application the authority proposing to authorize the construction of the second plant or equipment and the owner,



manager or operator of the plant or equipment then in operation shall be made parties. The applications shall set up the reasons why public convenience and necessity require the second plant or equipment. In determining whether the public convenience and necessity require the second plant or equipment, the commission shall consider and determine upon substantial evidence whether the following conditions existed at the time of the filing of the application:

(1) the existing telephone or telegraph service is inadequate to meet the reasonable needs and convenience of the public;

(2) the proposed second plant or equipment would eliminate such inadequacy;

(3) it is economically feasible to operate the proposed second plant or equipment successfully and continuously for the furnishing of telephone or telegraph service;

(4) the applicant for the second plant or equipment has sufficient financial resources to provide the proposed telephone or telegraph service properly and continuously;

(5) the applicant for the second plant or equipment has competent and experienced management and personnel to provide the proposed telephone or telegraph service;

(6) the applicant for the second plant or equipment is willing and able to conform to the constitution and law of New Mexico and the rules of the commission; and

(7) the applicant for the second plant or equipment is in every respect willing and able to provide the proposed telephone or telegraph service properly.

C. If the commission finds upon substantial evidence that each of the conditions enumerated in Subsection B of this section existed at the time of filing the application and after determining that the public convenience and necessity require that an additional plant or equipment is necessary, the commission shall issue an order in the alternative directing the owner, manager or operator of the plant or equipment then in operation to make such changes and additions in plant as may be reasonably necessary to meet the public convenience and necessity within not less than ninety days or such other additional time as the commission finds from the testimony would be reasonably required to expeditiously make the changes and additions specified and required by the commission. The order shall specifically direct what changes or additions in plant shall be made or what services shall be provided. If such changes or additions are not made within the time ordered by the commission or such additional time as may be ordered, then a certificate of public convenience and necessity for the

second plant or equipment may issue."

Section 57. Section 63-9-16 NMSA 1978 (being Laws 1965, Chapter 292, Section 16) is repealed and a new Section 63-9-16 NMSA 1978 is enacted to read:

"63-9-16. APPEAL TO SUPREME COURT.--

A. A telephone company or other party in interest being aggrieved by a final order or determination of the commission pursuant to Sections 63-9-1 through 63-9-19 NMSA 1978 may appeal to the supreme court within thirty days.

B. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. The supreme court shall affirm the commission's order unless it is:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law."

Section 58. Section 63-9-19 NMSA 1978 (being Laws 1965, Chapter 292, Section 19) is amended to read:

"63-9-19. INJUNCTIONS--CONTEMPT.--The commission may apply to the district court for injunctions to prevent violations of any provision of the Telephone and Telegraph Company Certification Act or of any rule or order of the

commission in connection with the issuance or nonissuance of certificates of public convenience and necessity pursuant to that act, and the court has the power to grant injunctions and to enforce injunctions by contempt procedure. "

Section 59. Section 63-9A-1 NMSA 1978 (being Laws 1985, Chapter 242, Section 1) is amended to read:

"63-9A-1. SHORT TITLE. --Chapter 63, Article 9A NMSA 1978 may be cited as the "New Mexico Telecommunications Act". "

Section 60. Section 63-9A-3 NMSA 1978 (being Laws 1985, Chapter 242, Section 3, as amended) is amended to read:

"63-9A-3. DEFINITIONS. --As used in the New Mexico Telecommunications Act:

A. "affordable rates" means local exchange service rates that promote universal service within a local exchange service area, giving consideration to the economic conditions and costs to provide service in such area;

B. "cable television service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection of such video programming or other programming service;

C. "commission" means the public regulation commission;

D. "competitive telecommunications service" means

a service that has been determined to be subject to effective competition pursuant to Section 63-9A-8 NMSA 1978;

E. "effective competition" means that the customers of the service have reasonably available and comparable alternatives to the service;

F. "fund" means the New Mexico universal service fund;

G. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission, where local exchange rates apply;

H. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a telecommunications company within a local exchange area;

I. "message telecommunications service" means telecommunications service between local exchange areas within the state for which charges are made on a per-unit basis, not including wide-area telecommunications service, or its equivalent, or individually negotiated contracts for telecommunications services;

J. "noncompetitive telecommunications service" means a service that has not been determined to be subject to effective competition pursuant to Section 63-9A-8 NMSA 1978;

K. "private telecommunications service" means a

system, including the construction, maintenance or operation thereof, for the provision of telecommunications service, or any portion of that service, by a person for the sole and exclusive use of that person and not for resale, directly or indirectly. For purposes of this definition, the person that may use such service includes any affiliates of the person if at least eighty percent of the assets or voting stock of the affiliates is owned by the person. If any other person uses the telecommunications service, whether for hire or not, the private telecommunications service is a public telecommunications service;

L. "public telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing. "Public telecommunications service" does not include the provision of terminal equipment used to originate or terminate such service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including mobile telephone service and radio paging; or one-way cable television service; and

M "telecommunications company" means a person that

provides public telecommunications service."

Section 61. A new section of the New Mexico Telecommunications Act is enacted to read:

"CHANGE IN RATES. --

A. At a hearing involving an increase in rates or charges sought by a telecommunications company, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the company.

B. Unless the commission otherwise orders, no telecommunications company shall make a change in an established rate except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, the time when the changed rates will go into effect and other information as the commission by rule requires. The telecommunications company shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

C. Whenever a telecommunications company files a complete application proposing new rates, the commission may, upon complaint or upon its own initiative, except as

otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the telecommunications company for the service in question and shall fix the rates by order to be served upon the telecommunications company; or the commission by its order shall direct the telecommunications company to file new rates respecting such service that are just and reasonable. Those rates shall thereafter be observed until changed as provided



by the New Mexico Telecommunications Act. "

Section 62. Section 63-9A-14 NMSA 1978 (being Laws 1985, Chapter 242, Section 14) is amended to read:

"63-9A-14. APPEAL OF ORDERS OF THE COMMISSION. -- Any provider of telecommunications services and any other person in interest being aggrieved by a final order or determination of the commission under the New Mexico Telecommunications Act may file a notice of appeal in the supreme court asking for a review of the commission's final orders. A notice of appeal shall be filed within thirty days after the entry of the commission's final order. Every notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken. Any person whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may upon proper notice order any person to be joined as a party. "

Section 63. Section 63-9A-16 NMSA 1978 (being Laws 1985, Chapter 242, Section 16) is amended to read:

"63-9A-16. APPEAL ON THE RECORD. --

A. The appeal shall be on the record made before the commission and shall be governed by the appellate rules applicable to administrative appeals.

B. The supreme court shall affirm the commission's order unless it is:

(1) arbitrary, capricious or an abuse of

discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law. "

Section 64. Section 63-9A-20 NMSA 1978 (being Laws 1985, Chapter 242, Section 20) is amended to read:

"63-9A-20. INJUNCTIONS--CONTEMPT.--The commission may apply to the district court for injunctions to prevent violations of any provision of the New Mexico Telecommunications Act or of any rule or order of the commission issued pursuant to that act, and the court has the power to grant such injunctions and to enforce such injunctions by contempt procedure. "

Section 65. Section 63-9B-1 NMSA 1978 (being Laws 1987, Chapter 296, Section 1) is amended to read:

"63-9B-1. SHORT TITLE.--Chapter 63, Article 9B NMSA 1978 may be cited as the "Cellular Telephone Services Act". "

Section 66. Section 63-9B-3 NMSA 1978 (being Laws 1987, Chapter 296, Section 3) is amended to read:

"63-9B-3. DEFINITIONS.--As used in the Cellular Telephone Services Act:

A. "commission" means the public regulation commission;

B. "cellular service company" means a cellular telephone company that uses cellular telephone equipment and

is a radio common carrier or telephone or telecommunications company licensed by the federal communications commission. A cellular service company operates a cellular system that is a high capacity land mobile system in which assigned spectrum is divided into discrete channels that are assigned in groups to geographic cells covering a cellular geographic area, as defined by the federal communications commission. "Cellular service company" does not include noncellular radio common carrier service, including noncellular mobile telephone service, radio-paging service or one-way cable television service; and

C. "certificated area" means the geographical area that a cellular service company is authorized to serve by a certificate of public convenience and necessity and that is defined on the map as part of the certificate issued under such law authorizing the issuance of a certificate of public convenience and necessity for such purpose. "

Section 67. Section 63-9B-8 NMSA 1978 (being Laws 1987, Chapter 296, Section 8) is amended to read:

"63-9B-8. APPEAL OF ORDERS OF THE COMMISSION. -- A cellular service company or other person in interest being aggrieved by an order or determination of the commission under the Cellular Telephone Services Act may file a notice of appeal in the supreme court asking for a review of the commission's final orders. A notice of appeal shall be filed

within thirty days after the entry of the commission's final order. Every notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken. Any person whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may upon proper notice order any person to be joined as a party."

Section 68. Section 63-9B-10 NMSA 1978 (being Laws 1987, Chapter 296, Section 10) is amended to read:

"63-9B-10. APPEAL ON THE RECORD. --

A. The appeal shall be on the record made before the commission and shall be governed by the appellate rules applicable to administrative appeals.

B. The supreme court shall affirm the commission's order unless it is:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law."

Section 69. Section 63-9B-14 NMSA 1978 (being Laws 1987, Chapter 296, Section 14) is amended to read:

"63-9B-14. INJUNCTIONS--CONTEMPT. --The commission may apply to the district court for injunctions to prevent violations of any provision of the Cellular Telephone

Services Act or of any rule or order of the commission issued pursuant to that act, and the court has the power to grant injunctions and to enforce injunctions by contempt procedure. "

Section 70. Section 63-9C-1 NMSA 1978 (being Laws 1987, Chapter 197, Section 1) is amended to read:

"63-9C-1. SHORT TITLE. -- Chapter 63, Article 9C NMSA 1978 may be cited as the "Low Income Telephone Service Assistance Act". "

Section 71. Section 63-9C-3 NMSA 1978 (being Laws 1987, Chapter 197, Section 3) is amended to read:

"63-9C-3. DEFINITIONS. -- As used in the Low Income Telephone Service Assistance Act:

A. "commission" means the public regulation commission;

B. "department" means the human services department; and

C. "local exchange company" means a person not engaged solely in interstate business that provides services or facilities for the transmission of two-way interactive switched voice communications over a telephone line within a local exchange area for single-line customers. "

Section 72. Section 63-9D-1 NMSA 1978 (being Laws 1989, Chapter 25, Section 1, as amended) is amended to read:

"63-9D-1. SHORT TITLE. -- Sections 63-9D-1 through

63-9D-11.1 NMSA 1978 may be cited as the "Enhanced 911 Act". "

Section 73. Section 63-9D-3 NMSA 1978 (being Laws 1989, Chapter 25, Section 3, as amended) is amended to read:

"63-9D-3. DEFINITIONS. --As used in the Enhanced 911 Act:

A. "911 emergency surcharge" means the monthly uniform charge assessed on each local exchange service customer in the state for each local exchange access line to pay for the purchase, lease, installation and maintenance of equipment necessary for the establishment of a 911 system, including the repayment of bonds issued pursuant to the Enhanced 911 Bond Act;

B. "911 service area" means the area within a local governing body's jurisdiction that has been designated by the local governing body or the division to receive enhanced 911 service;

C. "911 system" means the basic 911 system or the enhanced 911 system;

D. "basic 911 system" means a telephone service that automatically connects a person dialing the single three-digit number 911 to an established public safety answering point through normal telephone service facilities;

E. "commission" means the public regulation commission;

F. "department" means the taxation and revenue

department;

G. "division" means the local government division of the department of finance and administration;

H. "enhanced 911 system" means a telephone system consisting of network, database and on-premises equipment that uses the single three-digit number 911 for reporting police, fire, medical or other emergency situations, thereby enabling the users of a public telephone system to reach a public safety answering point to report emergencies by dialing 911, and includes the capability to:

(1) selectively route incoming 911 calls to the appropriate public safety answering point operating in a 911 service area; and

(2) automatically display the name, address and telephone number of an incoming 911 call on a video monitor at the appropriate public safety answering point;

I. "enhanced 911 equipment" means the customer premises equipment directly related to the operation of an enhanced 911 system, including automatic number identification or automatic location identification controllers and display units, printers, cathode ray tubes and software associated with call detail recording;

J. "equipment supplier" means a person who provides or offers to provide telecommunications equipment necessary for the establishment of enhanced 911 services;

K. "local 911 surcharge" means the additional charge imposed by a local governing body of a community served by a local exchange telephone company that has not otherwise provided for enhanced 911 capability in its network in order to provide funding for the local governing body to pay for development of the network and database;

L. "local exchange access line" means a telephone line that connects a local exchange service customer to the local switching office and has the capability of reaching local public safety service agencies, but does not include any line used by a carrier for the provision of interexchange services;

M. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission, where local exchange rates apply;

N. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a local exchange telephone company within a local exchange area, including access to enhanced 911 systems;

O. "local exchange telephone company" means a telecommunications company, as defined by Subsection M of Section 63-9A-3 NMSA 1978, certified to provide local exchange service;



P. "local governing body" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipal Code;

Q. "network" means a system designed to provide one or more access paths for communications between users at different geographic locations; provided that a system may be designed for voice, data or both and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies;

R. "network and database surcharge" means the monthly uniform charge assessed on each local exchange service customer in the state for each local exchange access line to pay for the costs of developing and maintaining a network and database for a 911 emergency system; and

S. "public safety answering point" means a twenty-four-hour local jurisdiction communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency. "

Section 74. Section 65-2-82 NMSA 1978 (being Laws 1981, Chapter 358, Section 3, as amended by Laws 1989, Chapter 250, Section 1 and also by Laws 1989, Chapter 375, Section 1) is amended to read:

"65-2-82. DEFINITIONS. --As used in the Motor Carrier Act:

A. "antitrust laws" means the laws of this state relating to combinations in restraint of trade;

B. "broker" means a person not included in the term "motor carrier" and not a bona fide employee or agent of any motor carrier who, as principal or agent, sells or offers for sale any transportation subject to the Motor Carrier Act or negotiates for or holds himself out by solicitation, advertisement or otherwise as one who sells, provides, furnishes, contracts or arranges for that transportation;

C. "certificate" means a certificate of public convenience and necessity issued under authority of the laws of the state to common motor carriers;

D. "clerk" or "chief clerk" means the chief clerk of the public regulation commission;

E. "commission" means the public regulation commission;

F. "common motor carrier" means a person who undertakes, whether directly or indirectly or by lease of equipment or operating rights or any other arrangement, to transport persons or property or any class of property for the general public by motor vehicle for compensation, whether over regular or irregular routes and under scheduled or nonscheduled service, but does not include farm carriers;

G. "contract motor carrier" means a person not a common motor carrier who, under individual contracts or

agreements and whether directly or indirectly or by lease of equipment or operating rights or any other arrangements, transports persons or property by motor vehicle for compensation, but does not include farm carriers;

H. "farm carrier" means a motor vehicle registered in this state being used in the transportation for hire of a cargo consisting of one or several of the following: farm produce, including grains, cotton, cottonseed, vegetables, hay and other farm products; livestock feed; livestock; stock salt; manure; wire; posts; dairy products; and farm or ranch machinery except tractors weighing more than forty-five thousand pounds;

I. "highway" means the public roads, highways, streets and ways in this state;

J. "household goods" means:

(1) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of the dwelling and other similar property as the commission may provide by rule; except that this paragraph shall not be construed to include property moving from a factory or store, except property as the householder has purchased with intent to use in his dwelling and that is transported at the request of, and the transportation charges paid to the carrier by, the householder;

(2) furniture, fixtures, equipment and the

property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment or supply of stores, offices, museums, institutions, hospitals or other establishments and other similar property as the commission may provide by rule; except that this paragraph shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to the moving of the establishment, or a portion of it, from one location to another; and

(3) articles, including objects of art, displays and exhibits, that, because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods and other similar articles as the commission may provide by rule; except that this paragraph shall not be construed to include any article, whether crated or uncrated, that does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods;

K. "interested parties" shall in all cases include all carriers operating over the routes or any part thereof or in the territory involved in an application for a certificate or permit or an application to file or change a schedule of rates, charges or fares or a rule or practice, and other parties as the commission may deem interested in the

particular matter;

L. "irregular route" means that the route to be used by a motor carrier is not restricted to any specific highway within the area the motor carrier is authorized to serve;

M. "lease" means an arrangement whereby a motor carrier augments his equipment by use of equipment owned by others;

N. "license" means a license issued pursuant to the Motor Carrier Act to a broker;

O. "motor carrier" includes common motor carriers, contract motor carriers and any person performing for-hire transportation service without authority from the commission and farm carriers;

P. "motor vehicle" means a vehicle, machine, tractor, trailer or semi-trailer propelled or drawn by mechanical power and used upon the highways in the transportation of property or persons, but does not include any vehicle, locomotive or car operated exclusively on rail or rails;

Q. "permit" means a permit issued under authority of the laws of this state to contract motor carriers;

R. "person" means an individual, firm, partnership, corporation, company, association or organization and includes any trustee, receiver, assignee or personal

representative thereof;

S. "regular route" means a fixed, specific and determined course to be traveled by a motor carrier's vehicles rendering service to, from or between various points, localities or municipalities in this state;

T. the "services" and "transportation" to which the Motor Carrier Act applies include all vehicles operated by, for or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property controlled by any motor carrier and used in the transportation of persons or property or in the performance of any service in connection therewith;

U. "shipper" means a person who consigns or receives goods for transportation;

V. "single-line rate" means a rate, charge or allowance proposed by a single common motor carrier of property that is applicable only over its line and for which the transportation can be provided by that common motor carrier;

W. "state" means New Mexico;

X. "towing company" means a common motor carrier engaged in transporting for hire disabled or abandoned motor vehicles by means of a tow truck or flatbed vehicle carrier; and

Y. "weight-bumping" means the knowing and willful

making or securing of a fraudulent weight on a shipment of household goods that is subject to the jurisdiction of the commission under the Motor Carrier Act. "

Section 75. Section 65-2-120 NMSA 1978 (being Laws 1981, Chapter 358, Section 41, as amended) is repealed and a new Section 65-2-120 NMSA 1978 is enacted to read:

"65-2-120. APPEAL TO SUPREME COURT. --

A. A motor carrier or other party in interest being aggrieved by a final order or determination of the commission pursuant to Chapter 65, Article 2 NMSA 1978 may appeal to the supreme court within thirty days.

B. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. The supreme court shall affirm the commission's order unless it is:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law. "

Section 76. Section 65-4-4 NMSA 1978 (being Laws 1933, Chapter 120, Section 4) is amended to read:

"65-4-4. ADMINISTRATION OF ACT. -- The commission shall administer Sections 65-4-1 through 65-4-18 NMSA 1978 with full power to regulate and control the issuance and

revocation of licenses to be issued under the provisions of those sections and to perform all other acts and duties provided in those sections necessary for their enforcement. "

Section 77. Section 65-4-18 NMSA 1978 (being Laws 1933, Chapter 120, Section 19) is amended to read:

"65-4-18. COMMISSION DEFINED. --The term "commission", when used in Sections 65-4-1 through 65-4-18 NMSA 1978, means the public regulation commission. "

Section 78. Section 65-6-2 NMSA 1978 (being Laws 1974, Chapter 82, Section 2, as amended) is amended to read:

"65-6-2. DEFINITIONS. --As used in the Ambulance Standards Act:

A. "ambulance" means a vehicle, including motor vehicles or watercraft, designed and used or intended to be used for the transportation of sick or injured persons;

B. "driver" means a person who, on a regular or irregular basis, either paid or voluntary, serves as the operator of an ambulance;

C. "attendant" means a person who, on a regular or irregular basis, either paid or voluntary, serves as an assistant to the driver in the operation of the ambulance; and

D. "commission" means the public regulation commission. "

Section 79. Section 70-3-12 NMSA 1978 (being Laws 1969,



Chapter 71, Section 2, as amended) is amended to read:

"70-3-12. DEFINITIONS. --As used in the Pipeline Safety Act:

A. "person" means an individual, firm, joint venture, partnership, corporation, association, state, municipality, political subdivision, cooperative association, joint stock association or any combination thereof and includes any receiver, trustee, assignee or personal representative thereof;

B. "commission" means the public regulation commission;

C. "gas" means natural gas, flammable gas or gas that is toxic or corrosive;

D. "oil" means crude oil and liquid hydrocarbons and manufactured products derived from either;

E. "transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage, except that it shall not include the gathering of gas in those rural locations that lie outside the limits of any municipality or unincorporated city, town or village or any residential or commercial area such as a subdivision, a business or shopping center, a community development or any similar populated area that the commission may define by order as a nonrural area;

F. "transportation of oil" means the transmission

of oil by pipeline, except pipelines operated exclusively for the gathering of oil in any field or area or pipelines constituting a part of any tank farm, plant facilities of any processing plant, gasoline plant, refinery, carbon-black plant, recycling system or similar operations;

G. "gas pipeline facilities" means new and existing pipeline rights of way and any equipment, facility or structure used in the transportation of gas or the treatment of gas during the course of transportation;

H. "oil pipeline facilities" means new and existing pipeline rights of way and any equipment, facility or structure used in the transportation of oil; and

I. "intrastate pipeline facilities" means oil pipeline facilities or gas pipeline facilities within the state that are not gas pipeline facilities subject to the jurisdiction of the federal energy regulatory commission pursuant to the federal Natural Gas Act or oil pipeline facilities used in the transportation of oil in interstate or foreign commerce, except that it shall include pipeline facilities within the state that transport gas from an interstate gas pipeline to a direct sales customer within the state purchasing gas for its own consumption."

**Section 80. TEMPORARY PROVISION-- TRANSFERS. --**

A. Except as otherwise provided in this section, on January 1, 1999, all personnel and all money, appropriations,

records, furniture, equipment, supplies and other property belonging to the state corporation commission, the insurance board, the fire board and the New Mexico public utility commission are transferred to the public regulation commission. On January 1, 1999, all personnel and all money, appropriations, records, furniture, equipment, supplies and other property belonging to the attorney general for the provision of legal services to the state corporation commission are transferred to the public regulation commission.

B. Except as otherwise provided in this section, on January 1, 1999, all existing contracts, agreements and other obligations in effect for the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall be binding on the public regulation commission.

C. Except as otherwise provided in this section, on January 1, 1999, all pending cases, legal actions, appeals and other legal proceedings of every description and all pending administrative proceedings that involve the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall be unaffected and shall continue in the name of the public regulation commission.

D. All rules, tariffs, orders and other official

acts of the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall continue in effect until amended, replaced or repealed by the public regulation commission; provided, however, that the public regulation commission shall review all rules of the state corporation commission and the New Mexico public utility commission by July 1, 2003.

E. All references in law, rules, tariffs, orders and other official acts to the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall be construed to be references to the public regulation commission.

Section 81. REPEAL. -- Sections 53-1-2 through 53-1-6, 53-3-34, 59A-1-6, 59A-2-5 and 59A-2-6, 59A-3-1 through 59A-3-9, 62-5-1 through 62-5-11, 62-6-1 through 62-6-3, 62-10-7, 62-10-15, 62-15-29, 63-2-11, 63-2-17, 63-3-3 through 63-3-5, 63-3-9 through 63-3-22, 63-3-24, 63-3-29 through 63-3-32, 63-4-1 through 63-4-8, 63-6-1 through 63-6-7, 63-7-2 through 63-7-9, 63-7-11 through 63-7-19, 63-8-1 through 63-8-7, 63-9-12 through 63-9-14, 63-9-17, 63-9A-13, 63-9A-15, 63-9A-17 and 63-9A-18, 63-9B-7, 63-9B-11, 63-9B-12, 65-2-118 and 65-2-119 NMSA 1978 (being Laws 1913, Chapter 68, Sections 2 and 3, Laws 1912, Chapter 83, Section 18, Laws 1913, Chapter 83, Section 11, Laws 1951, Chapter 93, Section 1, Laws 1979, Chapter 390, Section 11, Laws 1984, Chapter 127, Sections 6, 23, 24, 35, 36 and 38 through 44, Laws 1941,

Chapter 84, Section 3, Laws 1977, Chapter 255, Section 121, Laws 1941, Chapter 84, Sections 4 through 8, 10 through 16, 56 and 64, Laws 1939, Chapter 47, Section 29, Laws 1878, Chapter 1, Section 8-23, Laws 1882, Chapter 59, Section 1, Laws 1947, Chapter 49, Sections 1 and 2, Laws 1878, Chapter 1, Section 8-14, Laws 1882, Chapter 60, Sections 1 and 2, Laws 1878, Chapter 1, Sections 9-3 and 8-18, Laws 1882, Chapter 59, Sections 2 through 7 and 9, Laws 1878, Chapter 1, Section 8-12, Laws 1912, Chapter 62, Sections 1 and 2, Laws 1878, Chapter 1, Section 8-13, Laws 1915, Chapter 37, Sections 1 through 4, Laws 1921, Chapter 200, Sections 1 through 8, Laws 1878, Chapter 1, Sections 9-4 through 9-10, Laws 1912, Chapter 78, Sections 2 through 5, Laws 1925, Chapter 19, Section 1, Laws 1912, Chapter 78, Sections 6 through 8 and 10 through 18, Laws 1955, Chapter 43, Sections 1 through 7, Laws 1965, Chapter 292, Sections 12 through 14 and 17, Laws 1985, Chapter 242, Sections 13, 15, 17 and 18, Laws 1987, Chapter 296, Sections 7, 11 and 12 and Laws 1981, Chapter 358, Sections 39 and 40, as amended) are repealed.

Section 82. DELAYED REPEAL. --The following are repealed effective July 1, 2003:

- A. the Public Utility Act;
- B. Chapter 63, Article 7 NMSA 1978;
- C. the Telephone and Telegraph Company

Certification Act;

- D. the New Mexico Telecommunications Act; and

E. the Cellular Telephone Services Act.

Section 83. EFFECTIVE DATE. --The effective date of the provisions of Sections 1 through 18 and 20 through 81 of this act is January 1, 1999. \_\_\_\_\_