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HOUSE BILL 84

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

R. DAVID PEDERSON

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

**RELATING TO JUDICIAL REVIEW; PROMTING UNIFORMITY WITH RESPECT
TO JUDICIAL REVIEW OF FINAL DECISIONS BY AGENCIES; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.**

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

**Section 1. A new Section 12-8A-1 NMSA 1978 is enacted to
read:**

**"12-8A-1. [NEW MATERIAL] APPEAL OF FINAL DECISIONS BY
AGENCIES TO DISTRICT COURT--APPLICATION--SCOPE OF REVIEW--
REVIEW OF DISTRICT COURT DECISIONS. --**

**A. The provisions of this section shall apply only
to judicial review of final decisions by agencies that are
placed under the authority of this section by specific
statutory reference or that are not covered by specific
statutory procedures regarding judicial review of final**

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1 decisions by agencies.

2 B. Upon issuing a final decision, an agency shall
3 promptly:

4 (1) prepare a written decision that includes
5 an order granting or denying relief and a statement of the
6 factual and legal basis for the order;

7 (2) file the written decision with the
8 official public records of the agency; and

9 (3) serve a document that includes a copy of
10 the written decision and the requirements for filing an appeal
11 of the final decision on:

12 (a) all parties whose rights are
13 adjudged by the final decision; and

14 (b) every person who has filed a
15 written request for notice of the final decision in that
16 particular proceeding.

17 C. Unless standing is further limited by a
18 specific statute, a person aggrieved by a final decision may
19 appeal the decision to district court by filing in district
20 court a notice of appeal within thirty days of the date of
21 filing of the final decision. The appeal may be taken to the
22 district court for the county in which the agency maintains
23 its principal office or the district court of any county in
24 which a hearing on the matter was conducted. When notices of
25 appeal from a final decision are filed in more than one

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1 district court, all appeals not filed in the district court in
2 which the first appeal was properly filed shall be dismissed
3 without prejudice. An appellant whose appeal was dismissed
4 without prejudice pursuant to the provisions of this
5 subsection shall have fifteen days after receiving service of
6 the notice of dismissal to file a notice of appeal in the
7 district court in which the first appeal was properly filed.

8 D. In a proceeding for judicial review of a final
9 decision by an agency, the district court may set aside,
10 reverse or remand the final decision if it determines that:

11 (1) the agency acted fraudulently,
12 arbitrarily or capriciously;

13 (2) the final decision was not supported by
14 substantial evidence; or

15 (3) the agency did not act in accordance with
16 law.

17 E. A party to the appeal to district court may
18 seek review of the district court decision by filing a
19 petition for writ of certiorari with the court of appeals,
20 which may exercise its discretion whether to grant review. A
21 party may seek further review by filing a petition for writ of
22 certiorari with the supreme court.

23 F. The procedures governing appeals and petitions
24 for writ of certiorari that may be filed pursuant to the
25 provisions of this section shall be set forth in rules adopted

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1 by the supreme court.

2 G. As used in this section:

3 (1) "agency" means any state or local public
4 body or officer placed under the authority of this section by
5 specific statutory reference or that is not covered by
6 specific statutory procedures regarding judicial review of
7 final decisions by agencies;

8 (2) "final decision" means an agency ruling
9 that as a practical matter resolves all issues arising from a
10 dispute within the jurisdiction of the agency, once all
11 administrative remedies available within the agency have been
12 exhausted. The determination of whether there is a final
13 decision by an agency shall be governed by the law regarding
14 the finality of decisions by district courts. "Final
15 decision" does not mean a decision by an agency on a rule, as
16 defined in the State Rules Act; and

17 (3) "hearing on the matter" means a
18 proceeding conducted by an agency or its hearing officer for
19 the purpose of taking evidence or hearing argument concerning
20 the dispute resolved by the final decision. "

21 Section 2. Section 1-4-21 NMSA 1978 (being Laws 1969,
22 Chapter 240, Section 77, as amended) is amended to read:

23 "1-4-21. REFUSAL OF REGISTRATION -- APPEAL. -- ~~[Mandamus may~~
24 ~~be brought in the district court against the county clerk by~~
25 ~~any]~~ A qualified elector whose registration has been refused

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1 or ~~by~~ the county chairman of any major political party who
2 alleges that certain persons are qualified electors but have
3 been refused registration may bring an appeal regarding the
4 refused registration pursuant to the provisions of Section
5 12-8A-1 NMSA 1978. "

6 Section 3. Section 3-2-5 NMSA 1978 (being Laws 1965,
7 Chapter 300, Section 14-2-4, as amended) is amended to read:

8 "3-2-5. INCORPORATION--DUTIES OF COUNTY COMMISSIONERS
9 AFTER FILING OF PETITION TO ACT--CENSUS REQUIRED--ELECTION--
10 RIGHT OF APPEAL TO DISTRICT COURT.--

11 A. After the petition for incorporation, together
12 with the accompanying map or plat, and the amount of money
13 sufficient to pay the cost of a census ~~have~~ has been filed
14 with the board of county commissioners, the board of county
15 commissioners shall, in lieu of complying with the
16 requirements of Section 3-1-5 NMSA 1978, within thirty days
17 after the filing of the petition, determine:

18 (1) from the voter registration list in the
19 office of the county clerk if the signers of the petition are
20 ~~registered~~ qualified electors residing in the territory
21 proposed to be incorporated; or

22 (2) from the tax ~~rolls~~ schedules of the
23 county if any of the owners of the real estate who signed the
24 petition ~~is~~ are delinquent in the payment of property taxes;
25 and

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1 (3) if the territory proposed to be
2 incorporated is within an existing municipality or within the
3 urbanized area of a municipality.

4 B. If the board of county commissioners determines
5 that the territory proposed to be incorporated is:

6 (1) not within the boundary of an existing
7 municipality and not within the urbanized area of a
8 municipality; or

9 (2) [~~that the conditions for incorporation of~~
10 ~~a municipality~~] within the urbanized area of another
11 municipality [~~as established in~~] and in compliance with
12 Section 3-2-3 NMSA 1978 [~~have been met~~], the board of county
13 commissioners shall cause a census to be taken of the persons
14 residing within the territory proposed to be incorporated. The
15 census shall be completed and filed with the board of county
16 commissioners within thirty days after the board of county
17 commissioners authorizes the taking of the census.

18 C. Within fifteen days after the date the results
19 of the census have been filed with the board of county
20 commissioners, the board of county commissioners shall
21 determine if the conditions for incorporation of the territory
22 as a municipality have been met as required in Sections 3-2-1
23 through 3-2-3 NMSA 1978 and [~~the board of county~~
24 ~~commissioners~~] shall have its determination recorded in the
25 minutes of its meeting.

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1 D. If the board of county commissioners determines
2 that the conditions for incorporation have not been met, the
3 board of county commissioners shall notify the petitioners of
4 its [~~determinations~~] determination by publishing in a
5 newspaper of general circulation in the territory proposed to
6 be incorporated, once, not more than ten days after its
7 determination, a notice of its determination that the
8 conditions for incorporation have not been met. If there is
9 no newspaper of general circulation in the territory proposed
10 to be incorporated, notice of the determination shall be
11 posted in eight public places within the territory proposed to
12 be incorporated.

13 E. After the board of county commissioners has
14 determined that all of the conditions for incorporation of the
15 territory as a municipality have been met, the board of county
16 commissioners shall hold an election on the question of
17 incorporating the territory as a municipality. Elections for
18 the incorporation of [~~municipalities~~] municipalities shall only
19 be held in odd-numbered years upon the first Tuesday in July
20 or in any year upon the first Tuesday in January, unless
21 [~~such~~] that Tuesday is a holiday, in which case the election
22 shall be held on the second Tuesday in July or the second
23 Tuesday in January. The county clerk shall notify the
24 secretary of finance and administration and the secretary of
25 taxation and revenue of the date of [~~such~~] the incorporation

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1 election within ten days after the adoption of the resolution
2 calling the election.

3 F. The signers of the petition or [any] a
4 municipality within whose urbanized area the territory
5 proposed to be incorporated is located may appeal any
6 determination of the board of county commissioners to the
7 district court pursuant to the provisions of Section 12-8A-1
8 NMSA 1978. "

9 Section 4. Section 3-2-9 NMSA 1978 (being Laws 1965,
10 Chapter 300, Section 14-2-8, as amended) is amended to read:

11 "3-2-9. INCORPORATION COMPLETE-- JUDICIAL NOTICE-- DEFECTS
12 IN INCORPORATION-- [~~CONTEST~~] APPEAL. --

13 A. After certified copies of the papers relating
14 to the incorporation of a municipality have been filed in the
15 offices of the county clerk and the secretary of state and
16 after the municipal officers have been elected and qualified,
17 the incorporation of the municipality shall be complete and
18 effective on the following January 1 if the election was held
19 in July or on the following July 1 if the election was held in
20 January, and notice of the incorporation shall be taken in all
21 judicial proceedings.

22 B. An action by a protestant against the
23 incorporation of a municipality shall be taken to the district
24 court [~~within sixty days after the filing of the certified~~
25 ~~copies of the papers relating to the incorporation of a~~

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1 ~~municipality in the offices of the county clerk and secretary~~
2 ~~of state. Any action commenced more than sixty days after the~~
3 ~~filing of the certified copies of the papers relating the~~
4 ~~incorporation of a municipality in the offices of the county~~
5 ~~clerk and secretary of state and questioning the~~
6 ~~incorporation, formation or organization of a municipality is~~
7 ~~perpetually barred] pursuant to the provisions of~~
8 Section 12-8A-1 NMSA 1978. "

9 Section 5. Section 3-19-8 NMSA 1978 (being Laws 1965,
10 Chapter 300, Section 14-18-8) is amended to read:

11 "3-19-8. APPEAL. -- [A.] Any person in interest [(1)]
12 dissatisfied with [any] an order or determination of the
13 planning commission, [and (2)] after review of the order or
14 determination by the governing body of the municipality, may
15 commence an [action] appeal in the district court [to vacate
16 and set aside the order or determination on the ground that it
17 is unlawful or unreasonable.

18 B. ~~The court shall determine the issue from the~~
19 ~~evidence introduced, but the plaintiff has the burden of~~
20 ~~establishing a prima facie case. The court may grant relief~~
21 ~~by injunction, mandamus or any other extraordinary remedy. In~~
22 ~~any action, the complaint shall be served with the summons.~~
23 ~~Appeal may be taken from the judgment as in other civil cases.~~

24 C. ~~The trial shall be de novo and shall be~~
25 ~~governed by the rules of civil procedure of the district~~

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1 court.

2 D. ~~Except as provided in this section, all~~
3 ~~processes shall be served and the practice and rules of~~
4 ~~evidence shall be the same as in civil action]~~ pursuant to the
5 provisions of Section 12-8A-1 NMSA 1978. "

6 Section 6. Section 3-21-4 NMSA 1978 (being Laws 1977,
7 Chapter 80, Section 3) is amended to read:

8 "3-21-4. EXTRATERRITORIAL ZONING ORDINANCE--ENFORCEMENT
9 AND ADMINISTRATION--APPEALS. --

10 A. A zoning ordinance adopted by a joint
11 municipal-county zoning authority shall be an ordinance of the
12 municipality and an ordinance of the county joining in the
13 agreement pursuant to Subsection A of Section [~~14-20-2.2 NMSA~~
14 ~~1953~~] 3-21-3 NMSA 1978 and may be enforced by appropriate
15 procedures of either the municipality or the county. The
16 agreement entered into pursuant to Subsection A of Section
17 [~~14-20-2.2 NMSA 1953~~] 3-21-3 NMSA 1978 may specify whether the
18 municipality or the county shall assume primary enforcement
19 responsibility.

20 B. The extraterritorial zoning commission shall
21 administer the zoning ordinance adopted by the joint
22 municipal-county zoning authority in the manner provided in
23 Subsection C of Section [~~14-20-5 NMSA 1953~~] 3-21-7 NMSA 1978.

24 C. Appeals from the decisions of the
25 extraterritorial zoning commission shall be taken to the joint

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1 municipal-county zoning authority in the manner provided in
2 Section [~~14-20-6 NMSA 1953~~] 3-21-8 NMSA 1978, and appeals from
3 the decisions of the joint municipal-county zoning authority
4 shall be taken to the district court in the manner provided in
5 Section [~~14-20-7 NMSA 1953~~] 12-8A-1 NMSA 1978."

6 Section 7. Section 3-21-9 NMSA 1978 (being Laws 1965,
7 Chapter 300, Section 14-20-7) is amended to read:

8 "3-21-9. ZONING - - [~~PETITION FOR COURT REVIEW - TIME LIMIT -~~
9 ~~CERTIORARI - RESTRAINING ORDER - RETURN - HEARING - REFERENCE -~~
10 ~~COSTS - PRECEDENCE~~] APPEAL. - - [A. ~~Any~~] A person aggrieved by a
11 decision of the zoning authority or any officer, department,
12 board or bureau of the zoning authority may [~~present to the~~
13 ~~district court a petition, duly verified, setting forth that~~
14 ~~the decision is illegal in whole or in part and specifying the~~
15 ~~grounds of the illegality. The petition shall be presented to~~
16 ~~the court within thirty days after the decision is entered in~~
17 ~~the records of the clerk of the zoning authority.~~

18 B. ~~Upon presentation of the petition, the court~~
19 ~~may allow a writ of certiorari directed to the zoning~~
20 ~~authority to review its decision and shall prescribe the time~~
21 ~~in which a return must be made, which shall not be less than~~
22 ~~ten days and may be extended by the court and shall be served~~
23 ~~upon the relator's attorney. The allowance of the writ shall~~
24 ~~not stay proceedings upon the decision appealed from, but the~~
25 ~~court may, on application, on notice and on due cause shown,~~

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1 ~~grant a restraining order.~~

2 C. ~~In answering said writ, it shall not be~~
3 ~~necessary to return the original papers acted upon, but it~~
4 ~~shall be sufficient to return certified or sworn copies~~
5 ~~thereof or of such portions thereof as may be called for by~~
6 ~~such writ. The return shall concisely set forth such further~~
7 ~~facts as may be pertinent or material to show the grounds of~~
8 ~~the decision appealed from and shall be verified.~~

9 D. ~~If at the hearing it appears to the court that~~
10 ~~testimony is necessary for the proper disposition of the~~
11 ~~matter, it may take evidence or appoint a referee to take such~~
12 ~~evidence as it may direct and report the same to the court~~
13 ~~with his findings of fact and conclusions of law which shall~~
14 ~~constitute a part of the proceedings upon which the~~
15 ~~determination of the court shall be made. The court may~~
16 ~~reverse, affirm or modify the decision brought up for review.~~

17 E. ~~Costs shall not be allowed against the~~
18 ~~respondent unless it appears to the court that he acted with~~
19 ~~gross negligence, in bad faith or with malice in making the~~
20 ~~decision appealed from] appeal the decision pursuant to the~~
21 ~~provisions of Section 12-8A-1 NMSA 1978.~~ "

22 Section 8. Section 3-33-13 NMSA 1978 (being Laws 1965,
23 Chapter 300, Section 14-32-6, as amended) is amended to read:

24 "3-33-13. IMPROVEMENT DISTRICT-- PROVISIONAL ORDER--
25 PROTEST-- [ACTION IN] APPEAL TO DISTRICT COURT.--

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1 A. At the hearing of the governing body on the
2 provisional order creating an improvement district, [~~any~~] an
3 interested person or owner of property to be assessed for the
4 improvement may file a written protest or objection
5 questioning the:

6 (1) propriety and advisability of
7 constructing the improvement;

8 (2) estimated cost of the improvement;

9 (3) manner of paying for the improvement; or

10 (4) estimated maximum benefit to each
11 individual tract or parcel of land.

12 B. The governing body may recess the hearing from
13 time to time so that all protestants may be heard.

14 C. Within thirty days after the governing body
15 has, by adoption of a resolution:

16 (1) concluded the hearing;

17 (2) determined:

18 (a) the advisability of constructing
19 the improvement; and

20 (b) the type and character of the
21 improvement; and

22 (3) created the improvement district, [~~any~~] a
23 person who during the hearing filed a written protest with the
24 governing body protesting the construction of the improvement
25 may [~~commence an action in district court to correct or set~~

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1 ~~aside the determination of the governing body. After the~~
2 ~~lapse of thirty days after adoption of the resolution by the~~
3 ~~governing body, any action attacking the validity of the~~
4 ~~proceedings and the amount of benefit to be derived from the~~
5 ~~improvement is perpetually barred]~~ appeal the determination of
6 the governing body pursuant to the provisions of Section
7 12-8A-1 NMSA 1978.

8 D. Where no person has filed a written protest
9 during the hearing and all owners of property to be assessed,
10 upon conclusion of the hearing, submit to the governing body
11 written statements in favor of the creation of the improvement
12 district for the types and character of improvements indicated
13 in the provisional order, [~~such~~] those owners shall be deemed
14 to have waived their right to bring any action challenging the
15 validity of the proceedings or the amount of benefit to be
16 derived from the improvements. "

17 Section 9. Section 3-33-16 NMSA 1978 (being Laws 1965,
18 Chapter 300, Section 14-32-9, as amended) is amended to read:

19 "3-33-16. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--
20 PROTEST--ACTION OF THE GOVERNING BODY-- [~~ACTION IN~~] APPEAL TO
21 DISTRICT COURT. --

22 A. At the preliminary hearing of the governing
23 body on the question of creating an improvement district as
24 authorized in Section 3-33-14 NMSA 1978, [~~any~~] an owner of a
25 tract or parcel of land to be assessed ~~may~~ contest:

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- 1 (1) the proposed assessment;
2 (2) the regularity of the proceedings
3 relating to the improvement;
4 (3) the benefits of the improvement; or
5 (4) any other matter relating to the
6 improvement district.

7 B. The governing body shall not assess the tract
8 or parcel of land an amount greater than the actual benefit to
9 the tract or parcel of land by reason of the enhanced value of
10 the tract or parcel of land as a result of the improvement as
11 ascertained at the hearing. The governing body may allow a
12 fair price, based on its [~~present~~] current value, as a set-off
13 against any assessment against a tract or parcel of land if
14 the owner has improved the tract or parcel of land in such a
15 manner that the improvement may be made part of the proposed
16 improvement.

- 17 C. At the hearing, the governing body may:
18 (1) correct [~~any~~] a mistake or irregularity
19 in any proceeding relating to the improvement;
20 (2) correct an assessment made against any
21 tract or parcel of land;
22 (3) in case of any invalidity, reassess the
23 cost of the improvement against a benefiting tract or parcel
24 of land; [~~and~~] or
25 (4) recess the hearing [~~from time to time~~].

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1 D. ~~[Within thirty days after the hearing, any]~~ An
2 owner of a tract or parcel of land assessed, whether he
3 appeared at the hearing or not, may commence an [action]
4 appeal in district court ~~[seeking an account of any error or~~
5 ~~invalidity of the proceedings relating to the improvement~~
6 ~~district to set aside or correct the assessment or any~~
7 ~~proceedings relating to the improvement district. Thereafter,~~
8 ~~any owner, his heirs, assigns, successors or personal~~
9 ~~representatives are perpetually barred from any action or any~~
10 ~~defense of error or invalidity in the proceedings or~~
11 ~~assessments. Where no owner of a tract or parcel to be~~
12 ~~assessed has presented a protest during the hearing and all~~
13 ~~owners of the property to be assessed upon conclusion of the~~
14 ~~hearing submit written statements in favor of the creation of~~
15 ~~the improvement district for the types and character of~~
16 ~~improvements indicated in the petition, such owners shall be~~
17 ~~deemed to have waived their right to bring any action in~~
18 ~~district court seeking an account of any error or invalidity~~
19 ~~of the proceedings relating to the improvement district or to~~
20 ~~set aside or correct the assessment or any proceedings~~
21 ~~relating to the improvement district]~~ pursuant to the
22 provisions of Section 12-8A-1 NMSA 1978. "

23 Section 10. Section 3-33-22 NMSA 1978 (being Laws 1965,
24 Chapter 300, Section 14-32-15, as amended) is amended to read:

25 "3-33-22. IMPROVEMENT DISTRICT-- FILING OF OBJECTIONS--
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1 ASSESSMENT HEARING-- ACTION OF THE GOVERNING BODY-- APPEAL TO
2 DISTRICT COURT. --

3 A. Not later than three days before the date of
4 the hearing on the assessment roll, [~~any~~] an owner of a tract
5 or parcel of land [~~which~~] that is listed on the assessment
6 roll may file his specific objections in writing with the
7 municipal clerk. Unless presented as required in this
8 section, [~~any~~] an objection to the regularity, validity and
9 correctness of:

- 10 (1) the proceedings;
- 11 (2) the assessment roll;
- 12 (3) each assessment contained on the
13 assessment roll; or
- 14 (4) the amount of the assessment levied
15 against each tract or parcel of land,
16 is deemed waived.

17 B. At the hearing, the governing body shall hear
18 all objections that have been filed as provided in this
19 section and may recess the hearing [~~from time to time~~] and, by
20 resolution, revise, correct, confirm or set aside [~~any~~] an
21 assessment and order another assessment be made de novo.

22 C. The governing body by ordinance shall, by
23 reference to [~~such~~] the assessment roll as so modified, if
24 modified, and as confirmed by [~~such~~] the resolution, levy the
25 assessments contained in the assessment roll. The assessments

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1 may be levied in stages if preliminary liens are established
2 pursuant to Section 3-33-11 NMSA 1978. The decision,
3 resolution and ordinance of the governing body is:

4 (1) a final determination of the regularity,
5 validity and correctness of:

- 6 (a) the proceedings;
- 7 (b) the assessment roll;
- 8 (c) each assessment contained on the
9 assessment roll; and
- 10 (d) the amount of the assessment levied
11 against each tract or parcel of land; and

12 (2) conclusive upon the owners of the tract
13 or parcel of land assessed.

14 D. ~~[Within fifteen days after the publication of~~
15 ~~the title and general summary of the ordinance or posting of~~
16 ~~the ordinance, any]~~ An owner who has filed an objection as
17 provided in this section may commence an [action] appeal in
18 district court [to correct or set aside the determination of
19 the governing body. After the lapse of fifteen days after the
20 publication or posting, all actions that include the defense
21 of confiscation or attack the regularity, validity and
22 correctness of:-

- 23 (1) ~~the proceedings;~~
- 24 (2) ~~the assessment roll;~~
- 25 (3) ~~each assessment contained on the~~

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1 ~~assessment roll; or~~
2 ~~(4) the amount of the assessment levied~~
3 ~~against each tract or parcel of land,~~
4 ~~are perpetually barred] pursuant to the provisions of Section~~
5 ~~12-8A-1 NMSA 1978. "~~

6 Section 11. Section 3-33-35 NMSA 1978 (being Laws 1965,
7 Chapter 300, Section 14-32-30) is amended to read:

8 "3-33-35. IMPROVEMENT DISTRICT--NOTICE OF APPEAL--APPEAL
9 TO DISTRICT COURT[--APPEAL TO SUPREME COURT].-- [A-] After an
10 owner has filed a written objection with the municipal clerk
11 to [any] a reassessment as provided in Section [14-32-15 New
12 Mexico Statutes Annotated, 1953 Compilation] 3-33-22 NMSA 1978
13 and the governing body has determined the reassessment, [any]
14 an owner of a tract or parcel of land that is reassessed may
15 [within ten days after the reassessment roll has been ratified
16 by ordinance] file a notice of appeal to the district court.
17 [The notice to the municipal clerk shall describe the tract or
18 parcel of land being reassessed and shall state the objections
19 of the appellant to the reassessment.

20 B. ~~Within twenty days after the reassessment roll~~
21 ~~has been ratified by ordinance, the appellant shall file with~~
22 ~~the clerk of the district court copies of the:-~~

- 23 (1) ~~notice of appeal;~~
- 24 (2) ~~appeal;~~
- 25 (3) ~~reassessment roll;~~

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1 ~~shall be to the supreme court as in other causes. If an~~
2 ~~appeal is taken to the supreme court, the transcript of the~~
3 ~~proceedings in the district court shall be filed in the office~~
4 ~~of the clerk of the supreme court within thirty days after the~~
5 ~~rendering of the decree being appealed. If the appeal is not~~
6 ~~filed within the thirty day period, the appeal shall be~~
7 ~~forthwith dismissed upon motion. If the appeal is properly~~
8 ~~prosecuted, the supreme court shall advance the cause on the~~
9 ~~docket and hear the appeal at the earliest possible~~
10 ~~opportunity.] The appeal shall be filed pursuant to the~~
11 ~~provisions of Section 12-8A-1 NMSA 1978. "~~

12 Section 12. Section 3-35-3 NMSA 1978 (being Laws 1965,
13 Chapter 300, Section 14-34-3) is amended to read:

14 "3-35-3. HEARING ON PROVISIONAL ORDER--PROTEST BY
15 PROPERTY OWNER OR INTERESTED PERSON-- [~~ACTION TO CORRECT OR SET~~
16 ~~ASIDE DETERMINATION~~] APPEAL.--At the hearing on a provisional
17 order, [any] a property owner or interested person may file a
18 written protest and may be heard by the governing body on the
19 order. [Any] A person filing a written protest may [~~within~~
20 ~~thirty days after the governing body has finally passed on the~~
21 ~~protest, bring an action in the district court to correct or~~
22 ~~set aside the determination, but thereafter, no actions shall~~
23 ~~be brought to attack the validity of the proceedings or the~~
24 ~~amount of benefits~~] bring an appeal concerning the governing
25 body's determination on the protest pursuant to the provisions

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1 of Section 12-8A-1 NMSA 1978. "

2 Section 13. Section 3-39-23 NMSA 1978 (being Laws 1965,
3 Chapter 300, Section 14-40-21) is amended to read:

4 "3-39-23. JUDICIAL REVIEW. --

5 A. Any person aggrieved by [~~any~~] a decision of the
6 board of appeals, [~~or~~] any taxpayer, [~~or~~] any officer, any
7 department, any board or any bureau of the political
8 subdivision may [~~present to the district court a verified~~
9 ~~petition setting forth that the decision is illegal, in whole~~
10 ~~or in part, and specifying the grounds of the illegality. Such~~
11 ~~petition shall be presented to the court within thirty days~~
12 ~~after the decision is filed in the office of the board.~~

13 B. ~~Upon presentation of such petition, the court~~
14 ~~may allow a writ of certiorari directed to the board of appeals~~
15 ~~to review such decision of the board. The allowance of the~~
16 ~~writ shall not stay proceedings upon the decision appealed~~
17 ~~from, but the court may, on application, on notice to the board~~
18 ~~and on due cause shown, grant a restraining order.~~

19 C. ~~The board of appeals shall not be required to~~
20 ~~return the original papers acted upon by it, but it shall be~~
21 ~~suffieient to return certified or sworn copies thereof or of~~
22 ~~such portions thereof as may be called for by the writ. The~~
23 ~~return shall concisely set forth such other facts as may be~~
24 ~~pertinent and material to show the grounds of the decision~~
25 ~~appealed from and shall be verified.~~

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1 D. ~~The court shall have exclusive jurisdiction to~~
2 ~~affirm, modify or set aside the decision brought up for review,~~
3 ~~in whole or in part, and if need be, to order further~~
4 ~~proceedings by the board of appeals. The findings of fact by~~
5 ~~the board, if supported by substantial evidence, shall be~~
6 ~~accepted by the court as conclusive, and no objection to a~~
7 ~~decision of the board shall be considered by the court unless~~
8 ~~such objection shall have been urged before the board or, if it~~
9 ~~was not so urged, unless there were reasonable grounds for~~
10 ~~failure to do so] file an appeal pursuant to the provisions of~~
11 Section 12-8A-1 NMSA 1978.

12 [E.] B. Costs shall not be allowed against the
13 board of appeals unless it appears to the court that it acted
14 with gross negligence, in bad faith or with malice in making
15 the decision appealed from "

16 Section 14. Section 3-46-43 NMSA 1978 (being Laws 1965,
17 Chapter 300, Section 14-47-19) is amended to read:

18 "3-46-43. ORDINANCES RELATING TO REPAIR, CLOSING AND
19 DEMOLITION OF DWELLINGS UNFIT FOR HUMAN HABITATION -- COMPLAINT--
20 SERVICE OF COMPLAINT--APPEAL.--

21 A. Whenever any municipality finds that there exist
22 dwellings [~~which~~] that are unfit for human habitation due to
23 dilapidation; defects increasing the hazards of fire, accidents
24 or other calamities; lack of ventilation, light or sanitary
25 facilities or due to other conditions, including those set

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1 forth in Subsection C [~~hereof~~] of this section, rendering
2 [~~such~~] the dwellings unsafe and [~~insanitary~~] unsanitary or
3 dangerous or detrimental to the health, safety or morals or
4 otherwise inimical to the welfare of the residents of [~~such~~]
5 the municipality, power is [~~hereby~~] conferred upon the
6 municipality to require or cause the repair, closing or
7 demolition or removal of the dwelling in the manner [~~herein~~]
8 provided in this section. A "dwelling" means any building or
9 structure or part thereof used and occupied for human
10 habitation or intended to be so used and includes any
11 appurtenances usually enjoyed [~~therewith~~] in the dwelling.

12 B. Upon the adoption of an ordinance finding that
13 dwelling conditions of the character described in Subsection A
14 of this section exist, the governing body of the municipality
15 is authorized to adopt ordinances relating to the dwellings
16 within the municipality [~~which~~] that are unfit for human
17 habitation. The ordinances shall include the following
18 provisions:

19 (1) a public officer shall be designated or
20 appointed to exercise the powers prescribed by the ordinances;

21 (2) whenever it appears to the public officer,
22 on his own motion, that any dwelling is unfit for human
23 habitation, he shall, if his preliminary investigation
24 discloses a basis for [~~such~~] the charges, issue and cause to be
25 served on the owner, every mortgagee of record and all parties

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1 in interest in the dwelling, including persons in possession, a
2 complaint stating the charges in that respect. The complaint
3 shall contain a notice that a hearing will be held before the
4 public officer or his designated agent at a place [~~therein~~
5 fixed in the complaint not less than ten days nor more than
6 thirty days after the serving of the complaint; that the owner,
7 mortgagee and parties in interest shall be given the right to
8 file an answer to the complaint and to appear in person or
9 otherwise and give testimony at the place and the time fixed in
10 the complaint; and that the rules of evidence prevailing in
11 courts of law or equity shall not be controlling in hearings
12 before the public officer;

13 (3) if after [~~such~~] the notice and hearing the
14 public officer determines that the dwelling under consideration
15 is unfit for human habitation, he shall state in writing his
16 findings of fact in support of [~~such~~] that determination and
17 shall issue and cause to be served upon the owner an order in
18 writing [~~which~~] that advises the owner of his rights under
19 Subsection E of this section and [~~which~~] that:

20 (a) if the repair, alteration or
21 improvement of the dwelling can be made at a reasonable cost in
22 relation to the value of the dwelling, the ordinance of the
23 municipality shall fix a certain percentage of the cost as
24 being reasonable for [~~such~~] that purpose [~~requires~~] and require
25 the owner, within the time specified in the order, to repair,

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1 alter or improve the dwelling to render it fit for human
2 habitation or to vacate and close the dwelling as a human
3 habitation; or

4 (b) if the repair, alteration or
5 improvement of the dwelling cannot be made at a reasonable cost
6 in relation to the value of the dwelling, the ordinance of the
7 municipality shall fix a certain percentage of the cost as
8 being reasonable for the purpose, [~~requires~~] and require the
9 owner, within the time specified in the order, to remove or
10 demolish the dwelling;

11 (4) if the owner fails to comply with an order
12 to repair, alter or improve or to vacate and close the
13 dwelling, the public officer may cause the dwelling to be
14 repaired, altered or improved or to be vacated and closed;

15 (5) if the owner fails to comply with an order
16 to remove or demolish the dwelling, the public officer may
17 cause the dwelling to be removed or demolished; and

18 (6) the amount of the cost of the repairs,
19 alterations or improvements or the vacating and closing or the
20 removal or demolition by the public officer shall be a lien
21 against the real property upon which the cost was incurred. If
22 the dwelling is removed or demolished by the public officer, he
23 shall sell the materials of the dwelling and shall credit the
24 proceeds of the sale against the cost of the removal or
25 demolition. [~~and~~] Any balance remaining shall be deposited in

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1 the district court by the public officer and shall be secured
2 in the manner as may be directed by the court and shall be
3 disbursed by the court to the persons found to be entitled
4 [~~thereto~~] to the balance by final order or decree of the court.

5 C. An ordinance adopted by a municipality pursuant
6 to this section shall provide that the public officer may
7 determine a dwelling is unfit for human habitation if he finds
8 that conditions exist in [~~such~~] the dwelling [~~which~~] that are
9 dangerous or injurious to the health, safety or morals of the
10 occupants of the dwelling, the occupants of neighboring
11 dwellings or other residents of the municipality or [~~which~~]
12 that have a blighting influence on properties in the area. The
13 conditions may include the following, without limitations:
14 defects [~~therein~~] increasing the hazards of fire, accident or
15 other calamities; lack of adequate ventilation, light or
16 sanitary facilities; dilapidation; disrepair; structural
17 defects; uncleanliness; overcrowding; inadequate ingress and
18 egress; inadequate drainage; or any violation of health, fire,
19 building or zoning regulations or any other laws or regulations
20 relating to the use of land and the use and occupancy of
21 buildings and improvements. The ordinance may provide
22 additional standards to guide the public officer or his agents
23 or employees in determining the fitness of a dwelling for human
24 habitation.

25 D. Complaints or orders issued by a public officer

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1 pursuant to an ordinance adopted under the provisions of the
2 Urban ~~[Renewal]~~ Development Law shall be served upon persons
3 either personally or by registered mail. ~~[but]~~ If the
4 whereabouts of the persons are unknown and cannot be
5 ascertained by the public officer in the exercise of reasonable
6 diligence and the public officer ~~[shall make]~~ makes an
7 affidavit to that effect, then the serving of the complaint or
8 order upon the persons may be made by publishing the ~~[same]~~
9 complaint or order once each week for two consecutive weeks in
10 a newspaper printed and published in the municipality or, in
11 the absence of a newspaper, in one printed and published in the
12 county and circulating in the municipality in which the
13 dwellings are located. A copy of the complaint or order shall
14 be posted in a conspicuous place on the premises affected by
15 the complaint or order. A copy of the complaint or order shall
16 also be filed with the clerk of the county in which the
17 dwelling is located. ~~[and]~~ Filing of the complaint or order
18 shall have the same force and effect as other lis pendens
19 notices provided by law.

20 E. Any person affected by an order issued by the
21 public officer may ~~[petition the district court for an~~
22 ~~injunction restraining the public officer from carrying out the~~
23 ~~provisions of the order, and the court may, upon the petition,~~
24 ~~issue a temporary injunction restraining the public officer~~
25 ~~pending the final disposition of the cause; provided that~~

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1 ~~within sixty days after the posting and service of the order of~~
2 ~~the public officer, such person shall petition such court.~~
3 ~~Hearings shall be had by the court on the petitions within~~
4 ~~twenty days or as soon thereafter as possible and shall be~~
5 ~~given preference over other matters on the court's calendar.~~
6 ~~The court shall hear the matter de novo and enter a final~~
7 ~~judgment in accordance with its findings. The remedies herein~~
8 ~~provided shall be exclusive remedies, and no person affected by~~
9 ~~an order of the public officer shall be entitled to recover any~~
10 ~~damages for action taken pursuant to any order of the public~~
11 ~~officer or because of compliance by the person with any order~~
12 ~~of the public officer. Appeals may be taken in the same manner~~
13 ~~as civil actions] file an appeal pursuant to the provisions of~~
14 ~~Section 12-8A-1 NMSA 1978.~~

15 F. An ordinance adopted by the governing body of
16 the municipality may authorize the public officer to exercise
17 [such] powers as may be necessary or convenient to carry out
18 and effectuate the purposes and provisions of the Urban
19 [Renewal] Development Law, including the following powers in
20 addition to others [herein] granted in the Urban Development
21 Law:

22 (1) to investigate the dwelling conditions in
23 the municipality in order to determine which dwellings
24 [therein] are unfit for human habitation;

25 (2) to administer oaths and affirmations,

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1 examine witnesses and receive evidence;

2 (3) to enter upon premises for the purpose of
3 making examinations, provided that the entries shall be made in
4 a manner as to cause the least possible inconvenience to the
5 persons in possession, and to obtain an order for this purpose
6 from a court of competent jurisdiction in the event entry is
7 denied or resisted;

8 (4) to appoint and fix the duties of any
9 officers, agents and employees as he deems necessary to carry
10 out the purposes of [~~such~~] the ordinances; and

11 (5) to delegate any of his functions and
12 powers under [~~such~~] the ordinance to [~~such~~] officers, agents
13 and employees [~~as~~] he may designate.

14 G. The governing body of [~~any~~] a municipality
15 adopting an ordinance under this section shall, as soon as
16 possible thereafter, prepare an estimate of the annual expenses
17 or costs to provide the equipment, personnel and supplies
18 necessary for periodic examinations and investigations of the
19 dwellings in the municipality for the purpose of determining
20 the fitness of the dwellings for human habitation and for the
21 enforcement and administration of its ordinance or ordinances
22 adopted under this section.

23 H. Nothing in this section shall be construed to
24 abrogate or impair the powers of the courts or of [~~any~~] a
25 department of [~~any~~] a municipality to enforce any provisions of

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1 its charter or its ordinances or regulations [~~nor~~] or to
2 prevent or punish violations thereof [~~and~~]. The powers
3 conferred by this section shall be in addition and supplemental
4 to the powers conferred by any other law.

5 I. Nothing in this section shall be construed to
6 impair or limit in any way the power of the municipality to
7 define and declare nuisances and to cause their removal or
8 abatement by summary proceedings or otherwise. "

9 Section 15. Section 3-51-12 NMSA 1978 (being Laws 1971,
10 Chapter 173, Section 7) is amended to read:

11 "3-51-12. FORMATION OF DISTRICT--PROVISIONAL ORDER
12 HEARING--CONDUCT--APPEAL. --

13 A. The owner [~~or owners~~] of any property within the
14 proposed district may, not less than two days preceding the
15 hearing, file with the clerk his specific objections in
16 writing. Any objection to the regularity, validity and
17 correctness of the proceedings, including the validity and
18 amount of the preliminary fund assessment, shall be deemed
19 waived unless presented at the time and in the manner [~~herein~~]
20 specified in this subsection.

21 B. At the time and place [~~so~~] designated for
22 hearing the objections, the governing body of the city shall
23 hear and determine all objections [~~which~~] that have been [~~so~~]
24 filed. [~~and said~~] The governing body shall have the power to
25 adjourn the hearing [~~from time to time~~] and shall have power by

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1 resolution, in its discretion, to revise, correct or confirm
2 any proceedings [~~theretofore~~] previously taken.

3 C. Within fifteen days after the publication of the
4 ordinance forming the parking district, [~~any~~] a person who has
5 filed an objection [~~or objections~~], as [~~hereinbefore~~] provided
6 in Subsection A of this section, shall have the right to appeal
7 to the district court [~~for the county in which the city is~~
8 ~~located for review of errors in law; but, thereafter, all~~
9 ~~actions or suits, including the defense of confiscation,~~
10 ~~attacking the regularity, validity and correctness of the~~
11 ~~proceeding, including the validity and amount of preliminary~~
12 ~~fund assessment, shall be perpetually barred] pursuant to the
13 provisions of Section 12-8A-1 NMSA 1978. "~~

14 Section 16. Section 4-45-5 NMSA 1978 (being Laws 1876,
15 Chapter 1, Section 22, as amended) is amended to read:

16 "4-45-5. ACCOUNTS AGAINST COUNTY--APPEAL FROM
17 DISALLOWANCE. -- [~~Sec. 163.~~] When [~~any~~] a claim of [~~any~~] a person
18 against a county [~~shall be~~] is disapproved in whole or in part
19 by the board of county commissioners, [~~such~~] that person may
20 appeal [~~from~~] the decision of [~~such~~] the board to the district
21 court [~~for the same county by causing written notice of such~~
22 ~~appeal to be served on the clerk of such board within thirty~~
23 ~~days after such decision and executing bond to such county with~~
24 ~~suffieient security, to be approved by the clerk of said board,~~
25 ~~conditioned for the faithful prosecution of such appeal and~~

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1 ~~payment of all costs that may be adjudged against such~~
2 ~~appellant] pursuant to the provisions of Section 12-8A-1 NMSA~~
3 ~~1978. "~~

4 Section 17. Section 4-55A-31 NMSA 1978 (being Laws 1980,
5 Chapter 91, Section 31) is amended to read:

6 "4-55A-31. IMPROVEMENT DISTRICT[~~NOTICE OF APPEAL~~]-
7 ~~APPEAL TO DISTRICT COURT~~[~~APPEAL TO SUPREME COURT~~]. - [A.]

8 After an owner has filed a written objection with the county
9 clerk to any reassessment as provided in Section [~~19 of the~~
10 ~~County Improvement District Act~~] 4-55A-18 NMSA 1978 and the
11 board has determined the reassessment, any owner of a tract or
12 parcel of land that is reassessed may [~~within ten days after~~
13 ~~the reassessment roll has been ratified by ordinance file a~~
14 ~~notice of appeal to the district court. The notice to the~~
15 ~~county clerk shall describe the tract or parcel of land being~~
16 ~~reassessed and shall state the objections of the appellant to~~
17 ~~the reassessment.~~

18 B. ~~Within twenty days after the reassessment roll~~
19 ~~has been ratified by ordinance, the appellant shall file with~~
20 ~~the clerk of the district court copies of the:~~

- 21 (1) ~~notice of appeal;~~
- 22 (2) ~~appeal;~~
- 23 (3) ~~reassessment roll;~~
- 24 (4) ~~reassessment proceedings, all certified by~~
25 ~~the county clerk; and~~

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1 ~~(5) a bond to the county conditioned to pay~~
2 ~~all costs that may be awarded against the appellant in a sum of~~
3 ~~not less than two hundred dollars (\$200), with such security as~~
4 ~~shall be approved by the district court.~~

5 ~~C. The case shall:~~

6 ~~(1) be docketed by the clerk of the district~~
7 ~~court in the name of the owner taking such appeal against the~~
8 ~~county as "an equal appeal from reassessments";~~

9 ~~(2) have preference over all civil cases~~
10 ~~pending in the district court except proceedings under:~~

11 ~~(a) the law relating to eminent domain~~
12 ~~by counties; or~~

13 ~~(b) actions of forcible entry and~~
14 ~~detainer; and~~

15 ~~(3) be tried as in the case of equitable~~
16 ~~causes, except that no pleadings are necessary.~~

17 ~~The judgment of the district court shall be to confirm,~~
18 ~~modify or annul the reassessment insofar as the reassessment~~
19 ~~affects the tract or parcel of land of the appellant. If the~~
20 ~~reassessment is confirmed, the fees of the county clerk for~~
21 ~~copies of the record shall be taxed against the appellant with~~
22 ~~the other costs.~~

23 ~~D. On any judgment of the district court, appeal~~
24 ~~shall be to the supreme court as in other causes. If an appeal~~
25 ~~is taken to the supreme court, the transcript of the~~

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1 ~~proceedings in the district court shall be filed in the office~~
2 ~~of the clerk of the supreme court within thirty days after the~~
3 ~~rendering of the decree being appealed. If the appeal is not~~
4 ~~filed within the thirty-day period, the appeal shall be~~
5 ~~forthwith dismissed upon motion. If the appeal is properly~~
6 ~~prosecuted, the supreme court shall advance the cause on the~~
7 ~~docket and hear the appeal at the earliest possible~~
8 ~~opportunity] file a notice of appeal pursuant to the provisions~~
9 ~~of Section 12-8A-1 NMSA 1978.~~ "

10 Section 18. Section 7-8A-16 NMSA 1978 (being Laws 1997,
11 Chapter 25, Section 16) is amended to read:

12 "7-8A-16. APPEAL--ACTION TO ESTABLISH CLAIM --

13 A. A person aggrieved by a decision of the
14 administrator [or] may file an appeal pursuant to the
15 provisions of Section 12-8A-1 NMSA 1978.

16 B. A person whose claim has not been acted upon
17 within ninety days after its filing may maintain an original
18 action to establish the claim in the district court for the
19 first judicial district, naming the administrator as a
20 defendant.

21 C. If the aggrieved person establishes the claim in
22 an action against the administrator, the court may award the
23 claimant reasonable [attorney's] attorney fees. "

24 Section 19. Section 7-38-28 NMSA 1978 (being Laws 1973,
25 Chapter 258, Section 68, as amended) is amended to read:

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1 "7-38-28. APPEALS FROM ORDERS OF THE DIRECTOR OR COUNTY
2 VALUATION PROTESTS BOARDS. --

3 A. A property owner may appeal an order made by the
4 director or a county valuation protests board by filing [with
5 the court of appeals a notice of appeal within thirty days, or
6 such other time prescribed by the Rules of Appellate Procedure,
7 SCRA 1986, of the date the order was made. A copy of the
8 notice of appeal shall be mailed to the director. The appeal
9 shall be on the record made at the hearing or upon a
10 stipulation submitted by both the valuation authority and the
11 property owner and shall not be de novo. The procedure for
12 perfecting an appeal under this section to the court of appeals
13 shall be as provided by the Rules of Appellate Procedure, SCRA
14 1986.

15 B. Upon appeal, the court shall set aside a
16 decision and order of the director or a county valuation
17 protests board only if it is found to be:

- 18 (1) ~~arbitrary, capricious or an abuse of~~
- 19 discretion;
- 20 (2) ~~not supported by substantial evidence in~~
- 21 the record taken as a whole; or
- 22 (3) ~~otherwise not in accordance with law~~] an
- 23 appeal pursuant to the provisions of Section 12-8A-1 NMSA 1978 .

24 [~~C.~~] B. The director shall notify the appropriate
25 county assessor of the decision and order of the district court

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1 [of appeals] and shall direct the assessor to take appropriate
2 action to comply with the decision and order. "

3 Section 20. Section 10-7D-23 NMSA 1978 (being Laws 1992,
4 Chapter 9, Section 23) is amended to read:

5 "10-7D-23. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW. --

6 A. The board or a local board may request the
7 district court to enforce [~~any~~] an order issued pursuant to the
8 Public Employee Bargaining Act, including those for appropriate
9 temporary relief and restraining orders. The court shall
10 consider the request for enforcement on the record made before
11 the board or local board. It shall uphold the action of the
12 board or local board and take appropriate action to enforce it
13 unless it concludes that the order is:

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

16 (2) not supported by substantial evidence on
17 the record considered as a whole; or

18 (3) otherwise not in accordance with law.

19 B. [~~Any~~] A person or party, including [~~any~~] a labor
20 organization affected by a final [~~regulation~~] rule, order or
21 decision of the board or a local board, may appeal to the
22 district court for further relief [~~All such appeals shall be~~
23 ~~based upon the record made at the board or local board hearing.~~
24 ~~All such appeals to the district court shall be taken within~~
25 ~~thirty days of the date of the final regulation, order or~~

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1 ~~decision of the board or local board. Actions taken by the~~
2 ~~board or local board shall be affirmed unless the court~~
3 ~~concludes that the action is:-~~

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

6 ~~(2) not supported by substantial evidence on~~
7 ~~the record taken as a whole; or~~

8 ~~(3) otherwise not in accordance with law]~~
9 pursuant to the provisions of Section 12-8A-1 NMSA 1978 . "

10 Section 21. Section 10-9-18 NMSA 1978 (being Laws 1980,
11 Chapter 47, Section 2) is amended to read:

12 "10-9-18. APPEALS BY EMPLOYEES TO THE BOARD. --

13 A. [Any] An employee who is dismissed, demoted or
14 suspended may, within thirty days after the dismissal, demotion
15 or suspension, appeal to the board. The appealing employee and
16 the agency whose action is reviewed have the right to be heard
17 publicly and to present facts pertinent to the appeal.

18 B. [Any] An applicant denied permission to take an
19 examination or who is disqualified may appeal to the board.

20 C. The technical rules of evidence shall not apply
21 to appeals to the board.

22 D. A record shall be made of the hearing which
23 shall be transcribed if there is an appeal to the district
24 court. Costs of [such] the transcripts, including one copy for
25 the board, shall be paid initially by the agency. The cost of

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1 [such] the transcripts may be [~~assessed~~] assessed by the court
2 to the losing party on appeal.

3 E. The board may designate a hearing officer who
4 may be a member of the board or any qualified state employee to
5 preside over and take evidence at any hearing held pursuant to
6 this section. The hearing officer shall prepare and submit to
7 the board a summary of the evidence taken at the hearing and
8 proposed findings of fact. The board shall render a decision
9 which shall include findings of fact and conclusions of law.

10 F. If the board finds that the action taken by the
11 agency was without just cause, the board may modify the
12 disciplinary action or order the agency to reinstate the
13 appealing employee to his former position or to a position of
14 like status and pay. Every consideration shall be given to
15 placing the appealing employee in the same geographical
16 location in which he was employed prior to the disciplinary
17 action. The board may recommend that the appealing employee be
18 reinstated by an agency other than the one who disciplined the
19 appealing employee. When the board orders an agency to
20 reinstate an appealing employee, [such] the reinstatement shall
21 be effective within thirty days of the board's order. The
22 board may award back pay as of the date of the dismissal,
23 demotion or suspension or as of [such] the later date as the
24 board may specify.

25 G. [~~Any~~] A party aggrieved by the decision of the

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1 board made pursuant to this section may appeal the decision to
2 the district court [~~for the district in which he resides, is~~
3 ~~employed or maintains his principal office or for the district~~
4 ~~of Santa Fe county. Such appeal shall be initiated by filing a~~
5 ~~notice of appeal with the clerk of the appropriate district~~
6 ~~court within thirty days after the service of a written copy of~~
7 ~~the decision of the board on that party. Upon appeal, the~~
8 ~~district court shall affirm the decision of the board unless~~
9 ~~the decision is found to be:~~

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

12 (2) ~~not supported by substantial evidence; or~~

13 (3) ~~otherwise not in accordance with law.~~

14 H. ~~An appeal from the decision of the district~~
15 ~~court may be taken to the court of appeals in accordance with~~
16 ~~the rules of civil procedure] pursuant to the provisions of~~
17 Section 12-8A-1 NMSA 1978. "

18 Section 22. Section 10-11-120 NMSA 1978 (being Laws
19 1987, Chapter 253, Section 120, as amended) is amended to read:

20 "10-11-120. DENIAL OF BENEFIT CLAIM - APPEALS. --

21 A. A benefit claimant shall be notified in writing
22 of a denial of a claim for benefits within thirty days of the
23 denial. The notification shall give the reason for the denial.
24 A claimant may appeal the denial and request a hearing. The
25 appeal shall be in writing filed with the association within

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1 ninety days of the denial. The appeal shall contain a
2 statement of the claimant's reason for claiming the denial to
3 be improper. The retirement board shall schedule a de novo
4 hearing of the appeal before the retirement board or, at the
5 discretion of the retirement board, a designated hearing
6 officer or committee of the retirement board within sixty days
7 of receipt of the appeal. A final decision on the matter being
8 appealed shall be made by the retirement board.

9 B. Appeals from a final decision of the retirement
10 board ~~[shall be made to the first judicial district court and~~
11 ~~initiated by filing a notice of appeal with the district court~~
12 ~~within thirty days after the retirement board has issued its~~
13 ~~final decision. The review of the district court shall be~~
14 ~~restricted to the record made before the retirement board, and~~
15 ~~the district court shall not permit the introduction of new~~
16 ~~evidence on any of the issues presented before the retirement~~
17 ~~board. The decision of the retirement board shall be upheld by~~
18 ~~the district court unless the district court finds the decision~~
19 ~~of the retirement board to be unlawful, arbitrary or capricious~~
20 ~~or not supported by substantial evidence on the entire record~~
21 ~~as submitted by the retirement board]~~ may be filed pursuant to
22 the provisions of Section 12-8A-1 NMSA 1978. "

23 Section 23. Section 12-8-16 NMSA 1978 (being Laws 1969,
24 Chapter 252, Section 16) is amended to read:

25 "12-8-16. PETITION FOR JUDICIAL REVIEW. -- [A.] Any party

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1 who has exhausted all administrative remedies available within
2 the agency and who is adversely affected by a final order or
3 decision in an adjudicatory proceeding [~~whether the order or~~
4 ~~decision is affirmative or negative in form, is entitled to~~
5 ~~certain, speedy, adequate and complete judicial review thereof~~
6 ~~under the Administrative Procedures Act, but nothing in this~~
7 ~~section prevents resort to other means of review, redress or~~
8 ~~relief available because of constitutional provisions or~~
9 ~~otherwise prescribed by statute. A preliminary procedural or~~
10 ~~intermediate action or ruling is immediately reviewable if it~~
11 ~~practically disposes of the merits of the action.~~

12 B. ~~Any party also has a right to judicial review,~~
13 ~~including relief deemed appropriate, at any stage of any agency~~
14 ~~proceeding or other matter before the agency and prior to a~~
15 ~~final order or decision, or the exhausting of administrative~~
16 ~~remedies or procedures, upon a showing of serious and~~
17 ~~irreparable harm, or the lack of an adequate and timely remedy~~
18 ~~otherwise or upon a showing of other good cause to the~~
19 ~~satisfaction of the court if the party was required to await a~~
20 ~~final order or decision or was required to exhaust~~
21 ~~administrative remedies or procedures.~~

22 C. ~~Except as the constitution or statutes~~
23 ~~specifically preclude judicial review or action, any person~~
24 ~~suffering legal wrong because of any agency action or inaction~~
25 ~~or adversely affected or aggrieved by the action or inaction,~~

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1 ~~within the meaning of any relevant statute or constitutional~~
2 ~~provision, is entitled to judicial review thereof and relief.~~

3 ~~D. All preliminary, procedural or intermediate~~
4 ~~agency actions or rulings, whether or not directly reviewable,~~
5 ~~are subject to judicial review upon the review of any final~~
6 ~~agency action or decision. Except as otherwise expressly~~
7 ~~required by statute, agency action otherwise final shall be~~
8 ~~final for the purposes of this section whether or not there has~~
9 ~~been presented or determined any application for a declaratory~~
10 ~~order, for any form of reconsideration or for an appeal to~~
11 ~~superior agency authority, unless the agency has legally~~
12 ~~required otherwise by rule and has provided that such action~~
13 ~~meanwhile shall be inoperative.~~

14 ~~E. The form of proceeding for judicial review shall~~
15 ~~be any special statutory review proceeding relevant to the~~
16 ~~subject matter in any court specified by statute or, in the~~
17 ~~absence or inadequacy thereof, any applicable form of legal~~
18 ~~action, including actions for declaratory judgments, writs of~~
19 ~~prohibition or mandatory injunction or habeas corpus or by~~
20 ~~appeal to the court of appeals.~~

21 ~~F. In all instances of review by appeal from an~~
22 ~~agency order or decision under the Administrative Procedures~~
23 ~~Act, unless otherwise provided by law, proceedings shall be~~
24 ~~instituted by filing a notice of appeal in the court of appeals~~
25 ~~within thirty days after the entry of the final agency order or~~

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1 ~~decision.~~

2 ~~The notice of appeal shall include a concise statement of~~
3 ~~the facts upon which jurisdiction is based, facts showing that~~
4 ~~petitioner is aggrieved and the ground or grounds specified in~~
5 ~~Section 22 of the Administrative Procedures Act upon which~~
6 ~~petitioner contends he is entitled to relief. The notice shall~~
7 ~~demand the relief to which petitioner believes he is entitled,~~
8 ~~which demand may be in the alternative. Copies of the notice~~
9 ~~shall be served, personally or by certified mail, upon all~~
10 ~~parties to the agency proceeding no later than ten days after~~
11 ~~the institution of the proceeding for review. For the purpose~~
12 ~~of such service, the agency upon request shall certify to the~~
13 ~~appellant the names and addresses of all parties as disclosed~~
14 ~~by its records, and service upon parties so certified is~~
15 ~~sufficient, and proof of service shall be filed in the court of~~
16 ~~appeals within twenty days after the filing of the petition.]~~
17 may appeal pursuant to the provisions of Section 12-8A-1 NMSA
18 1978. "

19 Section 24. Section 13-1-183 NMSA 1978 (being Laws 1984,
20 Chapter 65, Section 156) is amended to read:

21 "13-1-183. JUDICIAL REVIEW[~~--LIMITATION--VENUE~~]. -- [A.]
22 All actions authorized by the Procurement Code for judicial
23 review of a determination shall be [~~based upon the records of~~
24 ~~the central purchasing office and all evidence submitted by the~~
25 ~~protestant and other interested parties. All actions for~~

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1 ~~judicial review must be filed within thirty days of receipt of~~
2 ~~notice of the determination as follows:~~

3 ~~(1) in the first judicial district court in~~
4 ~~Santa Fe county when the decision to be reviewed is made by a~~
5 ~~state agency located in Santa Fe county; or~~

6 ~~(2) in the district court in which a state~~
7 ~~agency or a local public body is located when the decision to~~
8 ~~be reviewed is made by a local public body or a state agency~~
9 ~~not located in Santa Fe county.~~

10 ~~B. All determinations under the Procurement Code~~
11 ~~made by a state agency or a local public body shall be~~
12 ~~sustained unless arbitrary, capricious, contrary to law,~~
13 ~~clearly erroneous or not based upon substantial evidence.] filed~~
14 ~~pursuant to the provisions of Section 12-8A-1 NMSA 1978.~~ "

15 Section 25. Section 13-4-15 NMSA 1978 (being Laws 1963,
16 Chapter 304, Section 5, as amended) is amended to read:

17 "13-4-15. APPEALS. --

18 A. Any interested person may appeal any
19 determination, finding or action of the director of the labor
20 and industrial division of the labor department made pursuant
21 to the Public Works Minimum Wage Act to the labor and
22 industrial commission sitting as the appeals board by filing
23 notice of the appeal with the director within fifteen days
24 after the determination has been issued or notice of the
25 finding or action has been given as provided in the Public

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1 Works Minimum Wage Act.

2 B. The labor and industrial commission, sitting as
3 the appeals board, shall adopt [such] rules [and regulations]
4 as it deems necessary for the prompt disposition of appeals. A
5 copy of the rules [and regulations] shall be filed with the
6 librarian of the supreme court law library.

7 C. The appeals board, within ten days after the
8 filing of the appeal, shall set the matter for an oral hearing
9 within thirty days and, following [such] the hearing, shall
10 enter a decision within ten days after the close of the hearing
11 and promptly mail copies of the decision to the parties.

12 D. Decisions of the appeals board may be [reviewed
13 ~~by the district court in Santa Fe county or in the county in~~
14 ~~which the contract affected is to be performed. Proceedings~~
15 ~~for review shall be instituted by filing a petition in the~~
16 ~~court within thirty days after mailing notice of the final~~
17 ~~decision of the board. Copies of the petition shall be served~~
18 ~~upon the director of the labor and industrial division of the~~
19 ~~labor department and all parties of record. The review shall~~
20 ~~be conducted by the court without a jury and shall be confined~~
21 ~~to the record of the proceedings before the board. The~~
22 ~~findings of fact of the board shall be binding upon the~~
23 ~~district court when supported by substantial evidence. The~~
24 ~~court may affirm the decision of the board or remand the case~~
25 ~~for further proceedings. The court may reserve or modify the~~

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- 1 ~~decision because the administrative findings, inferences,~~
- 2 ~~conclusions or decisions are:-~~
- 3 ~~(1) in violation of constitutional or~~
- 4 ~~statutory provisions;-~~
- 5 ~~(2) in excess of the statutory authority of~~
- 6 ~~the board;-~~
- 7 ~~(3) made upon unlawful procedure;-~~
- 8 ~~(4) affected by other error of law;-~~
- 9 ~~(5) clearly erroneous in view of the reliable~~
- 10 ~~probative and substantial evidence on the whole record; or~~
- 11 ~~(6) arbitrary or capricious or characterized~~
- 12 ~~by abusive discretion or clearly unwarranted exercise of~~
- 13 ~~discretion.-~~

14 ~~An aggrieved party may obtain a review of any final~~
15 ~~judgment of the district court made pursuant to the Public~~
16 ~~Works Minimum Wage Act by appeal to the supreme court, which~~
17 ~~shall be taken as in other civil cases] appealed pursuant to~~
18 ~~the provisions of Section 12-8A-1 NMSA 1978. "~~

19 Section 26. Section 17-3-34 NMSA 1978 (being Laws 1912,
20 Chapter 85, Section 35, as amended) is amended to read:

21 "17-3-34. REVOCATION OF LICENSE, CERTIFICATE OR PERMIT
22 FOR VIOLATION OF LAW - NOTICE AND HEARING - JUDICIAL REVIEW. - -

23 A. If the holder of any license, certificate or
24 permit [~~shall~~] persistently, flagrantly or knowingly [~~violate~~]
25 violates or [~~countenance~~] countenances the violation of any of

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1 the provisions of Chapter [~~53, NMSA 1953~~] 17 NMSA 1978 or of
2 any regulations referred to in Section [~~53-2-9 NMSA 1953~~]
3 17-2-10 NMSA 1978, [~~such~~] the license, certificate or permit
4 shall be revoked by the state game commission after reasonable
5 notice given the accused of the alleged violation and after the
6 accused is afforded an opportunity [~~afforded~~] to appear and
7 show cause against the charges.

8 B. At the hearing, the state game commission shall
9 cause a record of the hearing to be made and shall allow the
10 person charged to examine witnesses testifying at the hearing.
11 Any person whose license, certificate or permit has been
12 revoked by the commission may appeal to the district court [~~for~~
13 ~~further relief. Upon appeal, the district court shall set~~
14 ~~aside the decision only if found to be:~~

- 15 ~~_____ (1) arbitrary, capricious or an abuse of~~
- 16 ~~discretion;~~
- 17 ~~(2) not supported by substantial evidence in~~
- 18 ~~the record; or~~
- 19 ~~(3) otherwise not in accordance with law]~~
- 20 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

21 Section 27. Section 19-7-17 NMSA 1978 (being Laws 1963,
22 Chapter 237, Section 4) is amended to read:

23 "19-7-17. APPEAL. -- [~~Any~~] A person in interest aggrieved
24 by the decision of the commissioner in fixing the value of
25 improvements or in collecting costs may appeal to the district

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1 court [~~as provided by Sections 7-8-71 through 7-8-73, New~~
2 ~~Mexico Statutes Annotated, 1953 Compilation. All parties to~~
3 ~~the appeal shall be entitled to introduce additional evidence~~
4 ~~as to value]~~ pursuant to the provisions of Section 12-8A-1 NMSA
5 1978. "

6 Section 28. Section 19-7-67 NMSA 1978 (being Laws 1912,
7 Chapter 82, Section 72, as amended) is amended to read:

8 "19-7-67. CONTEST-- COMMISSIONER-- APPEAL TO DISTRICT
9 COURT[~~--PROCEDURE~~].-- Sec. 73. [Any] A person aggrieved by [any]
10 a decision of the commissioner may appeal to the district court
11 [~~of any county wherein any portion of the land as to which any~~
12 ~~such right, title or interest is in controversy is situated by~~
13 ~~filing with the commissioner within sixty days after the~~
14 ~~rendering of any such decision a motion praying such appeal and~~
15 ~~also a bond, with two or more sufficient sureties, to be~~
16 ~~approved by the commissioner, conditioned that appellant shall~~
17 ~~prosecute said appeal with diligence and effect and abide by~~
18 ~~the decision of said court and pay all costs of such appeal~~
19 ~~which shall lawfully be adjudged against him. Notice of said~~
20 ~~motion shall be served upon the adverse party or his attorney~~
21 ~~at least ten days before the filing thereof]~~ pursuant to the
22 provisions of Section 12-8A-1 NMSA 1978. "

23 Section 29. Section 19-10-23 NMSA 1978 (being Laws 1929,
24 Chapter 125, Section 16, as amended) is amended to read:

25 "19-10-23. APPEAL OF COMMISSIONER'S DECISION.-- [Any] A

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1 person or corporation aggrieved by [any] a ruling or decision
2 of the commissioner affecting his interest in any lease issued
3 under or affected by the provisions relating to oil and gas
4 leases of state lands may [within sixty days after rendering of
5 the order or decision, apply to the district court of the
6 county in which the lands or the greater part of them affected
7 by the order or decision are located for an order directed to
8 the commissioner requiring him to show cause why the order or
9 decision should not be cancelled or set aside. The district
10 court shall have jurisdiction as a court of equity to receive
11 the application, to issue the order and to cancel or set aside
12 the order or decision of the commissioner; provided that not
13 less than twenty days are allowed the commissioner for making
14 return to any order to show cause which may be issued. Any
15 other person interested in the outcome of the controversy may,
16 upon proper showing to the court, be made a party to or be
17 permitted to intervene in the proceeding and have his rights in
18 the subject matter determined. Appeals to and writs of error
19 from the supreme court lie from the decisions of the district
20 court as in other cases] file an appeal pursuant to the
21 provisions of Section 12-8A-1 NMSA 1978. "

22 Section 30. Section 21-24-8 NMSA 1978 (being Laws 1971,
23 Chapter 304, Section 8, as amended) is amended to read:

24 "21-24-8. JUDICIAL REVIEW. -- Any final determination of
25 the commission respecting the issuance, denial or revocation of

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1 a registration may be appealed to the district court pursuant
2 to the provisions of Section 12-8A-1 NMSA 1978. "

3 Section 31. Section 22-10-22 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 124, as amended) is amended to read:

5 "22-10-22. SUSPENSION AND REVOCATION OF CERTIFICATES--
6 APPEAL. --

7 A. The state board may suspend or revoke a
8 certificate held by a certified school instructor or
9 administrator for incompetency, immorality or any other good
10 and just cause.

11 B. A certificate may be suspended or revoked only
12 according to the following procedure:

13 (1) the state board serving written notice of
14 the suspension or revocation on the person holding the
15 certificate in accordance with the law for service of process
16 in civil actions. The notice of the suspension or revocation
17 shall state the grounds for the suspension or revocation of the
18 certificate. The notice of the suspension or revocation shall
19 describe the rights of the person holding the certificate and
20 include instructions for requesting a hearing before the state
21 board. [~~Such~~] A hearing shall be requested within thirty days
22 of receipt of the notice of suspension or revocation. If a
23 hearing is requested, the hearing shall be held not more than
24 ninety days from the date of the request for the hearing;

25 (2) the state board or its designated hearing

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1 officer conducting a hearing [~~which~~] that provides the person
2 holding the certificate, or his attorney, an opportunity to
3 present evidence or arguments on all pertinent issues. A
4 transcript shall be made of the entire hearing conducted by the
5 state board or its designated hearing officer; and

6 (3) the state board rendering a written
7 decision in accordance with the law and based upon evidence
8 presented and admitted at the hearing. The written decision
9 shall include findings of fact and conclusions of law and shall
10 be based upon the findings of fact and the conclusions of law.
11 A written copy of the decision of the state board shall be
12 served upon the person holding the certificate within sixty
13 days from the date of the hearing. Service of the written copy
14 of the decision shall be in accordance with the law for service
15 of process in civil actions or by certified mail to the
16 person's address of record.

17 C. The secretary of the state board, with the
18 approval of the state board or its designated hearing officer,
19 may subpoena witnesses, require their attendance and giving of
20 testimony and require the production of books, papers and
21 records in connection with a hearing held pursuant to the
22 provisions of Subsection B of this section. Also, the state
23 board may apply to the district court for the issuance of
24 subpoenas and subpoenas duces tecum in the name of and on
25 behalf of the state board.

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1 D. Any person aggrieved by a decision of the state
2 board, after a hearing pursuant to this section, may appeal the
3 decision to the ~~[court of appeals by filing a notice of appeal~~
4 ~~with the clerk of the court within thirty days after service of~~
5 ~~a written copy of the decision of the state board on the~~
6 ~~person. The cost of transcripts on appeal, including one copy~~
7 ~~for the use of the state board, shall be borne by the~~
8 ~~appellant. Upon appeal, the court of appeals shall affirm the~~
9 ~~decision of the state board unless the decision is found to be:~~
10 ~~(1) arbitrary, capricious or unreasonable;~~
11 ~~(2) not supported by substantial evidence; or~~
12 ~~(3) otherwise not in accordance with law]~~
13 district court pursuant to the provisions of Sections 12-8A-1
14 NMSA 1978. "

15 Section 32. Section 24-1-5 NMSA 1978 (being Laws 1973,
16 Chapter 359, Section 5, as amended) is amended to read:

17 "24-1-5. LICENSURE OF HEALTH FACILITIES -- HEARINGS--
18 APPEALS. --

19 A. No health facility shall be operated without a
20 license issued by the department. If a health facility is
21 found to be operating without a license, in order to protect
22 human health or safety, the secretary may issue a cease-and-
23 desist order. The health facility may request a hearing
24 [which] that shall be held in the manner provided in this
25 section. The department may also proceed pursuant to the

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1 Health Facility Receivership Act.

2 B. The department is authorized to make inspections
3 and investigations and to prescribe regulations it deems
4 necessary or desirable to promote the health, safety and
5 welfare of persons using health facilities.

6 C. Except as provided in Subsection F of this
7 section, upon receipt of an application for a license to
8 operate a health facility, the department shall promptly
9 inspect the health facility to determine if it is in compliance
10 with all [~~regulations~~] rules of the department. Applications
11 for hospital licenses shall include evidence that the bylaws or
12 [~~regulations~~] rules of the hospital apply equally to
13 osteopathic and medical physicians. The department shall
14 consolidate the applications and inspections for a hospital
15 that also operates as a hospital-based primary care clinic.

16 D. Upon inspection of any health facility, if the
17 department finds any violation of its [~~regulations~~] rules, [~~it~~]
18 the department may deny the application for a license, whether
19 initial or renewal, or it may issue a temporary license. A
20 temporary license shall not be issued for a period exceeding
21 one hundred twenty days, nor shall more than two consecutive
22 temporary licenses be issued.

23 E. A one-year nontransferable license shall be
24 issued to any health facility complying with all [~~regulations~~]
25 rules of the department. The license shall be renewable for

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1 successive one-year periods, upon filing of a renewal
2 application, if the department is satisfied that the health
3 facility is in compliance with all [~~regulations~~] rules of the
4 department or, if not in compliance with [~~any~~] a [~~regulation~~]
5 rule, has been granted a waiver or variance of that
6 [~~regulation~~] rule by the department pursuant to procedures,
7 conditions and guidelines adopted by [~~regulation~~] rule of the
8 department. Licenses shall be posted in a conspicuous place on
9 the licensed premises, except that child-care centers that
10 receive no state or federal funds may apply for and receive
11 from the department a waiver from the requirement that a
12 license be posted or kept on the licensed premises.

13 F. Any health facility that has been inspected and
14 licensed by the department and that has received certification
15 for participation in federal reimbursement programs and that
16 has been fully accredited by the joint commission on
17 accreditation of health care organizations or the American
18 osteopathic association shall be granted a license renewal
19 based on that accreditation. Health facilities receiving less
20 than full accreditation by the joint commission on the
21 accreditation of health care organizations or by the American
22 osteopathic association may be granted a license renewal based
23 on [~~such~~] that accreditation. License renewals shall be issued
24 upon application submitted by the facility upon forms
25 prescribed by the department. This subsection does not limit

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1 in any way the department's various duties and responsibilities
2 under other provisions of the Public Health Act or under any
3 other subsection of this section, including any of the
4 department's responsibilities for the health and safety of the
5 public.

6 G. The department may charge a reasonable fee not
7 to exceed three dollars (\$3.00) per bed for an in-patient
8 health facility or one hundred dollars (\$100) for any other
9 health facility for each license application, whether initial
10 or renewal, of an annual license or the second consecutive
11 issuance of a temporary license. Fees collected shall not be
12 refundable. All fees collected pursuant to licensure
13 applications shall be deposited with the state treasurer for
14 credit to the general fund.

15 H. The department may revoke or suspend the license
16 of [any] a health facility or may impose on [any] a health
17 facility [any] an intermediate sanction and a civil monetary
18 penalty provided in Section 24-1-5.2 NMSA 1978 after notice and
19 an opportunity for a hearing before a hearing officer
20 designated by the department to hear the matter and, except for
21 child-care centers and facilities, may proceed pursuant to the
22 Health Facility Receivership Act upon a determination that the
23 health facility is not in compliance with any [regulation] rule
24 of the department. If immediate action is required to protect
25 human health and safety, the secretary may suspend [any] a

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1 license or impose [~~any~~] an intermediate sanction pending a
2 hearing, provided the hearing is held within five working days
3 of the suspension or imposition of the sanction, unless waived
4 by the licensee, and, except for child-care centers and
5 facilities, may proceed ex parte pursuant to the Health
6 Facility Receivership Act.

7 I. The department shall schedule a hearing pursuant
8 to Subsection H of this section if the department receives a
9 request for a hearing from a licensee:

10 (1) within ten working days after receipt by
11 the licensee of notice of suspension, revocation, imposition of
12 an intermediate sanction or civil monetary penalty or denial of
13 an initial or renewal application;

14 (2) within four working days after receipt by
15 the licensee of an emergency suspension order or emergency
16 intermediate sanction imposition and notice of hearing if the
17 licensee wishes to waive the early hearing scheduled and
18 request a hearing at a later date; or

19 (3) within five working days after receipt of
20 a cease-and-desist order.

21 The department shall also provide timely notice to the
22 licensee of the date, time and place [~~for~~] of the hearing,
23 identity of the hearing officer, subject matter of the hearing
24 and alleged violations.

25 J. Any hearing held pursuant to provisions of this

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1 section shall be conducted in accordance with adjudicatory
2 hearing rules and procedures adopted by regulation of the
3 department. The licensee has the right to be represented by
4 counsel, to present all relevant evidence by means of witnesses
5 and books, papers, documents, records, files and other evidence
6 and to examine all opposing witnesses who appear on any matter
7 relevant to the issues. The hearing officer has the power to
8 administer oaths on request of any party and issue subpoenas
9 and subpoenas duces tecum prior to or after the commencement of
10 the hearing to compel discovery and the attendance of witnesses
11 and the production of relevant books, papers, documents,
12 records, files and other evidence. Documents or records
13 pertaining to abuse, neglect or exploitation of a resident,
14 client or patient of a health facility or other documents,
15 records or files in the custody of the human services
16 department or the office of the state long-term care ombudsman
17 at the state agency on aging that are relevant to the alleged
18 violations are discoverable and admissible as evidence in any
19 hearing.

20 K. Any party may appeal ~~[to the court of appeals on~~
21 ~~the record within thirty days after the final decision of the~~
22 ~~department. The court shall set aside the final decision only~~
23 ~~if it is found to be arbitrary, capricious or an abuse of~~
24 ~~discretion; not supported by substantial evidence in the~~
25 ~~record; outside the authority of the department; or otherwise~~

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1 ~~not in accordance with law~~ the final decision of the
2 department pursuant to the provisions of Section 12-8A-1 NMSA
3 1978.

4 L. Every complaint about a health facility received
5 by the department pursuant to this section shall be promptly
6 investigated to substantiate the allegation and to take
7 appropriate action if substantiated. The department shall
8 coordinate with the human services department, the office of
9 the state long-term care ombudsman at the state agency on aging
10 and any other appropriate agency to develop a joint protocol
11 establishing responsibilities and procedures to assure prompt
12 investigation of complaints, including prompt and appropriate
13 referrals and necessary action regarding allegations of abuse,
14 neglect or exploitation of residents, clients or patients in a
15 health facility.

16 M. Complaints received by the department pursuant
17 to this section shall not be disclosed publicly in [~~such~~] a
18 manner as to identify any individuals or health facilities if
19 upon investigation the complaint is unsubstantiated.

20 N. Notwithstanding any other provision of this
21 section, where there are reasonable grounds to believe that any
22 child is in imminent danger of abuse or neglect while in the
23 care of a child-care facility, whether or not licensed, or upon
24 the receipt of a report pursuant to Section 32A-4-3 NMSA 1978,
25 the department shall consult with the owner or operator of the

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1 child-care facility. Upon a finding of probable cause, the
2 department shall give the owner or operator notice of its
3 intent to suspend operation of the child-care facility and
4 provide an opportunity for a hearing to be held within three
5 working days, unless waived by the owner or operator. Within
6 seven working days from the day of notice, the secretary shall
7 make a decision, and, if it is determined that any child is in
8 imminent danger of abuse or neglect in the child-care facility,
9 the secretary may suspend operation of the child-care facility
10 for a period not in excess of fifteen days. Prior to the date
11 of the hearing, the department shall make a reasonable effort
12 to notify the parents of children in the child-care facility of
13 the notice and opportunity for hearing given to the owner or
14 operator.

15 0. Nothing contained in this section or in the
16 Public Health Act shall authorize either the secretary or the
17 department to make any inspection or investigation or to
18 prescribe any regulations concerning group homes as defined in
19 Section 9-8-13 NMSA 1978 except as are reasonably necessary or
20 desirable to promote the health and safety of persons using
21 group homes. "

22 Section 33. Section 25-1-11 NMSA 1978 (being Laws 1977,
23 Chapter 309, Section 11) is amended to read:

24 "25-1-11. JUDICIAL REVIEW OF BOARD AND [AGENCY] DIVISION
25 ACTIONS. --

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1 A. ~~[Regulations]~~ Rules adopted by the board are
2 subject to judicial review under the provisions of Section [~~12-~~
3 ~~12-13 NMSA 1953~~] 74-1-9 NMSA 1978.

4 B. Any person to whom the [~~agency~~] division denies
5 a permit or whose permit is suspended or revoked by the
6 [~~agency~~] division may appeal to the [~~court of appeals within~~
7 ~~thirty days of the final agency action.~~ Upon appeal, the court
8 of appeals shall set aside the agency action only if it is
9 found to be:

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

12 ~~(2) otherwise not in accordance with law]~~
13 district court pursuant to the provisions of Section 12-8A-1
14 NMSA 1978. "

15 Section 34. Section 25-3-12 NMSA 1978 (being Laws 1969,
16 Chapter 89, Section 7) is amended to read:

17 "25-3-12. CONDEMNATION AND APPEAL. --The inspector at
18 [~~slaughtering~~] official establishments [~~with state meat~~
19 ~~inspection service~~] shall condemn all diseased or otherwise
20 unfit carcasses and parts of carcasses, including the viscera.
21 The condemned parts shall be removed from the slaughtering
22 department of the plant in equipment designated for that
23 purpose and shall be destroyed for food purposes under the
24 supervision of the inspector. If any [~~slaughtering~~] official
25 establishment wishes to appeal a decision of an inspector as to

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1 carcasses or parts of carcasses [~~which~~] that have been
2 condemned, the establishment may appeal the decision to the
3 chief veterinary meat inspector or any veterinarian he
4 designates. If [~~such~~] the establishment is not satisfied and
5 wishes to make a further appeal, it may submit [~~such~~] an appeal
6 to the board, whose decision shall be final unless the person
7 aggrieved [~~within ten days after the date of the decision,~~
8 ~~appeals to the district court of the district in which the~~
9 ~~licensed premises are located~~] appeals to the district court
10 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

11 Section 35. Section 25-3-19 NMSA 1978 (being Laws 1969,
12 Chapter 89, Section 14) is amended to read:

13 "25-3-19. SUSPENSION OR REVOCATION OF INSPECTION SERVICE
14 OR ESTABLISHMENT NUMBER-- HEARING-- APPEAL. --

15 A. Any license issued by the board or any state
16 meat inspection service or establishment numbers may be
17 suspended or revoked by the board for violation or
18 noncompliance with:

- 19 (1) any provision of the Meat Inspection Act;
20 or
21 (2) any rule [~~or regulation~~] issued pursuant
22 to the Meat Inspection Act.

23 B. State meat inspection service or establishment
24 numbers may be suspended or revoked only after a hearing before
25 the board upon reasonable notice. Notice shall be given the

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1 licensee by service of the complaint upon him

2 C. The decision of the board shall be final in any
3 matter relating to renewal, suspension or revocation of state
4 meat inspection service or establishment numbers unless the
5 person aggrieved [~~within ten days after the date of the~~
6 ~~decision, appeals to the district court of the district in~~
7 ~~which the licensed premises are located. On the appeal, the~~
8 ~~court shall hear and determine the matter de novo, not more~~
9 ~~than ten days after the date of filing the appeal. Subsequent~~
10 ~~to such decision, the person aggrieved may, in compliance with~~
11 ~~the statutory provisions relating thereto, appeal the decision~~
12 ~~of the district court to the supreme court of the state, but~~
13 ~~the suspension or revocation of state meat inspection service~~
14 ~~or establishment numbers shall remain in full force and effect~~
15 ~~pending the outcome of the appeal]~~ appeals to the district
16 court pursuant to the provision of Section 12-8A-1 NMSA 1978."

17 Section 36. Section 25-7B-9 NMSA 1978 (being Laws 1993,
18 Chapter 188, Section 28) is amended to read:

19 "25-7B-9. JUDICIAL REVIEW OF DEPARTMENT ACTIONS. -- Any
20 person to whom the department denies a permit or whose permit
21 is suspended or revoked by the department may appeal to the
22 [~~court of appeals within thirty days of the final department~~
23 ~~action. Upon appeal, the court of appeals shall set aside the~~
24 ~~department action only if it is found to be:~~

25 A. ~~arbitrary, capricious or an abuse of discretion;~~

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~~or~~

~~B. otherwise not in accordance with law~~ district court pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

Section 37. Section 27-3-4 NMSA 1978 (being Laws 1973, Chapter 256, Section 4) is amended to read:

"27-3-4. [~~REVIEW AND~~] APPEAL. -- [~~A.~~] Within thirty days after receiving written notice of the decision of the director pursuant to Section [~~3 of the Public Assistance Appeals Act~~] 27-3-3 NMSA 1978, an applicant or recipient may file a notice of appeal with the [~~court of appeals, together with a copy of the notice of the decision. The clerk of the court shall transmit a copy of the notice of appeal to the director.~~

~~B. The filing of a notice of appeal shall not stay the enforcement of the decision of the director, but the department may grant, or the court upon motion and good cause shown may order, a stay.~~

~~C. Within twenty days after receipt of the notice of appeal, the department shall file with the clerk of the court three copies and furnish to the appellant one copy of the written transcript of the record of the proceedings.~~

~~D. If before the date set for argument application is made to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and that there was good reason for not presenting it in the hearing, the court may order the additional evidence~~

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1 ~~taken before the department. If the application to present~~
2 ~~additional evidence is filed by the department and is approved~~
3 ~~by the court, the decision of the department which is being~~
4 ~~appealed shall be stayed. The director may modify his findings~~
5 ~~and decision by reason of the additional evidence and shall~~
6 ~~file with the court a transcript of the additional evidence,~~
7 ~~together with any modified or new findings or decision.~~

8 ~~E. The review of the court shall be made upon the~~
9 ~~decision and the record of the proceedings provided for in~~
10 ~~Section 3 of the Public Assistance Appeals Act.~~

11 ~~F. The court shall set aside a decision and order~~
12 ~~of the director only if found to be:~~

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

15 ~~(2) not supported by substantial evidence in~~
16 ~~the record as a whole; or~~

17 ~~(3) otherwise not in accordance with law]~~

18 district court pursuant to the provisions of Section 12-8A-1
19 NMSA 1978. "

20 Section 38. Section 27-5-12.1 NMSA 1978 (being Laws
21 1979, Chapter 146, Section 3, as amended) is amended to read:

22 "27-5-12.1. APPEAL. -- [A.] Any hospital or ambulance
23 service aggrieved by any decision of the board may appeal to
24 the district court [for the county in which the board sits.

25 ~~B. The appeal authorized in this section shall be~~

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1 ~~filed within thirty days of the decision of the board from~~
2 ~~which the appeal is taken.~~

3 ~~C. The rules of civil procedure shall apply to any~~
4 ~~appeal filed pursuant to this section] pursuant to the~~
5 provisions of Section 12-8A-1 NMSA 1978. "

6 Section 39. Section 28-17-19 NMSA 1978 (being Laws 1989,
7 Chapter 208, Section 19, as amended) is amended to read:

8 "28-17-19. INTERFERENCE WITH THE OFFICE AND RETALIATION
9 PROHIBITED--PENALTY--CIVIL--APPEAL. --

10 A. No person shall willfully interfere with the
11 lawful actions of the office, including the request for
12 immediate entry into a long-term care facility.

13 B. No person shall institute discriminatory,
14 disciplinary or retaliatory action against any resident,
15 employee or other person for filing a complaint, providing
16 information to or otherwise cooperating with [~~any~~] a
17 representative of the office.

18 C. Any person who violates Subsection A of this
19 section shall be subject to a civil penalty of up to five
20 thousand dollars (\$5,000) per occurrence. Any person who
21 violates Subsection B of this section shall be subject to a
22 civil penalty of up to ten thousand dollars (\$10,000) per
23 occurrence. The agency may assess and collect the penalty
24 after notice and an opportunity for hearing, before a hearing
25 officer designated by the agency to hear the matter, upon a

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1 determination that a person willfully interfered with the
2 office or discriminated, disciplined or retaliated against an
3 individual who communicated or disclosed information to the
4 office in good faith pursuant to Subsections A and B of this
5 section. The hearing officer has the power to administer oaths
6 on request of any party and issue subpoenas and subpoenas duces
7 tecum. However, if the violation is against a person covered
8 by the Personnel Act, the office shall refer the matter to the
9 agency employing the person for disciplinary action.

10 D. Any party may appeal to the ~~[court of appeals on~~
11 ~~the record within thirty days after the final decision of the~~
12 ~~agency]~~ district court pursuant to the provisions of Section
13 12-8A-1 NMSA 1978. "

14 Section 40. Section 29-2-11 NMSA 1978 (being Laws 1941,
15 Chapter 147, Section 11, as amended) is amended to read:

16 "29-2-11. DISCIPLINARY PROCEEDINGS -- APPEAL. --

17 A. No officer of the New Mexico state police
18 holding a permanent commission shall be removed from office,
19 demoted or suspended except for incompetence, neglect of duty,
20 violation of a published rule of conduct, malfeasance in office
21 or conduct unbecoming an officer, except as provided in this
22 section.

23 B. The secretary may suspend an officer for
24 disciplinary reasons for not more than thirty days in
25 accordance with New Mexico state police ~~[regulation]~~ rules. Any

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1 officer holding a permanent commission who is suspended by the
2 secretary has the right to have the suspension reviewed by the
3 commission, but without further review or appeal.

4 C. In the event the officer is to be removed from
5 office, demoted or suspended for a period of more than thirty
6 days, specific written charges shall be filed with the
7 commission. Timely and adequate notice of the charges to the
8 person charged shall be provided and a prompt hearing on the
9 charges shall be held by the commission. The person [s@]
10 charged has the right to be represented by counsel of his own
11 choice and at his own expense at the hearings. A complete
12 record of the hearing shall be made and, upon request, a copy
13 of it shall be furnished to the person charged. The person may
14 require that the hearing be public.

15 D. In the event the commission finds that the
16 person charged shall be removed, demoted or suspended for a
17 period in excess of thirty days, the person may appeal from the
18 decision of the commission to the district court [of Santa Fe
19 county. ~~The appeal shall be filed within twenty days after the~~
20 ~~decision of the commission is rendered, and the court shall~~
21 ~~determine promptly whether there is substantial evidence to~~
22 ~~support the commission's action and dispose of the appeal~~
23 ~~accordingly. The determination shall be made on the basis of~~
24 ~~the record except that, for cause shown, the court shall permit~~
25 ~~either the secretary or the person charged to introduce new~~

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1 ~~evidence]~~ pursuant to the provisions of Section 12-8A-1 NMSA
2 1978. "

3 Section 41. Section 29-10-8 NMSA 1978 (being Laws 1977,
4 Chapter 339, Section 5) is amended to read:

5 "29-10-8. REVIEW OF ARREST RECORD INFORMATION --
6 APPEAL. -- A person who believes that arrest record information
7 concerning him is inaccurate or incomplete [~~shall~~] is, upon
8 satisfactory verification of his identity, [~~be~~] entitled to
9 review [~~such~~] the information and obtain a copy of it for the
10 purpose of challenge or correction. In the event a law
11 enforcement agency refuses to correct challenged information to
12 the satisfaction of the person to whom the inaccurate or
13 incorrect information relates, the person [~~shall-be~~] is
14 entitled to [~~petition~~] appeal to the district court to correct
15 [~~such~~] the information pursuant to the provisions of Section
16 12-8A-1 NMSA 1978. "

17 Section 42. Section 32A-2-4 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 33) is amended to read:

19 "32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS --
20 APPEALS. --

21 A. The department shall promulgate updated
22 standards for all detention facilities, including standards for
23 [~~the~~] site, design, construction, equipment, care, program,
24 personnel and clinical services. The department shall certify
25 as approved all detention facilities in the state meeting the

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1 standards promulgated. The department may establish by rule
2 appropriate procedures for provisional certification and the
3 waiving of any of its standards for facilities in existence at
4 the time of the adoption of the standards, except that it shall
5 not allow waiver of any standard pertaining to adequate health
6 and safety protection of the residents and staff of the
7 facility. No child shall be detained in a detention facility
8 unless it is certified as approved by the department, except as
9 otherwise provided in [~~this article~~] Chapter 32A, Article 2
10 NMSA 1978.

11 B. The department shall inspect all detention
12 facilities in the state at least once each twelve months and
13 shall require those reports it deems necessary from detention
14 facilities in a form and containing the information determined
15 by the department. If as the result of an inspection a
16 certified detention facility is determined as failing to meet
17 the required standards, its certification is subject to
18 revocation or refusal for renewal by the department.

19 C. The department shall promulgate rules
20 establishing procedures that provide for prior notice and
21 public hearings on detention [~~facilities~~] facilities' standards
22 adoption and changes. The department shall also promulgate
23 rules establishing procedures for facility certification,
24 renewal of certification, refusal to renew certification and
25 revocation of certification. The procedures adopted on these

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1 matters shall provide for adequate prior notice of intended
2 action by the department, opportunity for the aggrieved person
3 to have an administrative hearing and written notification of
4 the administrative decision. Rules promulgated under this
5 subsection shall not be effective unless filed in accordance
6 with the State Rules Act.

7 D. Any person aggrieved by an administrative
8 decision of the department rendered under the provisions of
9 this section may petition for the review of the administrative
10 decision by ~~[filing a petition requesting judicial review in
11 the district court for the county in which the detention
12 facility involved in the decision is located. The court's
13 review shall be of the written transcript of the administrative
14 hearing and the decision of the department. The court shall
15 uphold the decision of the department unless it finds that
16 decision to be:~~

17 (1) ~~illegal or unconstitutional;~~

18 (2) ~~the result of arbitrary or capricious~~
19 ~~department action; or~~

20 (3) ~~not supported by substantial evidence;~~

21 ~~in which cases it shall reverse the department's administrative~~
22 ~~decision and remand the matter for appropriate action by the~~
23 ~~department]~~ appealing to the district court pursuant to the
24 provisions of Section 12-8A-1 NMSA 1978.

25 E. After January 1, 1994, no state or county

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1 detention facility shall hold juveniles sentenced by a federal
2 court, unless the facility meets state standards promulgated by
3 the department. "

4 Section 43. Section 36-1A-9 NMSA 1978 (being Laws 1991,
5 Chapter 175, Section 9) is amended to read:

6 "36-1A-9. APPEALS BY COVERED EMPLOYEES TO THE BOARD --
7 JUDICIAL REVIEW. --

8 A. [~~Any~~] A covered employee who is dismissed,
9 demoted or suspended may, within thirty days after the
10 dismissal, demotion or suspension, appeal to the board. The
11 appellant and the agency whose action is reviewed shall have
12 the right to be heard publicly and to present facts pertinent
13 to the appeal.

14 B. Formal rules of evidence shall not apply to
15 appeals to the board.

16 C. A record shall be made of the hearing, which
17 shall be transcribed if there is an appeal to the district
18 court. The cost of transcripts may be assessed by the court to
19 the losing party on appeal.

20 D. Appeals may be heard, at the election of the
21 appellant, either by the board or by a hearing officer selected
22 by the state personnel office. If the appellant does not elect
23 to have his case heard by a state-personnel-office-designated
24 hearing officer as provided in this section, the board may
25 designate a hearing officer who may be a member of the board to

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1 preside over and take evidence at any hearing held pursuant to
2 this section. This latter hearing officer shall prepare and
3 submit to the board a summary of the evidence taken at the
4 hearing and proposed findings of fact. The board shall render
5 a final decision on the appeal, which shall include findings of
6 fact and conclusions of law.

7 E. If the appellant chooses to have his case heard
8 by a state-personnel-office-designated hearing officer, the
9 appellant shall elect in writing within twenty days after
10 filing the notice of appeal to have his appeal heard solely by
11 a state-personnel-office-designated hearing officer. In the
12 event of that election, the board shall promptly make that
13 request to the state personnel office and promptly execute any
14 and all documents necessary to implement this election. The
15 state personnel office shall promptly arrange for the hearing
16 officer without charge. This hearing officer shall have all of
17 the rights, duties and responsibilities provided to the board
18 by the District Attorney Personnel and Compensation Act, and
19 that hearing officer's decision shall be binding and of the
20 same force and effect as if the board itself had rendered the
21 final decision.

22 F. If the board or the state-personnel-office-
23 designated hearing officer finds that the action taken was
24 without just cause, the board or the state-personnel-office-
25 designated hearing officer may modify the disciplinary action

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1 or order the reinstatement of the appellant to his former
2 position or to a position of like status and pay. When the
3 board or the state-personnel-office-designated hearing officer
4 orders a reinstatement of an appellant, the reinstatement shall
5 be effective within thirty days after the service of a written
6 copy of the decision on the affected party. The board or the
7 state-personnel-office-designated hearing officer may award
8 back pay as of the date of the dismissal, demotion or
9 suspension or as of such later date as the order may specify.

10 G. ~~[Any]~~ A party aggrieved by the decision of the
11 board or the state-personnel-office-designated hearing officer
12 made pursuant to this section may appeal the decision to the
13 district court ~~[in the district in which he resides, is~~
14 ~~employed or maintains his principal office or to the district~~
15 ~~court for the district of Santa Fe county. The appeal shall be~~
16 ~~initiated by filing a notice of appeal with the clerk of the~~
17 ~~appropriate district court within thirty days after the service~~
18 ~~on that party of a written copy of the final decision of the~~
19 ~~board or the state-personnel-office-designated hearing officer.~~
20 ~~Upon appeal the district court shall affirm the decision of the~~
21 ~~board or the state-personnel-office-designated hearing officer~~
22 ~~unless the decision is found to be:-~~

- 23 (a) ~~arbitrary, capricious or an abuse of~~
- 24 ~~discretion;~~
- 25 (b) ~~not supported by substantial evidence; or~~

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1 noncompliance with the [~~regulations~~] rules has ceased.

2 B. A person adversely affected by a decision of the
3 division denying, revoking, suspending, placing on probation or
4 refusing to renew a license may obtain a review [~~thereof~~] by
5 [~~filing a petition, duly verified, with the clerk of the~~
6 ~~district court of the first judicial district within sixty days~~
7 ~~after entry of the decision. The petition shall set forth~~
8 ~~specifically the ground for review. A copy of the petition~~
9 ~~shall be served upon the division by registered mail, return~~
10 ~~receipt requested. Upon presentation of the petition, the~~
11 ~~district court may allow a writ of certiorari directed to the~~
12 ~~division to review its decision and shall prescribe the time in~~
13 ~~which a return shall be made. Within thirty days after receipt~~
14 ~~of the petition, the division shall certify and file with the~~
15 ~~clerk of the court the transcript of the record upon which the~~
16 ~~decision complained of was entered] appealing to the district
17 court pursuant to the provisions of Section 12-8A-1 NMSA 1978.~~

18 C. When any license is denied, suspended, revoked
19 or not renewed, the care and custody of any child placed
20 [~~under~~] pursuant to the Child Placement Agency Licensing Act
21 shall be transferred to the certifying child placement agency
22 or the division. "

23 Section 45. Section 42-3-14 NMSA 1978 (being Laws 1972,
24 Chapter 41, Section 15, as amended) is amended to read:

25 "42-3-14. ADMINISTRATIVE HEARINGS-- COURT REVIEW. --

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1 A. ~~[Any persons]~~ A person aggrieved by a
2 determination as to eligibility for relocation payments or the
3 amount of payment received under the Relocation Assistance Act
4 shall have the right to a hearing before the displacing agency
5 or before a hearing officer designated by the displacing
6 agency.

7 B. After the hearing, ~~[any]~~ a person aggrieved or
8 affected by a final administrative determination concerning
9 eligibility for relocation payments or the amount of the
10 payment under the Relocation Assistance Act may ~~[have the~~
11 ~~determination reviewed by the district court in conformance~~
12 ~~with the rules of civil procedure. All such appeals shall be~~
13 ~~made:-~~

14 ~~(1) upon the record of the hearing and shall~~
15 ~~not be de novo; and~~

16 ~~(2) by filing a notice of appeal in the~~
17 ~~district court within thirty days of the date of mailing or~~
18 ~~delivery of the written decision and order of the displacing~~
19 ~~agency to the person, and if not so taken, the decision and~~
20 ~~order are conclusive.-~~

21 C. ~~Upon appeal, the court shall set aside a~~
22 ~~decision and order of the displacing agency only if found to~~
23 ~~be:-~~

24 ~~(1) arbitrary, capricious or an abuse of~~
25 ~~discretion;-~~

Underscored material = new
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1 affected by a decision of a delegate of the board of county
2 commissioners in approving or disapproving a final plat under
3 summary review shall appeal the delegate's decision to the
4 board of county commissioners within thirty days of the date of
5 the delegate's decision. The board of county commissioners
6 shall hear the appeal and shall render a decision within thirty
7 days of the date the board receives notice of the appeal.
8 Thereafter, the procedure for appealing the decision of the
9 board of county commissioners set out in [~~Subsections A, B and~~
10 ~~E~~] Subsection B of this section shall apply.

11 B. A party who is or may be adversely affected by a
12 decision of the board of country commissions in approving or
13 disapproving a preliminary or final plat may appeal to the
14 district court pursuant to the provisions of Section 12-8A-1
15 NMSA 1978. "

16 Section 47. Section 50-9-17 NMSA 1978 (being Laws 1972,
17 Chapter 63, Section 16, as amended) is amended to read:

18 "50-9-17. ENFORCEMENT -- APPEALS. --

19 A. If as a result of investigation the department
20 has good cause to believe that any employer is violating any
21 provision of the Occupational Health and Safety Act or any
22 [~~regulation~~] rule of the board, the department shall send
23 prompt notice of the violation by certified mail to the
24 employer believed to be in violation. The citation shall
25 describe with particularity the provision of the Occupational

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1 Health and Safety Act or [~~regulation~~] rule alleged to have been
2 violated. The notice shall also state the time for abatement
3 of the violation. Each citation issued pursuant to this
4 section, or a copy thereof, shall be promptly and prominently
5 posted by the cited employer, as prescribed in [~~regulations~~]
6 rules issued by the board, at or near the place where the
7 violation occurred. No citation may be issued under this
8 section after the expiration of six months following the
9 occurrence of any violation. The board may issue a regulation
10 prescribing procedures for the use of a notice in lieu of a
11 citation with respect to de minimis violations that have no
12 direct or immediate relationship to safety or health.

13 B. If the department issues a citation [~~under~~] as
14 provided in Subsection A of this section, it shall, within a
15 reasonable time after issuance of the citation, notify the
16 employer by certified mail of the penalty, if any, proposed to
17 be assessed and that the employer has fifteen working days
18 within which to notify the department in writing that he wishes
19 to contest the citation or proposed penalty. If within fifteen
20 working days from the receipt of the notice issued by the
21 department the employer fails to notify the department that he
22 intends to contest the citation or proposed penalty and no
23 notice is filed by an employee or employee representative as
24 provided by Subsection D of this section within [~~such~~] that
25 time, the citation and the assessment of penalty, if any, as

. 119929. 2

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1 proposed shall be deemed the final order of the commission and
2 not subject to review by any court or agency.

3 C. If the department has reason to believe that an
4 employer has failed to correct a violation for which a citation
5 has been issued within the abatement period permitted, which
6 period shall not begin to run until the entry of a final order
7 by the commission in the case of any review proceedings under
8 this section initiated by the employer in good faith and not
9 solely for delay or avoidance of penalties, the department
10 shall notify the employer by certified mail of [~~such~~] the
11 failure to correct and of the penalty proposed to be assessed
12 by reason of [~~such~~] the failure and that the employer has
13 fifteen working days within which to notify the department in
14 writing that he wishes to contest the department's notification
15 or the proposed assessment of penalty. If within fifteen
16 working days from the receipt of notification issued by the
17 department the employer fails to notify the department that he
18 intends to contest the notification or proposed assessment of
19 penalty, the notification and assessment as proposed shall be
20 deemed a final order of the commission and not subject to
21 review by any court or department.

22 D. If any employer notifies the department in
23 writing that he intends to contest the citation issued to him
24 [~~under~~] pursuant to provisions of Subsection A or notification
25 issued [~~under~~] pursuant to provisions of Subsection B or C of

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1 this section or if within fifteen working days of the receipt
2 of notice [~~under~~] pursuant to the provisions of this section
3 any employee of an employer [~~so~~] cited or any [~~such~~] employee's
4 representative files a notice with the department alleging that
5 the period of time fixed in the citation for the abatement of
6 the violation is unreasonable, the department shall provide
7 prompt opportunity for informal administrative review. If the
8 matter is not successfully resolved at the informal
9 administrative review, the petitioner may request a hearing
10 before the commission within fifteen days after the
11 administrative review. The commission shall afford an
12 opportunity for a hearing within thirty days after receipt of
13 [~~such~~] the petition. The commission shall thereafter issue an
14 order, based on findings of fact, affirming, modifying or
15 vacating the department's citation or the proposed penalty
16 fixed by the department or directing other appropriate relief.

17 E. At any time prior to the expiration of an
18 abatement period, an employer may notify the department in
19 writing that he is unable to take the corrective action
20 required within the period of abatement. The department shall
21 provide prompt opportunity for informal administrative review.
22 If the matter is not successfully resolved at the informal
23 administrative review, the petitioner may request a hearing
24 before the commission after the administrative review. The
25 commission shall afford prompt opportunity for a hearing after

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1 receipt of [~~such~~] the petition. The only grounds for modifying
2 an abatement period [~~under~~] provided by this subsection are a
3 showing by the employer of a good-faith effort to comply with
4 the abatement requirement of a citation and that abatement has
5 not been completed because of factors beyond the employer's
6 control.

7 F. Affected employees or their representatives
8 shall be provided an opportunity to participate as parties at
9 both informal administrative review and commission hearings
10 [~~under~~] provided for in this section.

11 G. Any person, including the department, adversely
12 affected by an order of the commission issued [~~under~~] pursuant
13 to provisions of this section may obtain a review of the order
14 in the [~~court of appeals by filing a notice of appeal in such~~
15 ~~court within thirty days after issuance of the commission's~~
16 ~~order. Every person who participated as a party in the~~
17 ~~proceeding before the commission shall be made a party to the~~
18 ~~appeal, but the commission shall not be deemed a real party in~~
19 ~~interest and shall not be so named. The findings of the~~
20 ~~commission with respect to questions of fact, as supported by~~
21 ~~substantial evidence, shall be conclusive. Upon appeal, the~~
22 ~~court may set aside action of the commission only if found to~~
23 ~~be:~~

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

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1 B. If the corporation commission revokes a
2 certificate of authority to conduct affairs in New Mexico of
3 any foreign corporation or a certificate of incorporation of a
4 domestic corporation, pursuant to the provisions of the
5 Nonprofit Corporation Act, the foreign or domestic corporation
6 may appeal to the district court [~~of the county of Santa Fe by~~
7 ~~filing with the clerk of the court a petition setting forth a~~
8 ~~copy of its certificate of authority or incorporation and a~~
9 ~~copy of the notice of revocation given by the corporation~~
10 ~~commission. The matter shall be tried de novo by the district~~
11 ~~court, and the court shall either sustain the action of the~~
12 ~~commission or direct it to take such action as the court may~~
13 ~~deem proper.~~

14 C. ~~Appeals from all final orders and judgments~~
15 ~~entered by the district court under this section in review of~~
16 ~~any ruling or decision of the corporation commission may be~~
17 ~~taken as in other civil actions] pursuant to the provisions of
18 Section 12-8A-1 NMSA 1978. "~~

19 Section 49. Section 53-18-2 NMSA 1978 (being Laws 1967,
20 Chapter 81, Section 123, as amended) is amended to read:

21 "53-18-2. APPEAL FROM COMMISSION. --

22 A. If the commission fails to approve any articles
23 of incorporation, amendment, merger, consolidation or
24 dissolution or any other document required by the Business
25 Corporation Act to be approved by the commission before it is

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1 filed in its office, it shall, within fifteen working days
2 after the delivery thereof to it, give written notice of its
3 disapproval to the person or corporation, domestic or foreign,
4 delivering the same, specifying the reasons therefor. From the
5 disapproval, the person or corporation may appeal to the
6 district court [~~of Santa Fe county by filing with the clerk of~~
7 ~~the court a petition setting forth the articles or other~~
8 ~~document sought to be filed and a copy of the written~~
9 ~~disapproval thereof by the commission, whereupon the matter~~
10 ~~shall be tried de novo by the court, and the court shall either~~
11 ~~sustain the action of the commission or direct it to take~~
12 ~~action the court may deem proper]~~ pursuant to the provisions of
13 Section 12-8A-1 NMSA 1978.

14 B. If the commission revokes the certificate of
15 authority to transact business in this state of any foreign
16 corporation pursuant to the provisions of the Business
17 Corporation Act, the foreign corporation may appeal to the
18 district court [~~of Santa Fe county by filing with the clerk of~~
19 ~~the court a petition setting forth a copy of its certificate of~~
20 ~~authority to transact business in this state and a copy of the~~
21 ~~notice of revocation given by the commission, whereupon the~~
22 ~~matter shall be tried de novo by the court, and the court shall~~
23 ~~either sustain the action of the commission or direct it to~~
24 ~~take action the court may deem proper.~~

25 C. ~~Appeals from all final orders and judgments~~

Underscored material = new
[bracketed material] = delete

1 ~~entered by the district court of Santa Fe county under this~~
2 ~~section in review of any ruling or decision of the commission~~
3 ~~may be taken as in other civil actions]~~ pursuant to the
4 provisions of Section 12-8A-1 NMSA 1978. "

5 Section 50. Section 53-19-67 NMSA 1978 (being Laws 1993,
6 Chapter 280, Section 67) is amended to read:

7 "53-19-67. APPEAL FROM COMMISSION. -- [A.] If the
8 commission fails to approve any articles of organization,
9 articles of amendment, articles of merger or consolidation or
10 articles of dissolution or any other document required or
11 permitted by the Limited Liability Company Act to be approved
12 by the commission before it is filed in its office, it shall,
13 within fifteen working days after the delivery thereof to it,
14 give written notice of its disapproval to the person delivering
15 the same, specifying the reasons therefor. From the
16 disapproval, the person may appeal to the district court [of
17 ~~Santa Fe county by filing with the clerk of the court a~~
18 ~~petition setting forth the articles or other document sought to~~
19 ~~be filed and a copy of the written disapproval thereof by the~~
20 ~~commission, whereupon the matter shall be tried de novo by the~~
21 ~~court, and the court shall either sustain the action of the~~
22 ~~commission or direct it to take action the court may deem~~
23 ~~proper.~~

24 B. ~~Appeals from all final orders and judgments~~
25 ~~entered by the district court of Santa Fe county under this~~

Underscored material = new
[bracketed material] = delete

1 ~~section in review of any ruling or decision of the commission~~
2 ~~may be taken as in other civil actions]~~ pursuant to the
3 provisions of Section 12-8A-1 NMSA 1978. "

4 Section 51. Section 57-19-36 NMSA 1978 (being Laws 1993,
5 Chapter 98, Section 12) is amended to read:

6 "57-19-36. PENALTIES--ADMINISTRATIVE PROCEDURES--
7 APPEALS.--

8 A. No person, by himself, by his servant or agent
9 or as the servant or agent of another person shall:

10 (1) violate the provisions of the Petroleum
11 Products Standards Act;

12 (2) violate any regulation adopted pursuant to
13 the Petroleum Products Standards Act; or

14 (3) misrepresent a petroleum product as
15 meeting the standards of the Petroleum Products Standards Act.

16 B. Any person who violates Subsection A of this
17 section [~~shall be~~] is guilty of a petty misdemeanor and shall
18 be sentenced in accordance with the provisions of Section
19 31-19-1 NMSA 1978.

20 C. The board shall establish a system of
21 administrative penalties for violations of the Petroleum
22 Products Standards Act. The administrative penalties may be
23 assessed by the director in lieu of or in addition to other
24 penalties provided by statute. In establishing the system of
25 administrative penalties, the board, after public notice and

Underscored material = new
[bracketed material] = delete

1 public hearing, shall adopt [~~regulations~~] rules that meet the
2 following minimum requirements:

3 (1) the maximum amount of any administrative
4 penalty shall not exceed one thousand dollars (\$1,000) for any
5 one violation of the Petroleum Products Standards Act by any
6 person;

7 (2) violations for which administrative
8 penalties may be assessed shall be clearly defined, along with
9 a scale of administrative penalties relating the amount of the
10 administrative penalty to the severity and frequency of the
11 violation;

12 (3) provisions shall be included for due
13 process, including proper notification of administrative
14 proceedings, right to discovery of charges and evidence and
15 appeal procedures; and

16 (4) prior to assessing administrative
17 penalties pursuant to the provisions of the Petroleum Products
18 Standards Act, the department shall comply with Paragraphs (2)
19 and (3) of this subsection.

20 D. Appeals from decisions of the director regarding
21 the assessment of an administrative penalty shall be to the
22 district court [~~in the county where the violation is alleged to~~
23 ~~have occurred. The appeal shall be limited to the record of~~
24 ~~the administrative proceedings, except that in cases of alleged~~
25 ~~irregularities not shown in the record, testimony may be taken]~~

Underscored material = new
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1 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

2 Section 52. Section 58-1-45 NMSA 1978 (being Laws 1963,
3 Chapter 305, Section 34) is amended to read:

4 "58-1-45. COURT REVIEW. -- [A.] Any person aggrieved and
5 directly affected by an order of the [~~commissioner~~] director
6 may appeal to the district court [~~in the county in which said~~
7 ~~person resides or maintains his principal office within thirty~~
8 ~~days after issuance of the order.~~ The filing of a petition for
9 review shall not stay enforcement of an order, but the court
10 ~~may order a stay upon such terms as it deems proper.~~

11 B. ~~The court may affirm the order of the~~
12 ~~commissioner, may direct the commissioner to take action as may~~
13 ~~be affirmatively required by law or may reverse or modify the~~
14 ~~order of the commissioner if the court finds the order:~~

- 15 (1) ~~was issued pursuant to an unconstitutional~~
16 ~~statutory provision;~~
- 17 (2) ~~was in excess of statutory authority;~~
- 18 (3) ~~was issued upon unlawful procedure; or~~
- 19 (4) ~~is not supported by substantial evidence~~
20 ~~in the record.~~

21 Due weight shall be accorded the experience, technical
22 competence and specialized knowledge of the commissioner as
23 well as the discretionary authority conferred upon him.

24 C. ~~The decision of the district court shall be~~
25 ~~subject to appeal as in other civil cases]~~ pursuant to the

Underscored material = new
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1 provisions of Section 12-8A-1 NMSA 1978. "

2 Section 53. Section 58-10-13 NMSA 1978 (being Laws 1967,
3 Chapter 61, Section 13) is amended to read:

4 "58-10-13. REFUSAL OF CHARTER APPLICATION-- APPEAL. --

5 A. Whenever the supervisor is unable to make the
6 findings required by Section [~~12 of the Savings and Loan Act~~]
7 58-10-12 NMSA 1978, he shall serve upon each party of record
8 and his attorney, if any, a written copy of his decision
9 denying the application by certified mail to the party's
10 address of record. All parties shall be deemed to have been
11 served on the tenth day following the mailing. The decision
12 shall include:

- 13 (1) findings of fact made by the supervisor;
- 14 (2) conclusions of law reached by the
15 supervisor; and
- 16 (3) the decision of the supervisor based upon
17 the findings of fact and conclusions of law.

18 B. Any party aggrieved by the decision of the
19 supervisor may appeal the decision to the district court [of
20 ~~the county in which the principal office of the association is~~
21 ~~located by filing a notice of appeal with the clerk of the~~
22 ~~court within thirty days after service of the decision of the~~
23 ~~supervisor. Notice of the appeal shall be served on the~~
24 ~~supervisor and all parties of record in the manner provided by~~
25 ~~law for the service of a summons in civil actions. The notice~~

Underscored material = new
[bracketed material] = delete

1 ~~of appeal shall contain a certification that arrangements have~~
2 ~~been made with the supervisor for preparation at the~~
3 ~~appellant's expense of a sufficient number of copies of the~~
4 ~~record of the hearing. The record of the hearing shall~~
5 ~~include:~~

6 (1) ~~all pleadings, motions and intermediate~~
7 ~~rulings;~~

8 (2) ~~evidence received or considered;~~

9 (3) ~~a statement of matters officially noticed;~~

10 (4) ~~questions and offers of proof, objections~~
11 ~~and rulings thereon;~~

12 (5) ~~any proposed findings submitted;~~

13 (6) ~~the decision of the supervisor and any~~
14 ~~decision, opinion or report by any hearing examiner conducting~~
15 ~~the hearing; and~~

16 (7) ~~a transcript of the testimony presented.~~

17 C. ~~Upon review, the district court shall not~~
18 ~~consider any errors in the decision of the supervisor which~~
19 ~~were not raised in the hearing before the supervisor. The~~
20 ~~review shall be upon the record of the hearing before the~~
21 ~~supervisor, and no new evidence shall be introduced upon~~
22 ~~appeal. The decision of the supervisor shall be sustained~~
23 ~~unless the court finds that the decision was:~~

24 (1) ~~contrary to law;~~

25 (2) ~~arbitrary or capricious; or~~

Underscored material = new
[bracketed material] = delete

1 1985, Chapter 163, Section 21) is amended to read:

2 "58-13A-21. JUDICIAL REVIEW OF ORDERS. --

3 A. Any person aggrieved by a final order of the
4 director may obtain a review of the order in the [court of
5 appeals by filing in court, within thirty days after the entry
6 of the order, a written petition praying that the order be
7 modified or set aside in whole or in part. A copy of the
8 petition for review shall be served upon the director.

9 B. ~~Upon the filing of a petition for review, except~~
10 ~~where the taking of additional evidence is ordered by the court~~
11 ~~pursuant to Subsection E or F of this section, the court shall~~
12 ~~have exclusive jurisdiction of the matter, and the director may~~
13 ~~not modify or set aside the order, in whole or part.] district
14 court pursuant to the provisions of Section 12-8A-1 NMSA 1978.~~

15 [C.] B. The filing of [a petition for review under]
16 an appeal pursuant to Subsection A of this section does not,
17 unless specifically ordered by the court, operate as a stay of
18 the director's order, and the director may enforce or ask the
19 court to enforce the order pending the outcome of the review
20 proceedings.

21 [D. ~~Upon receipt of the petition for review, the~~
22 ~~director shall certify and file in the court a copy of the~~
23 ~~order and the transcript or record of the evidence upon which~~
24 ~~it was based. If the order became final by operation of law~~
25 ~~under Subsection D of Section 20 of the Model State Commodity~~

Underscored material = new
[bracketed material] = delete

1 ~~Code, the director shall certify and file in court the summary~~
2 ~~order, evidence of its service upon the parties to it and an~~
3 ~~affidavit certifying that no hearing has been held and the~~
4 ~~order became final pursuant to Subsection D of Section 20 of~~
5 ~~the Model State Commodity Code.~~

6 ~~E. If either the aggrieved party or the director~~
7 ~~applies to the court for leave to adduce additional evidence~~
8 ~~and shows to the satisfaction of the court that there were~~
9 ~~reasonable grounds for failure to adduce the evidence in the~~
10 ~~hearing before the director or other good cause, the court may~~
11 ~~order the additional evidence to be taken by the director under~~
12 ~~such conditions as the court considers proper.~~

13 ~~F. If new evidence is ordered taken by the court,~~
14 ~~the director may modify the findings and order by reason of the~~
15 ~~additional evidence and shall file in the court the additional~~
16 ~~evidence together with any modified or new findings or order.~~

17 ~~G. The court shall review the petition based upon~~
18 ~~the original record before the director as amended under~~
19 ~~Subsections E and F of this section. The findings of the~~
20 ~~director as to the facts, if supported by competent, material~~
21 ~~and substantive evidence, are conclusive. Based upon this~~
22 ~~review, the court may affirm, modify, enforce or set aside the~~
23 ~~order, in whole or in part.~~

24 ~~H. The judgment of the court is subject to review~~
25 ~~by the supreme court.]"~~

Underscored material = new
[bracketed material] = delete

1 Section 56. Section 58-13B-56 NMSA 1978 (being Laws
2 1986, Chapter 7, Section 56) is amended to read:

3 "58-13B-56. JUDICIAL REVIEW OF ORDERS. - -

4 A. Any person aggrieved by a final order of the
5 director may obtain a review of the order in the [court of
6 appeals by filing in court, within thirty days after the entry
7 of the order, a written petition praying that the order be
8 modified or set aside in whole or in part. A copy of the
9 petition for review shall be served upon the director. -

10 B. ~~Upon the filing of a petition for review, except~~
11 ~~where the taking of additional evidence is ordered by the court~~
12 ~~pursuant to Subsection E or F of this section, the court shall~~
13 ~~have exclusive jurisdiction of the matter, and the director may~~
14 ~~not modify or set aside the order, in whole or part.] district
15 court pursuant to the provisions of Section 12-8A-1 NMSA 1978.~~

16 [C.] B. The filing of [a petition for review under]
17 an appeal pursuant to Subsection A of this section does not,
18 unless specifically ordered by the court, operate as a stay of
19 the director's order, and the director may enforce or ask the
20 court to enforce the order pending the outcome of the review
21 proceedings.

22 [D. ~~Upon receipt of the petition for review, the~~
23 ~~director shall certify and file in the court:-~~

24 (1) ~~a copy of the order; and~~

25 (2) ~~if the order was issued following a~~

Underscored material = new
[bracketed material] = delete

1 ~~hearing, the transcript or record of the evidence upon which~~
2 ~~the order was based or, if the order became final by operation~~
3 ~~of law pursuant to Subsection D of Section 53 of the New Mexico~~
4 ~~Securities Act of 1986, record of notification to all parties~~
5 ~~against whom action is taken or contemplated of the entry of~~
6 ~~the order and an affidavit certifying that no hearing was held~~
7 ~~because the party requesting a hearing did not appear or the~~
8 ~~time period for requesting such hearing has expired.~~

9 ~~E. If either the aggrieved party or the director~~
10 ~~applies to the court for leave to adduce additional evidence,~~
11 ~~and shows to the satisfaction of the court that there were~~
12 ~~reasonable grounds for failure to adduce the evidence at the~~
13 ~~hearing before the director or other good cause, the court may~~
14 ~~order the additional evidence to be taken by the director under~~
15 ~~such conditions as the court considers proper.~~

16 ~~F. If new evidence is ordered taken by the court,~~
17 ~~the director may modify the findings and order by reason of the~~
18 ~~additional evidence and shall file in the court the additional~~
19 ~~evidence together with any modified or new findings or order.~~

20 ~~G. The court shall review the petition based upon~~
21 ~~the original record before the director as amended under~~
22 ~~Subsections E and F of this section. The findings of the~~
23 ~~director as to the facts, if supported by competent, material~~
24 ~~and substantive evidence, are conclusive. Based upon this~~
25 ~~review, the court may affirm, modify, enforce or set aside the~~

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[bracketed material] = delete

1 ~~order, in whole or in part.~~

2 ~~H. The judgment of the court is subject to review~~
3 ~~by the supreme court.] "~~

4 Section 57. Section 58-15-25 NMSA 1978 (being Laws 1955,
5 Chapter 128, Section 23, as amended) is amended to read:

6 "58-15-25. REVIEW. - - [A. ~~Any interested party to a~~
7 ~~formal hearing before the director may, within twenty days~~
8 ~~after written notice of his decision, file an application~~
9 ~~before the director for a rehearing.~~

10 ~~B. Within twenty days after notice of the~~
11 ~~director's decision or of notice that the application for a~~
12 ~~rehearing is denied, or, if the application is granted, within~~
13 ~~twenty days after notice of the rendition of a decision on the~~
14 ~~rehearing, any interested party may apply to the district court~~
15 ~~of Santa Fe county for a writ of certiorari or review for the~~
16 ~~purpose of having the lawfulness of the original order inquired~~
17 ~~into and determined. Such writ shall be made returnable not~~
18 ~~later than twenty days after the date of the issuance thereof~~
19 ~~and shall direct the director to certify his record, which~~
20 ~~shall include all the proceedings and the evidence taken in the~~
21 ~~case, to the court. No new or additional evidence may be~~
22 ~~introduced in such court except such as may have been~~
23 ~~wrongfully excluded by the director, and the cause shall be~~
24 ~~heard de novo on the law and the facts as disclosed by the~~
25 ~~record of the director and such additional evidence.~~

Underscored material = new
[bracketed material] = delete

1 C. ~~The director, the attorney general and any~~
2 ~~party to the hearing or proceeding before the director and any~~
3 ~~other person the court shall determine to be necessary to a~~
4 ~~complete adjudication shall have the right to appear in the~~
5 ~~review proceeding. Upon the hearing, the court shall enter~~
6 ~~judgment either affirming the director's order or directing~~
7 ~~what order the director shall issue.~~

8 D. ~~The provisions of the Code of Civil Procedure~~
9 ~~relating to writs of certiorari or writ of review shall, so far~~
10 ~~as applicable and not in conflict with the New Mexico Small~~
11 ~~Loan Act of 1955, apply to proceedings in the courts under the~~
12 ~~provisions of the New Mexico Small Loan Act of 1955.~~

13 E. ~~The writ of injunction shall not be available to~~
14 ~~any person to suspend or delay the director from conducting~~
15 ~~hearings relating to the granting or denial of applications for~~
16 ~~licenses hereunder or revocation or suspension proceedings~~
17 ~~unless and until the director shall have entered a final order~~
18 ~~thereon, it being intended that review proceedings hereinabove~~
19 ~~provided for shall be the exclusive remedy in such matters. No~~
20 ~~court except the district court of Santa Fe county and the~~
21 ~~supreme court shall have jurisdiction to review, reverse or~~
22 ~~annul or to suspend or delay the operation or execution of any~~
23 ~~order of the director relating to the granting or denial,~~
24 ~~revocation or suspension of licenses hereunder; but, as regards~~
25 ~~to any other matter, any person aggrieved by any order or act~~

Underscored material = new
[bracketed material] = delete

1 ~~of the director shall not be limited in his manner or method of~~
2 ~~proceeding but may proceed by any applicable proceeding~~
3 ~~provided or recognized by law and]~~ Any licensee or any person
4 [considering himself] aggrieved by any act or order of the
5 director [hereunder other than as above specified may, within
6 thirty days from the entry of the order complained of or within
7 sixty days of the act complained of if there is no order, bring
8 an action in the district court to review such order or act]
9 pursuant to the New Mexico Small Loan Act of 1995 may file and
10 appeal in the district court pursuant to the provisions of
11 Section 12-8A-1 NMSA 1978. "

12 Section 58. Section 58-19-4 NMSA 1978 (being Laws 1959,
13 Chapter 204, Section 4, as amended) is amended to read:

14 "58-19-4. SUSPENSION OR REVOCATION OF LICENSES--RENEWAL
15 LICENSE DENIED--APPEALS.--

16 A. Renewal of a license originally granted under
17 the Motor Vehicle Sales Finance Act may be denied or a license
18 may be suspended or revoked by the director on any of the
19 following grounds:

- 20 (1) material misstatement in application for
21 license;
- 22 (2) willful failure to comply with any
23 provision of that act relating to retail installment contracts;
- 24 (3) defrauding any retail buyer to the buyer's
25 detriment while a licensee [hereunder] under that act;

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[bracketed material] = delete

1 (4) fraudulent misrepresentation,
2 circumvention or concealment by the licensee through whatever
3 subterfuge or device of any of the material particulars
4 required to be stated or furnished to the retail buyer under
5 that act; or

6 (5) during the course of examination, the
7 licensee intentionally furnished the examiner or duly
8 authorized representative with false or misleading information
9 so as to prevent discovery of apparent violations of that act.

10 B. If a licensee is a firm, association or
11 corporation, it shall be sufficient cause for the suspension or
12 revocation of a license that any officer, director or trustee
13 of a licensed firm, association or corporation, or any member
14 of a licensed partnership, has [~~so~~] acted or failed to act in
15 the conduct of the business under its license as would be cause
16 for suspending or revoking a license to [~~such~~] the person as an
17 individual. Each licensee shall be responsible for the acts of
18 any of its employees while acting as its agent, if [~~such~~] the
19 licensee after actual knowledge of the acts retained the
20 benefits, proceeds, profits or advantages accruing from the
21 acts or otherwise ratified the acts.

22 C. No license shall be denied, suspended or revoked
23 except after hearing [~~thereon~~]. The director shall give the
24 licensee at least ten days' written notice, in the form of an
25 order to show cause, of the time and place of [~~such~~] the

Underscored material = new
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1 hearing by certified mail addressed to the principal place of
2 business. The notice shall contain the grounds of complaint
3 against the licensee. Any order suspending or revoking [~~such~~]
4 a license shall recite the grounds upon which the [~~same~~] order
5 is based. The order shall be entered upon the records of the
6 director and shall not be effective until after thirty days'
7 written notice thereof, given after [~~such~~] the entry, forwarded
8 by certified mail to the licensee at [~~such~~] his principal place
9 of business. No revocation, suspension or surrender of any
10 license shall impair or affect the obligation of any lawful
11 retail installment contract acquired previously [~~thereto~~] by
12 the licensee.

13 ~~[D. Within thirty days after any such denial,~~
14 ~~suspension or revocation of a license, the person aggrieved may~~
15 ~~apply for a review thereof by an application to the district~~
16 ~~court of the county in which the applicant resides in~~
17 ~~accordance with the practice of the court. The court shall~~
18 ~~determine, de novo, all questions both of fact and of law~~
19 ~~touching upon the legality and reasonableness of the~~
20 ~~determination of the director and shall render such judgment as~~
21 ~~shall be lawful and just.]~~

22 D. A person aggrieved by the denial, suspension or
23 revocation of a license may file an appeal to the district
24 court pursuant to the provisions of Section 12-8A-1 NMSA 1978.

25 E. The director shall publish a notice that a

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[bracketed material] = delete

1 license has been revoked or suspended within thirty days after
2 [~~such~~] the revocation or suspension in a newspaper of general
3 circulation in the county in which the licensee was doing
4 business. "

5 Section 59. Section 58-21-16 NMSA 1978 (being Laws 1983,
6 Chapter 86, Section 16) is amended to read:

7 "58-21-16. REVIEW OF ORDER OF DIRECTOR. --

8 A. Any person aggrieved by a final order of the
9 director may [~~obtain a review of the order in the district~~
10 ~~court of the first judicial district of Santa Fe county by~~
11 ~~filing in court, within thirty days after the entry of the~~
12 ~~order, a written petition praying that the order be modified or~~
13 ~~set aside in whole or in part. A copy of the petition shall be~~
14 ~~served upon the director, and, thereupon, the director shall~~
15 ~~certify and file in court a copy of the filing and evidence~~
16 ~~upon which the order was entered. The findings of the director~~
17 ~~as to the facts, if supported by competent, material and~~
18 ~~substantial evidence, are conclusive. If either party applies~~
19 ~~to the court for leave to adduce additional material evidence~~
20 ~~and shows to the satisfaction of the court that there were~~
21 ~~reasonable grounds for failure to adduce the evidence in the~~
22 ~~hearing before the director and to be adduced upon the hearing~~
23 ~~in such manner and upon such conditions as the court considers~~
24 ~~proper, the director may modify his findings and order by~~
25 ~~reason of the additional evidence together with any modified or~~

Underscored material = new
[bracketed material] = delete

1 ~~new findings or order~~] appeal to the district court pursuant to
2 the provisions of Section 12-8A-1 NMSA 1978.

3 B. The commencement of the proceedings under
4 Subsection A of this section does not, unless specifically
5 ordered by the court, operate as a stay of the director's
6 order. "

7 Section 60. Section 58-22-29 NMSA 1978 (being Laws 1983,
8 Chapter 135, Section 29) is amended to read:

9 "58-22-29. REVIEW OF ORDER OF DIRECTOR. --

10 A. Any person aggrieved by a final order of the
11 director may [~~obtain a review of the order in the district~~
12 ~~court of the first judicial district of Santa Fe county by~~
13 ~~filing in court, within thirty days after the entry of the~~
14 ~~order, a written petition praying that the order be modified or~~
15 ~~set aside in whole or in part. A copy of the petition shall be~~
16 ~~forthwith served upon the director, and the director shall~~
17 ~~certify and file in court a copy of the filing and evidence~~
18 ~~upon which the order was entered. The findings of the director~~
19 ~~as to the facts, if supported by competent, material and~~
20 ~~substantial evidence, are conclusive~~] appeal to the district
21 court pursuant to the provisions of Section 12-8A-1 NMSA 1978 .

22 B. The commencement of proceedings [~~under~~] pursuant
23 to Subsection A of this section does not, unless specifically
24 ordered by the court, operate as a stay of the director's
25 order. "

Underscored material = new
[bracketed material] = delete

1 Section 61. Section 59A-4-20 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 67, as amended) is amended to read:

3 "59A-4-20. APPEAL TO COURT. --

4 A. A party may appeal from an order of the
5 superintendent made after an informal hearing or an
6 administrative hearing. [and the court shall try the matter de
7 novo; provided that if an administrative hearing was held, the
8 court may, in its discretion, limit its review to that provided
9 in Section 12-8-22 NMSA 1978, in which case Sections 12-8-17
10 through 12-8-22 NMSA 1978 shall apply.]

11 B. ~~The appeal shall be taken within sixty days~~
12 ~~after receipt, by the party appealing, of a copy of the~~
13 ~~decision from the review of the superintendent's order by the~~
14 ~~corporation commission or insurance board, if such review is~~
15 ~~sought. If no such review is sought, the appeal shall be taken~~
16 ~~within sixty days after receipt of a copy of the~~
17 ~~superintendent's order by the party appealing.~~

18 C. ~~The appeal shall be taken to the district court~~
19 ~~for Santa Fe county in the same manner and under the same rules~~
20 ~~of pleading, practice and procedure in civil actions as apply~~
21 ~~to appeals to court from actions of state administrative~~
22 ~~officers or agencies in general.~~

23 D. ~~Filing of an appeal pursuant to this section~~
24 ~~shall not stay the effectiveness of the order on hearing~~
25 ~~appealed from unless, after notice and opportunity given the~~

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[bracketed material] = delete

1 ~~parties to be heard and for good cause shown, the court~~
2 ~~determines that a stay should be granted and would not be~~
3 ~~detrimental to the interests of any other party or to~~
4 ~~policyholders, stockholders, creditors or to the public.~~

5 ~~E. The district court may affirm, reinstate, modify~~
6 ~~or vacate the order appealed from or remand for rehearing by~~
7 ~~the superintendent as to designated matters involved in the~~
8 ~~hearing. The judgment of the district court may be appealed to~~
9 ~~the court of appeals or to the supreme court of New Mexico.]~~
10 The appeal shall be taken to the district court pursuant to the
11 provisions of Section 12-8A-1 NMSA 1978.

12 ~~[F-]~~ B. This section shall not apply as to matters
13 arising ~~[under]~~ pursuant to Chapter 59A, Article 17 NMSA 1978. "

14 Section 62. Section 59A-11A-4 NMSA 1978 (being Laws
15 1989, Chapter 97, Section 4) is amended to read:

16 "59A-11A-4. INSURANCE CONSULTANT LICENSE--SUSPENSION OR
17 REVOCATION--APPEAL--PENALTY. --

18 A. The superintendent may revoke the license of an
19 insurance consultant or suspend it for a period not exceeding
20 the expiration date of the license for any good cause shown as
21 provided in the Insurance Code. The superintendent shall
22 revoke or suspend a license only upon notice and hearing as
23 provided in the Insurance Code.

24 B. Any person aggrieved by the action of the
25 superintendent in revoking, suspending or refusing to grant,

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1 renew or reissue a license may appeal that action [~~as provided~~
2 ~~in the Insurance Code~~] to the district court pursuant to the
3 provisions of Section 12-8A-1 NMSA 1978.

4 C. The superintendent may at any time require such
5 information as he deems necessary in respect to the business
6 methods, policies and transactions of a licensee. Any person
7 who fails or refuses to furnish the superintendent in the form
8 he may require any such information within ten days after
9 receiving a written request for it is guilty of a misdemeanor
10 and upon conviction shall be fined not less than fifty dollars
11 (\$50.00) [~~not~~] or more than five hundred dollars (\$500)."

12 Section 63. Section 59A-17-35 NMSA 1978 (being Laws
13 1984, Chapter 127, Section 330, as amended) is amended to read:

14 "59A-17-35. APPEALS FROM INSURANCE BOARD. -- [A-] Any
15 order made by the insurance board pursuant to Section 59A-17-34
16 NMSA 1978 shall be subject to review by appeal to the district
17 court [~~of Santa Fe county in the same manner as provided for~~
18 ~~taking of appeals in other civil actions~~] pursuant to the
19 provisions of Section 12-8A-1 NMSA 1978. Upon institution of
20 the appeal and for good cause shown upon motion and hearing,
21 the court may, in the following cases, stay operation of the
22 insurance board's order:

23 [(1)] A. where, pursuant to Chapter 59A, Article 17
24 NMSA 1978, a rate service organization has been refused a
25 license or an insurer has been refused a certificate of

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1 authority or had its license or certificate of authority
2 suspended, it may, with leave of court, be allowed to continue
3 to engage in business, subject to the provisions of that
4 article, pending final disposition of its application for
5 review; or

6 ~~[(2)]~~ B. where any order of the insurance board
7 shall provide for, or sustain the superintendent's order for, a
8 change in any rate or rating system [~~which~~] that results in an
9 increase or decrease in rates, any insurer affected [~~thereby~~]
10 may, with leave of court pending final disposition of the
11 proceedings in the district court, continue to charge rates
12 [~~which~~] that existed prior to such order, on condition that the
13 difference in the rates be deposited in a special escrow or
14 trust account with a reputable financial institution by the
15 insurer affected, to be held in trust by such insurer and to be
16 retained by the insurer or paid to the holders of policies
17 issued after the order of the court, as the court may
18 determine.

19 ~~[B.—The court shall sustain the administrative~~
20 ~~action appealed from unless the court finds such action to have~~
21 ~~been unlawful or arbitrary or capricious or not based upon~~
22 ~~substantial evidence and after giving due consideration to the~~
23 ~~expertise of the superintendent and insurance board.—]~~"

24 Section 64. Section 59A-29-6 NMSA 1978 (being Laws 1985,
25 Chapter 61, Section 6, as amended) is amended to read:

1 "59A-29-6. APPEALS-- JUDICIAL REVIEW [~~DE-NOVO~~]. --

2 A. [~~Any~~] A person aggrieved by [~~any~~] an action or
3 decision of the administrators of the FAIR plan or the
4 underwriting association or of any insurer as a result of its
5 participation [~~therein~~] may appeal to the superintendent [~~of~~
6 ~~insurance~~] within thirty days from the date of the action or
7 the decision. The superintendent [~~of insurance~~] shall, after
8 hearing held upon thirty days' written notice, issue an order
9 approving the action or decision or disapproving the action or
10 decision with respect to the matter [~~which~~] that is the subject
11 of appeal.

12 B. All final orders and decisions of the
13 superintendent [~~of insurance~~] shall be subject to judicial
14 review [~~de-novo~~] in the district court pursuant to the
15 provisions of Section 12-8A-1 NMSA 1978. "

16 Section 65. Section 59A-30-9 NMSA 1978 (being Laws 1985,
17 Chapter 28, Section 9) is amended to read:

18 "59A-30-9. REVIEW - APPEALS. -- [~~A. Any~~] A person
19 aggrieved by an order of the superintendent promulgating rates
20 under the New Mexico Title Insurance Law shall have the rights
21 to review and appeal provided for in [~~Section~~] Sections
22 59A-17-34 [~~NMSA 1978~~] and [~~Section~~] 59A-17-35 NMSA 1978.

23 [~~B. Any party may appeal the decision of the~~
24 ~~district court under Section 59A-17-35 NMSA 1978 to the supreme~~
25 ~~court in the same manner as provided for the taking of appeals~~

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1 ~~in other civil actions.]"~~

2 Section 66. Section 59A-42-12 NMSA 1978 (being Laws
3 1984, Chapter 127, Section 761) is amended to read:

4 "59A-42-12. APPEALS. --

5 A. [Any] A member insurer may appeal to the
6 superintendent from [any] an action of the board of directors
7 of the association by filing with the superintendent a notice
8 of appeal within thirty [~~(30)~~] days after the action appealed
9 from.

10 B. [Any] A final order of the superintendent on
11 appeal is subject to judicial review by an action in the
12 district court [~~of Santa Fe county to set aside the order as~~
13 ~~being unlawful or not supported by substantial evidence. If an~~
14 ~~action for judicial review is not filed within thirty (30) days~~
15 ~~after the superintendent's order on appeal, the order becomes~~
16 ~~final and conclusive]~~ pursuant to the provisions of
17 Section 12-8A-1 NMSA 1978. "

18 Section 67. Section 59A-43-14 NMSA 1978 (being Laws
19 1984, Chapter 127, Section 780) is amended to read:

20 "59A-43-14. APPEALS. --

21 A. [Any] A claimant whose claim is denied in whole
22 or in part by the association may, pursuant to [~~this article~~]
23 Chapter 59A, Article 43 NMSA 1978, request the receivership
24 court to review the decision of the association. [Any such] A
25 request for review shall be filed within thirty [~~(30)~~] days of

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1 [such] the denial. The receivership court shall have
2 jurisdiction of all [such] claims and the decision of the court
3 shall be binding on both the claimant and the association.

4 B. [Any] A member insurer may appeal to the
5 superintendent from [any] an action of the board of directors
6 of the association by filing with the superintendent a notice
7 of appeal within thirty [~~(30)~~] days after the action appealed
8 from.

9 C. [Any] A final order of the superintendent on
10 appeal is subject to judicial review by an action in the
11 district court [~~of Santa Fe county to set aside the order as~~
12 ~~being unlawful or not supported by substantial evidence. If an~~
13 ~~action for judicial review is not filed within thirty (30) days~~
14 ~~after the superintendent's order on appeal, the order becomes~~
15 ~~final and conclusive] pursuant to the provisions of Section
16 12-8A-1 NMSA 1978. "~~

17 Section 68. Section 59A-47-29 NMSA 1978 (being Laws
18 1984, Chapter 127, Section 879.28) is amended to read:

19 "59A-47-29. SETTLEMENT OF DISPUTES -- APPEAL. -- The parties
20 to [any] a dispute between a health care plan and [any] a
21 purveyor arising out of a health care expense payments contract
22 may submit the dispute to the superintendent for his final
23 decision [~~thereon~~] and [such] his final decision shall then be
24 binding upon the parties to [such] the contract. [~~except, that~~
25 ~~any such party, within thirty (30) days following filing of~~

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1 ~~such decision but not thereafter, may file in a court of~~
2 ~~competent jurisdiction any action or proceeding relating to the~~
3 ~~subject matter of the dispute which might have been filed in~~
4 ~~absence of this provision] A party to the contract may seek
5 review of the superintendent's decision by filing an appeal in
6 the district court pursuant to the provisions of Section
7 12-8A-1 NMSA 1978. "~~

8 Section 69. Section 59A-52-22 NMSA 1978 (being Laws
9 1984, Chapter 127, Section 968) is amended to read:
10 "59A-52-22. JUDICIAL REVIEW OF ORDER. -- [Any] A person
11 ~~[may, within thirty (30) days after the state fire board has~~
12 ~~filed its decision, appeal to the district court of Santa Fe~~
13 ~~county for a review of the decision. The appeal shall be taken~~
14 ~~by filing a petition for review in the district court of Santa~~
15 ~~Fe county setting forth the grounds of complaint against the~~
16 ~~decision. All rules of pleading, practice and procedure in~~
17 ~~force with respect to civil actions shall apply to such actions~~
18 ~~insofar as they are applicable. The judgment of the district~~
19 ~~court in any such action may be appealed to the supreme court~~
20 ~~as in the case of other civil actions] aggrieved by a decision
21 of the state fire board may appeal to the district court
22 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "~~

23 Section 70. Section 60-2B-4 NMSA 1978 (being Laws 1981,
24 Chapter 259, Section 4, as amended) is amended to read:
25 "60-2B-4. LICENSING AUTHORITY-- POWERS-- DUTIES --

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HEARINGS--APPEALS. --

A. The regulation and licensing department is designated as the "licensing authority" of the Bingo and Raffle Act. The superintendent of regulation and licensing is the executive in charge of enforcement of the terms and provisions of that act and, as the state licensing authority, has the powers and duties as follows:

(1) to grant or refuse licenses under the Bingo and Raffle Act. In addition, the licensing authority has the power, on its own motion based on reasonable grounds or on complaint made and after investigation by the special investigations division of the department of public safety [~~department~~] and public hearing at which the licensee shall be afforded an opportunity to be heard, to assess administrative fines to the licensee and to suspend or revoke any license issued by the licensing authority for any violation by the licensee or any officer, director, agent, member or employee of the licensee of the provisions of that act or any rule or regulation authorized under that act. Notice of suspension or revocation, as well as notice of the hearing, shall be given by certified mail to the licensee at the address contained in the license. Any license may be temporarily suspended for a period not to exceed thirty days pending any prosecution, investigation or public hearing;

(2) to supervise the administration of the

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1 Bingo and Raffle Act and to adopt, amend and repeal rules and
2 regulations governing the holding, operating and conducting of
3 games of chance, the rental of premises and the purchase of
4 equipment to the end that games of chance shall be held,
5 operated and conducted only by licensees for the purposes and
6 in conformity with the constitution of New Mexico and the
7 provisions of that act;

8 (3) to hear and determine at public hearings
9 all complaints against any licensee and to administer oaths and
10 issue subpoenas to require the presence of persons and
11 production of papers, books and records necessary to the
12 determination of any hearing [~~so~~] held;

13 (4) to keep records of all actions and
14 transactions of the licensing authority;

15 (5) to prepare and transmit annually, in the
16 form and manner prescribed by the licensing authority pursuant
17 to the provisions of law, a report accounting to the governor
18 and the legislature for the efficient discharge of all
19 responsibilities assigned by law or directive to the licensing
20 authority; and

21 (6) to issue publications of the licensing
22 authority intended for circulation in quantity outside the
23 executive branch in accordance with fiscal rules promulgated by
24 the licensing authority.

25 B. Proceedings brought against a licensee for a

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1 violation of the Bingo and Raffle Act shall be brought by the
2 licensing authority by serving, in the manner provided in the
3 rules of civil procedure, a complaint upon the licensee and
4 notifying the licensee of the place and date, not less than
5 twenty days after the date of service, at which a hearing shall
6 be held. The complaint shall set forth, in the manner of
7 complaints in civil action, the violations of the Bingo and
8 Raffle Act or the rules and regulations of the licensing
9 authority [~~which~~] that the licensing authority alleges the
10 licensee has committed. The licensing authority or the
11 department of public safety [~~department~~] may stop the operation
12 of a game of chance pending hearing, in which case the hearing
13 shall be held within ten days after notice.

14 C. The licensing authority shall cause the notice
15 of hearing to be served personally upon an officer of the
16 licensee or the member in charge of the conduct of the game of
17 chance or to be sent by registered or certified mail to the
18 licensee at the address shown in the license.

19 D. When proceedings are brought against a licensee
20 for a violation of the Bingo and Raffle Act, the licensing
21 authority shall hear the matter and make written findings in
22 support of its decision. The licensee shall be informed
23 immediately of the decision and, in the event of a suspension
24 or revocation, the effective date of the suspension or
25 revocation.

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1 E. For the first violation by a licensee of the
2 Bingo and Raffle Act, the licensing authority may assess an
3 administrative fine of not to exceed one thousand dollars
4 (\$1,000). For a second or subsequent violation by the licensee
5 of that act, the licensing authority may assess an
6 administrative fine of not to exceed two thousand five hundred
7 dollars (\$2,500). The amount of the administrative fine shall
8 be determined by the severity and nature of the violation of
9 the Bingo and Raffle Act and by the number of prior violations
10 of that act.

11 F. When a license is ordered suspended or revoked,
12 the licensee shall surrender the license to the licensing
13 authority on or before the effective date of the suspension or
14 revocation. No license is valid beyond the effective date of
15 the suspension or revocation, whether surrendered or not.

16 G. Upon the finding of a violation of the Bingo and
17 Raffle Act or the rules and regulations, or both, that would
18 warrant the suspension or revocation of a license, the
19 licensing authority, in addition to any other penalties [~~which~~
20 that may be imposed, may declare the violator ineligible to
21 conduct a game of chance and to apply for a license under that
22 act for a period not exceeding twelve months. The declaration
23 of ineligibility may be extended to include, in addition to the
24 violator, any of its subsidiary organizations, its parent
25 organization or an organization otherwise affiliated with the

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1 violator when in the opinion of the licensing authority the
2 circumstances of the violation warrant that action.

3 H. Upon receipt by a licensee of a complaint signed
4 by the licensing authority and notice of a hearing, the
5 licensee shall answer, in the manner of civil actions, the
6 complaint and inform the licensing authority whether oral
7 argument is desired and whether the licensee desires to produce
8 witnesses.

9 I. At the request of any party and for good cause
10 shown, the licensing authority or the department of public
11 safety [~~department~~] shall issue subpoenas for the attendance of
12 witnesses and the production of books, records and other
13 documents, but in no case shall a subpoena be made returnable
14 more than five days after service.

15 J. Whenever oral testimony of witnesses is taken at
16 the hearing, the licensing authority or the department of
17 public safety [~~department~~] shall have a certified reporter
18 present to prepare a record of the proceedings. The original
19 transcript shall be filed with the licensing authority. Any
20 party is entitled to secure a copy from the reporter at his own
21 expense.

22 K. Hearings may be convened by the licensing
23 authority from time to time at the request of any party, but
24 only for good cause shown. Hearings shall be held and
25 concluded with reasonable dispatch and without unnecessary

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1 delay. The licensing authority shall decide any matter within
2 thirty days of the hearing.

3 L. Upon the determination of any matter heard, the
4 licensing authority shall state its findings. All parties
5 shall be notified by the licensing authority of the action of
6 the licensing authority and shall be furnished a copy of the
7 findings.

8 M Applicants for a license or the licensee may be
9 represented by counsel.

10 N. Any person appearing before the licensing
11 authority in a representative capacity shall be required to
12 show his authority to act in that capacity.

13 O. No person shall be excused from testifying or
14 producing any book or document in any investigation or hearing
15 when ordered to do so by the licensing authority upon the
16 ground that testimony or documentary evidence required of him
17 may tend to incriminate or subject him to penalty or
18 forfeiture, but no person may be prosecuted, punished or
19 subjected to any penalty or forfeiture on account of any matter
20 or thing concerning which he, under oath, testified or produced
21 documentary evidence, except that he shall not be exempt from
22 prosecution or punishment for any perjury committed by him in
23 his testimony.

24 P. If a person subpoenaed to attend in any
25 investigation or hearing fails to obey the command of the

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1 subpoena without reasonable cause or if a person in attendance
2 in any investigation or hearing refuses, without lawful cause,
3 to be examined or to answer a legal or pertinent question or to
4 exhibit any book, account, record or other document when
5 ordered to do so by the representative of the licensing
6 authority holding the hearing or by the department of public
7 safety [~~department~~] performing the investigation, the licensing
8 authority or the department of public safety [~~department~~] may
9 apply to any judge of the district court, upon proof by
10 affidavit of the facts, for an order returnable in not less
11 than five nor more than ten days directing the person to show
12 cause before the judge why he should not comply with the
13 subpoena or order.

14 Q. Upon return of the order, the judge before whom
15 the matter comes for hearing shall examine the person under
16 oath. If the judge determines after giving the person an
17 opportunity to be heard that he refused without lawful excuse
18 to comply with the subpoena or the order of the licensing
19 authority or the department of public safety [~~department~~]
20 holding the investigation, the judge may order the person to
21 comply with the subpoena or order forthwith, and any failure to
22 obey the order of the judge may be punished as a contempt of
23 the district court.

24 R. Every witness is entitled to be paid for
25 attendance or attendance and travel by the party on whose

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1 behalf he is subpoenaed, at the rates prescribed by law, before
2 being required to testify.

3 S. The decision of the licensing authority in
4 suspending or revoking any license under the Bingo and Raffle
5 Act shall be subject to review. ~~[Any licensee aggrieved by a~~
6 ~~decision, within thirty days after receipt of a copy of the~~
7 ~~order of the licensing authority, may file a petition in the~~
8 ~~district court of Santa Fe county. That court has~~
9 ~~jurisdiction, after notice to the licensing authority, to hear~~
10 ~~and determine the petition and to affirm, reverse, vacate or~~
11 ~~modify the order of the licensing authority complained of if,~~
12 ~~upon consideration of the record, the court is of the opinion~~
13 ~~that the order was unlawful or unreasonable.~~

14 T. ~~Upon any petition being filed, a copy shall be~~
15 ~~served upon the licensing authority by delivery of a copy to~~
16 ~~the licensing authority. In the petition, the petitioner shall~~
17 ~~be denominated as respondent. The petition shall set forth the~~
18 ~~errors complained of.~~

19 U. ~~Upon service of a petition, the licensing~~
20 ~~authority, within twenty days or within such further time as~~
21 ~~the court may grant, shall file an answer to the petition in~~
22 ~~the office of the clerk of the court. With its answer, the~~
23 ~~licensing authority shall file a transcript of the records and~~
24 ~~orders of the licensing authority and a transcript of all~~
25 ~~papers and of all evidence adduced upon the hearing before the~~

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1 ~~licensing authority in the proceedings complained of. The~~
2 ~~court shall hear and determine the matter upon the petition,~~
3 ~~answer and transcripts.] A licensee aggrieved by a decision of
4 the licensing board may appeal to the district court pursuant
5 to the provisions of Section 12-8A-1 NMSA 1978.~~

6 [V.] T. No proceeding to vacate, reverse or modify
7 any final order rendered by the licensing authority shall
8 operate to stay the execution or effect of any final order
9 unless the district court, on application and three days'
10 notice to the licensing authority, allows the stay. In the
11 event a stay is ordered, the petitioner shall be required to
12 execute his bond in a sum the court may prescribe, with
13 sufficient surety to be approved by the judge or clerk of the
14 court, which bond shall be conditioned upon the faithful
15 performance by the petitioner of his obligation as a licensee
16 and upon the prompt payment of all damages arising from or
17 caused by the delay in the taking effect or enforcement of the
18 order complained of and for all costs that may be assessed or
19 required to be paid in connection with the proceedings. "

20 Section 71. Section 60-6B-2 NMSA 1978 (being Laws 1981,
21 Chapter 39, Section 38, as amended) is amended to read:

22 "60-6B-2. APPLICATIONS -- APPEALS. --

23 A. Before any new license authorized by the Liquor
24 Control Act may be issued by the director, the applicant for
25 the license shall:

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1 (1) submit to the director a written
2 application for the license under oath, in the form prescribed
3 by and stating the information required by the director,
4 together with a nonrefundable application fee of one hundred
5 fifty dollars (\$150);

6 (2) submit to the director for his approval a
7 description, including floor plans, in a form prescribed by the
8 director, which shows the proposed licensed premises for which
9 the license application is submitted. The area represented by
10 the approved description shall become the licensed premises;

11 (3) if the applicant is a corporation, be
12 required to submit as part of its application the following:

13 (a) a certified copy of its articles of
14 incorporation or, if a foreign corporation, a certified copy of
15 its certificate of authority;

16 (b) the names and addresses of all
17 officers and directors and those stockholders owning ten
18 percent or more of the voting stock of the corporation and the
19 amounts of stock held by each stockholder; provided, however, a
20 corporation may not be licensed if an officer, manager,
21 director or holder of more than ten percent of the stock would
22 not be eligible to hold a license pursuant to the Liquor
23 Control Act, except that the provision of Subsection [B] D of
24 Section 60-6B-1 NMSA 1978 shall not apply if the stock is
25 listed with a national securities exchange;

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1 (c) the name of the resident agent of
2 the corporation authorized to accept service of process for all
3 purposes, including orders and notices of the director, which
4 agent shall be approved by the director with respect to his
5 character;

6 (d) a duly executed power of attorney
7 authorizing the agent described in Subparagraph (c) of this
8 paragraph to exercise full authority, control and
9 responsibility for the conduct of all business and transactions
10 of the corporation within the state relative to the sale of
11 alcoholic beverages under authority of the license requested;
12 and

13 (e) [~~such~~] additional information
14 regarding the corporation as the director may require to assure
15 full disclosure of the corporation's structure and financial
16 responsibility;

17 (4) if the applicant is a limited partnership,
18 submit as part of its application the following:

19 (a) a certified copy of its certificate
20 of limited partnership;

21 (b) the names and addresses of all
22 general partners and of all limited partners contributing ten
23 percent or more of the total value of contributions made to the
24 limited partnership or entitled to ten percent or more of the
25 profits earned or other income paid by the limited partnership.

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1 No limited partnership shall receive a license if any partner
2 designated in this subsection would not be eligible to hold a
3 license issued pursuant to the Liquor Control Act; and

4 (c) [~~such~~] additional information
5 regarding the limited partnership as the director may require
6 to assure full disclosure of the limited partnership's
7 structure and financial responsibility; and

8 (5) obtain approval for the issuance from the
9 governing body of the local option district in which the
10 proposed licensed premises are to be located in accordance with
11 the provisions of the Liquor Control Act.

12 B. Every applicant for a new license or for a
13 transfer of ownership of a license, if an individual or general
14 partnership, shall file with the application two complete sets
15 of fingerprints of each individual, taken under the supervision
16 of and certified to by an officer of the New Mexico state
17 police, a county sheriff or a municipal chief of police. If
18 the applicant is a corporation, it shall file two complete sets
19 of fingerprints for each stockholder holding ten percent or
20 more of the outstanding stock, principal officer, director and
21 the agent responsible for the operation of the licensed
22 business. The fingerprints shall be taken and certified to as
23 provided for an individual or partnership. If the applicant is
24 a limited partnership, it shall file two complete sets of
25 fingerprints for each general partner and for each limited

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1 partner contributing ten percent or more of the total value of
2 contributions made to the limited partnership or entitled to
3 ten percent or more of the profits earned or other compensation
4 by way of income paid by the limited partnership. The
5 fingerprints shall be taken and certified to as provided for an
6 individual or partnership.

7 C. Upon submission of a sworn affidavit from each
8 person who is required to file fingerprints stating that the
9 person has not been convicted of a felony in any jurisdiction
10 and pending the results of background investigations, a
11 temporary license for ninety days may be issued. The temporary
12 license may be extended by the director for an additional
13 ninety days if the director determines there is not sufficient
14 time to complete the background investigation or obtain reviews
15 of fingerprints from appropriate agencies. A temporary license
16 shall be surrendered immediately upon order of the director.

17 D. An applicant who files a false affidavit shall
18 be denied a license. When the director determines a false
19 affidavit has been filed, he shall refer the matter to the
20 attorney general or district attorney for prosecution of
21 perjury.

22 E. If an applicant is not a resident of New Mexico,
23 fingerprints may be taken under supervision and certification
24 of comparable officers in the state of residence of the
25 applicant.

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1 F. Before issuing a license, the department shall
2 hold a public hearing within thirty days after receipt of the
3 application pursuant to Subsection [~~H~~] K of this section.

4 G. An application for transfer of ownership shall
5 be filed with the department no later than thirty days after
6 the date a person acquired an ownership interest in a license;
7 shall contain documentation of the actual purchase price paid
8 for the license, and the actual date of sale of the license;
9 and shall be accompanied by a sworn affidavit from the owner of
10 record of the license agreeing to the sale of the license to
11 the applicant as well as attesting to the accuracy of the
12 information required by this section to be filed with the
13 department. No license shall be transferred unless it will be
14 placed into operation in an actual location within one hundred
15 twenty days of issuance of the license, unless for good cause
16 shown the director grants an additional extension not to exceed
17 one hundred twenty days.

18 H. Whenever it appears to the director that there
19 will be more applications for new licenses than the available
20 number of new licenses during any time period, a random
21 selection method for the qualification, approval and issuance
22 of new licenses shall be provided by the director. The random
23 selection method shall allow each applicant an equal
24 opportunity to obtain an available license, provided that all
25 dispenser's and retailer's licenses issued in any calendar year

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1 shall be issued to residents of the state. For the purposes of
2 random selection, the director shall also set a reasonable
3 deadline by which applications for the available licenses shall
4 be filed. No person shall file more than one application for
5 each available license and no more than three applications per
6 calendar year.

7 I. After the deadline set in accordance with
8 Subsection H of this section, no more than ten applications per
9 available license shall be selected at random for priority of
10 qualification and approval. Within thirty days after the
11 random selection for the ten priority positions for each
12 license, a hearing pursuant to Subsection K of this section
13 shall be held to determine the qualifications of the applicant
14 having the highest priority for each available license. If
15 necessary, [~~such~~] a hearing shall be held on each selected
16 application by priority until a qualified applicant for each
17 available license is approved. Further random selections for
18 priority positions shall also be held pursuant to this section
19 as necessary.

20 J. All applications submitted for a license shall
21 expire upon the director's final approval of a qualified
22 applicant for that available license.

23 K. The director shall notify the applicant by
24 certified mail of the date, time and place of the hearing. The
25 hearing shall be held in Santa Fe. The director may designate

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1 a hearing officer to take evidence at the hearing. The
2 director or the hearing officer shall have the power to
3 administer oaths.

4 L. In determining whether a license shall be
5 issued, the director shall take into consideration all
6 requirements of the Liquor Control Act. In the issuance of a
7 license, the director shall specifically consider the nature
8 and number of prior violations of the Liquor Control Act by the
9 applicant or of any citations issued within the prior five
10 years against a license held by the applicant or in which the
11 applicant had an ownership interest required to be disclosed
12 under the Liquor Control Act. The director shall disapprove
13 the issuance or give preliminary approval of the issuance of
14 the license based upon a review of all documentation submitted
15 and any investigation deemed necessary by the director.

16 M Before any new license is issued for a location,
17 the director shall cause a notice of the application therefor
18 to be posted conspicuously, on a sign not smaller than thirty
19 inches by forty inches, on the outside of the front wall or
20 front entrance of the immediate premises for which the license
21 is sought or, if no building or improvements exist on the
22 premises, the notice shall be posted at the front entrance of
23 the immediate premises for which the license is sought, on a
24 billboard not smaller than five feet by five feet. The
25 contents of the notice shall be in the form prescribed by the

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1 department, and [~~such~~] posting shall be over a continuous
2 period of twenty days prior to preliminary approval of the
3 license.

4 N. No license shall be issued until the posting
5 requirements of Subsection M of this section have been met.

6 O. All costs of publication and posting shall be
7 paid by the applicant.

8 P. It is unlawful for any person to remove or
9 deface any notice posted in accordance with this section. Any
10 person convicted of a violation of this subsection shall be
11 punished by a fine of not more than three hundred dollars
12 (\$300) or by imprisonment in the county jail for not more than
13 one hundred twenty days or by both.

14 Q. [~~Any~~] A person aggrieved by [~~any~~] a decision
15 made by the director as to the approval or disapproval of the
16 issuance of a license may appeal to the district court [of
17 ~~jurisdiction by filing a petition in the court within thirty~~
18 ~~days from the date of the decision of the director, and a~~
19 ~~hearing on the matter may be held in the district court]~~
20 pursuant to the provisions of Section 12-8A-1 NMSA 1978. If
21 the disapproval is based upon local option district disapproval
22 pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the
23 local option district shall be a necessary party to any appeal.
24 The decision of the director shall continue in force, pending a
25 reversal or modification by the district court, unless

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1 otherwise ordered by the court. [~~Any appeal from the decision~~
2 ~~of the district court to the supreme court shall be permitted~~
3 ~~as in other cases of appeals from the district court to the~~
4 ~~supreme court.]"~~

5 Section 72. Section 60-6C-6 NMSA 1978 (being Laws 1981,
6 Chapter 39, Section 102, as amended) is amended to read:

7 "60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL[--
8 ~~PREFERENCE--NOTICE OF APPEAL~~]. --

9 A. No injunction or writ of mandamus or other legal
10 or equitable process shall issue in any suit, action or
11 proceeding to prevent or enjoin any finding of guilt or order
12 of suspension or revocation or fine made by a liquor control
13 hearing officer under the provisions of Section 60-6C-4 NMSA
14 1978. [Any] A licensee aggrieved or adversely affected by
15 [any] an order of revocation, suspension or fine shall have the
16 right to appeal to the district court [~~of the county in which~~
17 ~~the licensed premises are located for a judicial review of the~~
18 ~~order within thirty days of the entry of the order. The appeal~~
19 ~~shall be taken by filing a petition for review setting forth~~
20 ~~the grounds of complaint against the order of suspension,~~
21 ~~revocation or fine. The matter on appeal shall be heard by the~~
22 ~~court without a jury, and the court shall grant the matter a~~
23 ~~preference on the docket. The court shall set aside any order~~
24 ~~of suspension, revocation or fine found to be:~~

25 (1) ~~arbitrary, capricious, an abuse of~~

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1 ~~discretion or otherwise not in accordance with law;~~
2 ~~(2) in excess of statutory jurisdiction,~~
3 ~~authority or limitations or short of statutory right; or~~
4 ~~(3) unsupported by substantial evidence.~~
5 ~~B. In making the determinations, the court shall~~
6 ~~review the entire record or such portions as may be cited by~~
7 ~~any party. The director shall be given at least ten days'~~
8 ~~notice before hearing on an appeal may be held. A complete~~
9 ~~copy of the record of hearing shall be filed in the office of~~
10 ~~the clerk of the court before the hearing on the appeal, which~~
11 ~~copy shall be furnished by the department at the request of the~~
12 ~~licensee or his attorney. The cost of preparation of the~~
13 ~~hearing record shall be borne by the losing party] pursuant to~~
14 ~~the provisions of Section 12-8A-1 NMSA 1978.~~

15 [~~C.~~] B. No appeal shall have the effect of
16 suspending the operation of the order of suspension, revocation
17 or fine, but the liquor control hearing officer may, for good
18 cause shown and upon such terms and conditions as he may find
19 are just, in his discretion suspend the operation of the order
20 of suspension, revocation or fine pending the appeal. The
21 court shall tax costs against the losing party.

22 [~~D. Appeals from the decision of the court to the~~
23 ~~supreme court of the state may be made in accordance with the~~
24 ~~rules of the supreme court.]"~~

25 Section 73. Section 61-1-17 NMSA 1978 (being Laws 1957,
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1 Chapter 247, Section 17, as amended) is amended to read:

2 "61-1-17. PETITION FOR REVIEW[~~--WAIVER OF RIGHT~~]. -- [Any]

3 A person entitled to a hearing [under] provided for in the
4 Uniform Licensing Act, who is aggrieved by an adverse decision
5 of a board issued after hearing, may obtain a review of the
6 decision in the district court [of Santa Fe county or in the
7 district court of the county in which the hearing was held or,
8 upon agreement of the parties to the appeal, in any other
9 district court of the state. In order to obtain such review,
10 the person shall, within twenty days after the date of service
11 of the decision as required by Section 61-1-14 NMSA 1978, file
12 with the court a petition for review, a copy of which shall be
13 served on the office of the attorney general and on the board
14 secretary, stating all exceptions taken to the decision and
15 indicating the court in which the appeal is to be heard. The
16 court shall not consider any exceptions not stated in the
17 petition. Failure to file a petition for review in the manner
18 and within the time stated shall operate as a waiver of the
19 right to judicial review and shall result in the decision of
20 the board becoming final, except that for good cause shown,
21 within the time stated, the judge of the district court may
22 issue an order granting one extension of time not to exceed
23 sixty days] pursuant to the provisions of Section 12-8A-1."

24 Section 74. Section 61-1-19 NMSA 1978 (being Laws 1957,
25 Chapter 247, Section 19, as amended) is amended to read:

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1 "61-1-19. STAY. --At any time before or during the review
2 proceeding pursuant to Section 61-1-17 NMSA 1978, the aggrieved
3 person may apply to the board or file a motion in accordance
4 with the Rules of Civil Procedure for the District Courts in
5 the reviewing court for an order staying the operation of the
6 board decision pending the outcome of the review. The board or
7 court may grant or deny the stay in its discretion. No [~~such~~]
8 order granting or denying a stay shall be reviewable. "

9 Section 75. Section 61-14-13 NMSA 1978 (being Laws 1967,
10 Chapter 62, Section 9, as amended) is amended to read:

11 "61-14-13. DENIAL, SUSPENSION OR REVOCATION OF
12 LICENSE. --

13 A. [~~Upon written complaint by any person and after~~
14 ~~notice and hearing as prescribed in the Uniform Licensing Act~~]
15 The board may place a licensee on probation; impose on a
16 licensee an administrative penalty in an amount not to exceed
17 two thousand five hundred dollars (\$2,500); reprimand a
18 licensee; deny, suspend for a definite period or revoke [~~the~~] a
19 license, certificate or permit of a licensee; or take any other
20 reasonable action as established by the board [~~This applies to~~
21 ~~any person whose activities are covered by the Veterinary~~
22 ~~Practice Act for~~] if the board determines after receiving a
23 complaint and providing notice and a hearing pursuant to the
24 Uniform Licensing Act that a licensee:

- (1) has committed an act of fraud,

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1 misrepresentation or deception in obtaining a license or
2 permit;

3 (2) [~~adjudication of insanity~~] has been
4 adjudicated insane or [~~manifest incapacity~~] manifestly
5 incapacitated;

6 (3) [~~use of~~] has used advertising or
7 solicitation that is false, misleading or is otherwise deemed
8 unprofessional under [~~regulations~~] rules promulgated by the
9 board;

10 (4) [~~conviction~~] has been convicted of a
11 felony or other crime involving moral turpitude;

12 (5) is guilty of dishonesty, incompetence,
13 gross negligence or other malpractice in the practice of
14 veterinary medicine;

15 (6) [~~having~~] has a professional association
16 with or [~~employing~~] employs any person practicing veterinary
17 medicine unlawfully;

18 (7) is guilty of fraud or dishonesty in the
19 application or reporting of any test for disease in animals;

20 (8) [~~failure~~] has failed to maintain his
21 professional premises and equipment in a clean and sanitary
22 condition in compliance with facility permit [~~regulations~~]
23 rules promulgated by the board;

24 (9) is guilty of habitual or excessive use of
25 intoxicants or drugs;

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1 (10) is guilty of cruelty to animals;

2 (11) [~~revocation of a~~] has had his license to
3 practice veterinary medicine revoked by another state,
4 territory or district of the United States on grounds other
5 than nonpayment of license or permit fees;

6 (12) is guilty of unprofessional conduct by
7 violation of a [~~regulation~~] rule promulgated by the board
8 pursuant to provisions of the Veterinary Practice Act;

9 (13) [~~failure~~] has failed to perform as a
10 veterinary technician under the direct supervision of a
11 licensed veterinarian;

12 (14) [~~failure of~~] has failed as a licensed
13 veterinarian to reasonably exercise direct supervision with
14 respect to a veterinary technician;

15 (15) is guilty of aiding or abetting the
16 practice of veterinary medicine by a person not licensed,
17 certified or permitted by the board;

18 (16) [~~using~~] has used any controlled drug or
19 substance on any animal for the purpose of illegally
20 influencing the outcome of a competitive event;

21 (17) has willfully or negligently
22 [~~administering~~] administered a drug or substance that will
23 adulterate meat, milk, poultry, fish or eggs;

24 (18) [~~failure~~] has failed to maintain required
25 logs and records;

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1 (19) ~~[the use of]~~ has used a prescription or
2 ~~[sale of]~~ has sold any prescription drug or ~~[the prescription~~
3 ~~of]~~ prescribed extra-label use of any over-the-counter drug in
4 the absence of a valid veterinarian-client-patient
5 relationship;

6 (20) ~~[failure]~~ has failed to report, as
7 required by law, or ~~[making]~~ has made a false report of any
8 contagious or infectious disease; or

9 (21) has engaged in an unfair or deceptive
10 ~~[practices]~~ practice.

11 B. Any person whose license, certificate or permit
12 is suspended or revoked by the board pursuant to provisions of
13 this section may, at the discretion of the board, be relicensed
14 or reinstated by the board at any time without examination upon
15 written application to the board showing cause to justify
16 relicensing or reinstatement. "

17 Section 76. Section 61-18A-32 NMSA 1978 (being Laws
18 1987, Chapter 252, Section 32) is amended to read:

19 "61-18A-32. JUDICIAL REVIEW. -- ~~[Any]~~ A person aggrieved
20 by the decision of the director in the enforcement of the
21 Collection Agency Regulatory Act may obtain judicial review
22 ~~[thereof in the manner provided for review of agency decisions~~
23 ~~by the Administrative Procedures Act]~~ in the district court
24 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

25 Section 77. Section 66-4-3 NMSA 1978 (being Laws 1978,

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1 Chapter 35, Section 216) is amended to read:

2 "66-4-3. REFUSAL TO ISSUE LICENSE-- CANCELLATION OR
3 SUSPENSION OF LICENSE OR USE OF TEMPORARY PERMITS-- HEARING --
4 APPEAL. --

5 A. The division may refuse to issue a license for
6 just cause and may cancel or suspend a license or use of
7 temporary permits for violation of the Motor Vehicle Code. The
8 division shall take the action [~~herein~~] authorized in this
9 section only after hearing. Notice of [~~such~~] hearing shall be
10 given the party concerned as provided in Section [~~64-2-11 NMSA~~
11 ~~1953~~] 66-2-11 NMSA 1978. [~~Such~~] The notice shall state the
12 proposed action of the division and the reason for [~~such~~] the
13 proposed action.

14 B. The division shall prepare rules [~~and~~
15 ~~regulations~~] for the conduct of [~~such~~] the hearing. At [~~such~~]
16 the hearing, the technical rules of evidence [~~shall~~] do not
17 apply, and a party [~~shall have~~] has the right to be represented
18 by counsel, to call witnesses in his own behalf and to cross-
19 examine the witnesses of other parties.

20 C. The director or his designated agent shall
21 conduct the hearing for the division and shall cause a record
22 of hearing to be made.

23 D. Within ten days after completion of the hearing,
24 the director shall cause to be served upon all parties, in the
25 manner provided in Section [~~64-2-11 NMSA 1953~~] 66-2-11 NMSA

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1 1978, his findings and decision. The decision shall be:

2 (1) granting a license or refusing to grant a
3 license;

4 (2) continuing a license, [~~cancellation of~~]
5 canceling a license or [~~suspension of~~] suspending a license for
6 a time stated; or

7 (3) continuing use of dealer plates and
8 temporary permits, [~~cancellation of~~] canceling dealer plates
9 and temporary permits or [~~suspension of~~] suspending use of
10 temporary permits for a time stated.

11 [~~E. Within thirty days after receipt of notice of~~
12 ~~the decision of the director, any party aggrieved may stay the~~
13 ~~decision by docketing the cause in the district court. The~~
14 ~~district court shall hear the cause de novo. Appeals from the~~
15 ~~decision of the district court may be taken in the same manner~~
16 ~~as is provided by law for appeals in civil cases.]~~

17 E. A party aggrieved by the director's decision may
18 file an appeal in the district court pursuant to the provisions
19 of Section 12-8A-1 NMSA 1978. "

20 Section 78. Section 66-5-36 NMSA 1978 (being Laws 1978,
21 Chapter 35, Section 258) is amended to read:

22 "66-5-36. RIGHT OF APPEAL TO COURT. -- [Any] A person
23 denied a license or whose license has been [~~cancelled~~]
24 canceled, suspended or revoked by the division, except [where
25 such] when the cancellation or revocation is mandatory under

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1 the provisions of [~~this article, shall have the right to file a~~
2 ~~petition within thirty days thereafter for a hearing in the~~
3 ~~matter in the district court in the county wherein such person~~
4 ~~shall reside, and such court is vested with jurisdiction and it~~
5 ~~is its duty to set the matter for hearing upon thirty days'~~
6 ~~written notice to the director and thereupon to take testimony~~
7 ~~and examine into the facts of the case and to determine whether~~
8 ~~the petitioner is entitled to a license or is subject to~~
9 ~~suspension, cancellation or revocation of license under the~~
10 ~~provisions of this article]~~ Chapter 66, Article 5 NMSA 1978 may
11 file an appeal in the district court pursuant to the provisions
12 of Section 12-8A-1 NMSA 1978."

13 Section 79. Section 66-5-204 NMSA 1978 (being Laws 1983,
14 Chapter 318, Section 5) is amended to read:

15 "66-5-204. ADMINISTRATIVE AND COURT REVIEW. -- [Any] An
16 owner of a motor vehicle registered in New Mexico who is
17 aggrieved by the decision of the director made under the
18 provisions of the Mandatory Financial Responsibility Act may
19 appeal to the hearing officer of the division for a hearing to
20 be held within twenty days of the receipt by the division of
21 the appeal. [Any] A person who continues aggrieved after the
22 decision made by the hearing officer may appeal that decision
23 [~~within twenty days to the district court. The court shall~~
24 ~~determine whether there is sufficient evidence to uphold the~~
25 ~~decision of the hearing officer]~~ in the district court pursuant

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1 to the provisions of Section 12-8A-1 NMSA 1978. "

2 Section 80. Section 67-8-19 NMSA 1978 (being Laws 1959,
3 Chapter 310, Section 5, as amended) is amended to read:

4 "67-8-19. PROCEDURE--APPEAL. --

5 A. All hearings held [~~hereunder~~] pursuant to this
6 section shall be public and upon not less than fifteen [~~days~~]
7 days' written notice of the time, place and purpose of [~~such~~]
8 the hearing to each utility whose services or facilities ~~may~~ be
9 affected and to each municipality in which any part of the
10 proposed highway improvement is to be located. Hearings ~~may~~ be
11 held before the commission, any member [~~thereof~~] or any
12 representative designated by it and at [~~such~~] the place as
13 [~~shall be~~] is designated in the notice.

14 B. A record of the testimony shall be taken at
15 [~~such~~] the hearing and a transcript [~~thereof~~] furnished to
16 anyone upon request and payment of the cost [~~thereof~~].

17 C. The findings and orders shall be in writing and
18 a copy [~~thereof~~] served upon each party [~~thereto~~].

19 D. The commission ~~may~~ promulgate rules to govern
20 its proceedings [~~hereunder~~] pursuant to this section.

21 E. [~~Any~~] A party aggrieved by [~~any~~] an order ~~may~~
22 appeal to the district court [~~of Santa Fe county within thirty~~
23 ~~days of the entry of the same by filing a petition for review~~
24 ~~of such order, and upon receiving notice of the same it shall~~
25 ~~be the duty of the commission or its authorized agent to~~

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1 ~~prepare and transmit a transcript of the record of such hearing~~
2 ~~including all testimony, findings and orders which shall be the~~
3 ~~record in said cause. If it be made to appear to the court~~
4 ~~that the order appealed from is unreasonable or unlawful, the~~
5 ~~same shall be vacated and annulled and the entire matter~~
6 ~~remanded to the commission for further proceeding consistent~~
7 ~~with the decision of the court; provided, however, such appeal~~
8 ~~shall not operate as a stay of any order of the commission~~
9 ~~unless the court shall so order.~~

10 ~~F. Any party aggrieved by the order or decision of~~
11 ~~the district court may appeal therefrom to the supreme court in~~
12 ~~accordance with the rules for appeals in civil cases] pursuant~~
13 ~~to the provisions of Section 12-8A-1 NMSA 1978. "~~

14 Section 81. Section 67-10-2 NMSA 1978 (being Laws 1891,
15 Chapter 44, Section 2, as amended) is amended to read:

16 "67-10-2. RATES AND TOLLS--APPEALS. -- [Sec. 95. That
17 such] A corporation may, after the completion of [such] a wagon
18 road or any part thereof and after the completion of [any such]
19 a bridge or ferry for and by the traveling public, apply by
20 petition in writing to the board of county commissioners of the
21 county [or counties] in or through which [such] the road,
22 bridge or ferry is or has been constructed, for rates, prices
23 and tolls to be charged and collected from the traveling public
24 [so] using and traveling on [such] the toll road, bridge or
25 ferry, which petition shall state [such] facts in reference to

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1 a road, bridge or ferry as will be sufficient to inform the
2 board of county commissioners as to enable the board of county
3 commissioners to fix the rates, tolls and charges, equal and
4 just between the corporation owning the road, bridge or ferry
5 and the traveling public using the same, and the rates, tolls
6 and charges so fixed shall remain the same for two years [~~and~~].
7 At the expiration of each two years, the corporation shall
8 petition as aforesaid for the fixing of the rates, tolls and
9 charges by the board of county commissioners. In case the
10 corporation [~~shall be~~] is dissatisfied with the rates, tolls
11 and charges [~~so~~] fixed by the board, it may appeal [~~within ten~~
12 ~~days from such decision and determination to the judge of the~~
13 ~~district court of the county in which the road, bridge or ferry~~
14 ~~is situated by paying to the county clerk of the county in~~
15 ~~which the matter is pending one dollar who shall, upon such~~
16 ~~payment being made, at once transmit all the papers in the case~~
17 ~~on file in his office to the clerk of the district court to~~
18 ~~which the appeal is taken, and the corporation shall then~~
19 ~~present the matter to the district judge who shall at once~~
20 ~~appoint three disinterested citizens and taxpayers of the~~
21 ~~county to examine the road, bridge or ferry and report their~~
22 ~~finding and fixing of rates, tolls and charges in writing and~~
23 ~~under oath to the said judge, within the time by him to be~~
24 ~~fixed and, unless it shall appear to the judge that manifest~~
25 ~~injustice has been done by the persons appointed, he shall~~

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1 ~~approve the report, and the rates so fixed shall remain for the~~
2 ~~ensuing two years, which commissioners so appointed shall be~~
3 ~~paid by the corporation so appealing for their services such~~
4 ~~sum and on such terms as the judge may allow, together with the~~
5 ~~other costs incurred by such appeal]~~ to the district court
6 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

7 Section 82. Section 67-13-12 NMSA 1978 (being Laws 1973,
8 Chapter 17, Section 12) is amended to read:

9 "67-13-12. ZONING--PETITION FOR REVIEW[--TIME LIMIT]--
10 RESTRAINING ORDER.--

11 A. [Any] A person aggrieved by a decision of the
12 board may appeal to the [~~court of appeals by filing with the~~
13 ~~court of appeals a notice of appeal within thirty days after~~
14 ~~the decision is entered in the records of the board]~~ district
15 court pursuant to the provisions of Section 12-8A-1 NMSA 1978.

16 B. The appeal shall not stay the decision appealed
17 from, but the court may, on application, grant a restraining
18 order. "

19 Section 83. Section 69-6-2 NMSA 1978 (being Laws 1933,
20 Chapter 153, Section 308) is amended to read:

21 "69-6-2. RIGHT OF APPEAL. -- Every owner, operator or
22 employee of [~~any such~~] a mine [~~shall have~~] has a right of
23 appeal to the district court [~~in the county wherein such mine~~
24 ~~is situated and from such district court to the supreme court~~
25 ~~as to the necessity or reasonableness of the order or~~

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1 ~~requirement of the inspector under any of the provisions of~~
2 ~~this act] pursuant to the provisions of Section 12-8A-1 NMSA~~
3 ~~1978.~~ "

4 Section 84. Section 69-36-16 NMSA 1978 (being Laws 1993,
5 Chapter 315, Section 16) is amended to read:

6 "69-36-16. JUDICIAL REVIEW. --

7 A. [Any] A person who is or may be affected by a
8 [~~regulation~~] rule of the commission may appeal the action of
9 the commission by filing a notice of appeal with the court of
10 appeals within thirty days from the filing date of the
11 [~~regulation~~] rule with the state records center. All appeals
12 of [~~regulations~~] rules shall be taken on the record made at the
13 public hearing on the [~~regulation~~] rule.

14 B. A party, intervenor or any other person upon a
15 showing of good cause for not appearing at the public hearing
16 on a [~~regulation~~] rule may appeal a decision of the commission
17 adopting, amending or repealing [~~regulations~~] rule by filing a
18 written notice of appeal with the court of appeals within
19 forty-five days after entry of the commission's decision.
20 Copies of the notice of appeal shall be served at the time of
21 filing, either personally or by certified mail, upon all
22 parties to the proceeding before the commission.

23 C. [Any] A person who is or may be affected by a
24 final action of the commission other than a [~~regulation~~] rule
25 may appeal the action of the commission by filing a notice of

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1 appeal with the district court [~~for the first judicial district~~
2 ~~within thirty days from the date of the commission's action.~~
3 ~~The appeal shall be taken on the record made before the~~
4 ~~commission.~~

5 D. ~~The notice of appeal shall include a concise~~
6 ~~statement of the facts upon which jurisdiction is based, facts~~
7 ~~showing that the appellant is aggrieved, the grounds upon which~~
8 ~~the appellant is appealing and the relief that the appellant is~~
9 ~~seeking.~~

10 E. ~~The appellant shall certify in his notice of~~
11 ~~appeal that a sufficient number of transcripts of the record of~~
12 ~~the hearing from which the appeal is taken shall have been made~~
13 ~~by the commission, at his expense, including three copies,~~
14 ~~which shall remain with the commission.~~

15 F. ~~Upon appeal, the court shall set aside the~~
16 ~~regulation, order or other action only if it is found to be:~~

- 17 (1) ~~arbitrary, capricious or an abuse of~~
 - 18 ~~discretion;~~
 - 19 (2) ~~not supported by substantial evidence in~~
 - 20 ~~the record; or~~
 - 21 (3) ~~otherwise not in accordance with law]~~
- 22 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

23 Section 85. Section 70-2-25 NMSA 1978 (being Laws 1935,
24 Chapter 72, Section 17, as amended) is amended to read:

25 "70-2-25. REHEARINGS--APPEALS. --

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1 A. Within twenty days after entry of [~~any~~] an order
2 or decision of the commission, [~~any~~] a party of record
3 adversely affected [~~thereby~~] may file with the commission an
4 application for rehearing in respect of any matter determined
5 by [~~such~~] the order or decision, setting forth the respect in
6 which [~~such~~] the order or decision is believed to be erroneous.
7 The commission shall grant or refuse [~~any such~~] the application
8 in whole or in part within ten days after the [~~same~~]
9 application is filed, and failure to act [~~thereon~~] on the
10 application within [~~such~~] that period shall be deemed a refusal
11 [~~thereof~~] and [~~a~~] final disposition of [~~such~~] that application.
12 In the event the rehearing is granted, the commission may enter
13 [~~such~~] a new order or decision after rehearing as may be
14 required under the circumstances.

15 B. [~~Any~~] A party of record to [~~such~~] the rehearing
16 proceeding dissatisfied with the disposition of the application
17 for rehearing may appeal [~~therefrom~~] to the district court [~~of~~
18 ~~the county wherein is located any property of such party~~
19 ~~affected by the decision by filing a petition for the review of~~
20 ~~the action of the commission within twenty days after the entry~~
21 ~~of the order following rehearing or after the refusal or~~
22 ~~rehearing, as the case may be. Such petition shall state~~
23 ~~briefly the nature of the proceedings before the commission and~~
24 ~~shall set forth the order or decision of the commission~~
25 ~~complained of and the grounds of invalidity thereof upon which~~

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1 ~~the applicant will rely; provided, however, that the questions~~
2 ~~reviewed on appeal shall be only questions presented to the~~
3 ~~commission by the application for rehearing. Notice of such~~
4 ~~appeal shall be served upon the adverse party or parties and~~
5 ~~the commission in the manner provided for the service of~~
6 ~~summons in civil proceedings. The trial upon appeal shall be~~
7 ~~without a jury, and the transcript of proceedings before the~~
8 ~~commission, including the evidence taken in hearings by the~~
9 ~~commission, shall be received in evidence by the court in whole~~
10 ~~or in part upon offer by either party, subject to legal~~
11 ~~objections to evidence. The commission action complained of~~
12 ~~shall be prima facie valid and the burden shall be upon the~~
13 ~~party or parties seeking review to establish the invalidity of~~
14 ~~such action of the commission. The court shall determine the~~
15 ~~issues of fact and of law and shall enter its order either~~
16 ~~affirming or vacating the order of the commission. Appeals may~~
17 ~~be taken from the judgment or decision of the district court to~~
18 ~~the supreme court in the same manner as provided for appeals~~
19 ~~from any other final judgment entered by a district court in~~
20 ~~this state. The trial of such application for relief from~~
21 ~~action of the commission and the hearing of any appeal to the~~
22 ~~supreme court from the action of the district court shall be~~
23 ~~expedited to the fullest possible extent.~~

24 C. ~~The pendency of proceedings to review shall not~~
25 ~~of itself stay or suspend operation of the order or decision~~

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1 ~~being reviewed, but during the pendency of such proceedings,~~
2 ~~the district court in its discretion may, upon its own motion~~
3 ~~or upon proper application of any party thereto, stay or~~
4 ~~suspend, in whole or in part, operation of the order or~~
5 ~~decision pending review thereof, on such terms as the court~~
6 ~~deems just and proper and in accordance with the practice of~~
7 ~~courts exercising equity jurisdiction; provided that the court,~~
8 ~~as a condition to any such staying or suspension of operation~~
9 ~~of an order or decision, may require that one or more parties~~
10 ~~secure, in such form and amount as the court may deem just and~~
11 ~~proper, one or more other parties against loss or damage due to~~
12 ~~the staying or suspension of the commission's order or~~
13 ~~decision, in the event that the action of the commission shall~~
14 ~~be affirmed.~~

15 D. ~~The applicable rules of practice and procedure~~
16 ~~in civil cases for the courts of this state shall govern the~~
17 ~~proceedings for review and any appeal therefrom to the supreme~~
18 ~~court of the state to the extent such rules are consistent with~~
19 ~~provisions of the Oil and Gas Act] pursuant to the provisions~~
20 ~~of Section 12-8A-1 NMSA 1978.~~ "

21 Section 86. Section 70-5-16 NMSA 1978 (being Laws 1973,
22 Chapter 362, Section 16, as amended) is amended to read:

23 "70-5-16. APPEAL. -- [Any] A licensee whose license is
24 canceled or suspended by order of the commission may appeal the
25 decision by filing [with the court of appeals a notice of

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1 ~~appeal within thirty days after the date the order is made.~~
2 ~~The appeal must be on the record made at the hearing. The~~
3 ~~licensee shall certify in his notice of appeal that~~
4 ~~arrangements have been made with the commission for preparation~~
5 ~~of a sufficient number of transcripts of the record of the~~
6 ~~hearing on which the appeal depends to support his appeal to~~
7 ~~the court, at the expense of the licensee, including two copies~~
8 ~~which he shall furnish to the commission. Upon appeal, the~~
9 ~~court of appeals shall set aside the decision and order of the~~
10 ~~commission only if found to be:~~

11 A. ~~arbitrary, capricious or an abuse of discretion;~~

12 B. ~~not supported by substantial evidence in the~~
13 ~~record; or~~

14 C. ~~otherwise not in accordance with law] an appeal~~

15 with the district court pursuant to the provisions of Section

16 12-8A-1 NMSA 1978. "

17 Section 87. Section 70-5-17 NMSA 1978 (being Laws 1947,
18 Chapter 214, Section 17, as amended) is amended to read:

19 "70-5-17. NO FORMAL NOTICE REQUIRED OF HEARING ON
20 APPLICATION FOR LICENSE -- APPEAL. -- The same procedure, rights
21 and penalties as specified in the LPG and CNG Act in the cases
22 of revocation or suspension of licenses are available, where
23 applicable, in cases where the bureau refused to grant a
24 license, except that no formal notice of hearing on an
25 application for license need be given an applicant, other than

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1 that he is given a reasonable opportunity to appear in support
2 of his application before the bureau renders its order refusing
3 him a license. Appeal shall be to the district court [~~at Santa~~
4 ~~Fe county in all cases where an application for a license under~~
5 ~~the LPG and CNG Act is denied~~] pursuant to the provisions of
6 Section 12-8A-1 NMSA 1978. "

7 Section 88. Section 71-5-18 NMSA 1978 (being Laws 1975,
8 Chapter 272, Section 18, as amended) is amended to read:

9 "71-5-18. REHEARINGS--APPEALS. --

10 A. Within twenty days after entry of [~~any~~] an order
11 or decision of the division, [~~any~~] a party of record adversely
12 affected [~~thereby~~] may file with the commission an application
13 for rehearing in respect of any matter determined by [~~such~~] the
14 order or decision, setting forth the respect in which [~~such~~]
15 the order or decision is believed to be erroneous. The
16 commission shall grant or refuse [~~any such~~] the application in
17 whole or in part within ten days after [~~the same~~] it is filed,
18 and failure to act [~~thereon~~] within [~~such~~] the ten-day period
19 shall be deemed a refusal [~~thereof~~] of the application and a
20 final disposition of [~~such~~] the application. In the event the
21 rehearing is granted, the commission may enter [~~such~~] a new
22 order or decision after rehearing as may be required under the
23 circumstances.

24 B. [~~Any~~] A party of record to [~~such~~] the rehearing
25 proceeding dissatisfied with the disposition of the application

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1 for rehearing may appeal [therefrom] to the district court [of
2 the county wherein is located any property of such party
3 affected by the decision by filing a petition for the review of
4 the action of the commission within twenty days after the entry
5 of the order following rehearing or after the refusal of
6 rehearing, as the case may be. Such petition shall state
7 briefly the nature of the proceedings before the commission or
8 division and shall set forth the order or decision of the
9 commission or division complained of and the grounds of
10 invalidity thereof upon which the applicant will rely;
11 provided, however, that the questions reviewed on appeal shall
12 be only questions presented to the commission by the
13 application for rehearing. Notice of such appeal shall be
14 served upon the adverse party or parties and the commission in
15 the manner provided for the service of summons in civil
16 proceedings. The trial upon appeal shall be without a jury,
17 and the transcript of proceedings before the commission or
18 division, including the evidence taken in hearings by the
19 commission or division, shall be received in evidence by the
20 court in whole or in part upon offer by either party, subject
21 to legal objections to evidence. The commission or division
22 action complained of shall be prima facie valid and the burden
23 shall be upon the party or parties seeking review to establish
24 the invalidity of such action of the commission or division.
25 The court shall determine the issues of fact and of law and

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1 ~~shall enter its order either affirming or vacating the order of~~
2 ~~the commission or division. Appeals may be taken from the~~
3 ~~judgment or decision of the district court to the supreme court~~
4 ~~in the same manner as provided for appeals from any other final~~
5 ~~judgment entered by a district court in this state. The trial~~
6 ~~of such application for relief from action of the commission or~~
7 ~~division and the hearing of any appeal to the supreme court~~
8 ~~from the action of the district court shall be expedited to the~~
9 ~~fullest possible extent] pursuant to the provisions of Section~~
10 12-8A-1 NMSA 1978.

11 C. The pendency of proceedings to review shall not
12 of itself stay or suspend operation of the order or decision
13 being reviewed, but during the pendency of [~~such~~] the
14 proceedings, the district court in its discretion may, upon its
15 own motion or upon proper application of any party [~~thereto~~] to
16 the proceedings, stay or suspend in whole or in part operation
17 of the order or decision pending review [~~thereof~~] on [~~such~~]
18 terms as the court deems just and proper and in accordance with
19 the practice of courts exercising equity jurisdiction; provided
20 that the court, as a condition to any [~~such~~] staying or
21 suspension of operation of any order or decision, may require
22 that one or more parties secure, in [~~such~~] a form and amount as
23 the court may deem just and proper, one or more other parties
24 against loss or damage due to the staying or suspension of the
25 ~~commission's or division's order or decision in the event that~~

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1 the action of the commission or division [~~shall be~~] is
2 affirmed.

3 [D. ~~The applicable rules of practice and procedure~~
4 ~~in civil cases for the courts of this state shall govern the~~
5 ~~proceedings for review and any appeal therefrom to the supreme~~
6 ~~court of this state to the extent such rules are consistent~~
7 ~~with provisions of the Geothermal Resources Conservation Act.~~]"

8 Section 89. Section 73-11-29 NMSA 1978 (being Laws 1919,
9 Chapter 20, Section 21, as amended) is amended to read:

10 "73-11-29. APPLICATION FOR WATER--BUDGET MEETING OF
11 DIRECTORS--NOTICE OF MEETING--TAX ASSESSMENTS AND WATER
12 CHARGES--EXEMPTIONS FROM TAX--APPEAL--SUCCESSION TO RIGHTS OF
13 WATER USERS' ASSOCIATION.--

14 A. Every person desiring to receive water during
15 the course of the year, at the time he applies for water, shall
16 furnish the secretary of the board of directors of the [~~said~~]
17 irrigation district a statement in writing of the number of
18 acres intended by him to be irrigated and a statement, as near
19 as may be, of the crops planted or intended to be planted.

20 B. The board of directors, on a date to be fixed by
21 a standing order of the board, which shall not be later than
22 July [~~first~~] 1 of each year, shall estimate and determine the
23 amount of funds required to meet the obligations and needs of
24 the district for the ensuing year, together with [~~such~~] the
25 additional amount as may be necessary to meet any deficiency in

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1 the payment of expenses or obligations previously incurred by
2 the district and remaining unpaid, for [~~such~~] any of the
3 following purposes [~~as~~] that may be required by the activities
4 of the district [~~to-wit~~]:

5 [~~Item One~~] (1) the payment of the interest
6 upon bonds of the district and any [~~instalment~~] installment on
7 the principal [~~thereof~~] of the bonds;

8 [~~Item Two~~] (2) any payment to become due under
9 any contract with the United States, to secure which bonds have
10 not been deposited with the United States, whether for the cost
11 of irrigation or drainage system or for the operation and
12 maintenance [~~thereof~~], or both; or if the lands of the district
13 have been divided by the secretary of the interior into units,
14 not necessarily contiguous, for repayment purposes the board
15 shall prepare separate estimates for each [~~such~~] unit;

16 [~~Item Three~~] (3) the portion of the expenses
17 of operation and maintenance of the irrigation and drainage
18 systems to be collected by tax assessment and levy, including
19 funds required to meet obligations as provided in Section [5
20 (~~Section 77-2348~~) ~~hereof~~] 73-11-49 NMSA 1978. This portion
21 shall not be less than one-half of that portion required for
22 [~~such~~] the operation and maintenance costs for the ensuing year
23 and shall be determined by the board of directors of [~~said~~] the
24 district from year to year [~~and~~]. The [~~said~~] portion of [~~said~~]
25 the operation and maintenance expenses [~~so~~] collected by tax

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1 assessment and levy shall be collected from all lands of the
2 district, whether irrigated or not, except [~~such~~] those lands
3 as may be exempted from taxation by the terms of [~~this act~~]
4 Chapter 73, Articles 10 and 11 NMSA 1978, and the same, when
5 collected, shall be applied to the cost of operating and
6 maintaining [~~of~~] the irrigation and drainage systems. The
7 remainder of [~~said~~] the estimated amount shall be paid by the
8 parties actually using [~~said~~] the systems and water for
9 irrigation or other purposes in accordance with the terms of
10 their contract for water; or

11 [~~Item Four~~] (4) current and miscellaneous
12 expense fund requirements, other than as [~~above~~] specified in
13 this section, and necessary to defray the expenses of
14 maintaining the organization of the district and carrying out
15 the purposes of [~~this act~~] Chapter 73, Articles 10 and 11 NMSA
16 1978, shall be determined annually at a per acre rate by the
17 board of directors. The amounts to be collected [~~under Item~~
18 ~~Four~~] pursuant to this paragraph may, at the option of the
19 board of directors of [~~said~~] the district, be collected as
20 tolls and charges in the manner provided in Section [~~28,~~
21 ~~Chapter 20, of the Laws of 1919~~] 73-11-28 NMSA 1978.

22 C. Lands [~~which~~] that, in the opinion of the board
23 of directors, are unfit for cultivation by irrigation on
24 account of seepage, alkali or physical condition and location
25 of the land, or other conditions, or lands to which the

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1 existing distributing system or its extensions [~~thereof~~] cannot
2 furnish water at such points of delivery as the board may
3 consider reasonable, shall not be taxed for [~~Item Three; and~~]
4 Paragraph (3) of Subsection B of this section, provided that
5 tax shall not be assessed for [~~Item Three~~] Paragraph (3) of
6 Subsection B of this section against land involved in the
7 boundary suit now pending in the United States supreme court
8 between the state of Texas and the state of New Mexico until
9 the final determination of [~~said~~] the suit, unless [~~such~~] the
10 land is in cultivation and using water for irrigation; and
11 lands shall not be taxed for [~~Items One and Two~~] Paragraphs (1)
12 and (2) of Subsection B of this section for the periods and to
13 the extent that, on account of seepage or other conditions, in
14 the opinion of the directors or the secretary of the interior,
15 as may be provided by contract with the United States, or with
16 district bondholders, such lands are not fit for cultivation by
17 irrigation on account of [~~such~~] those conditions; but nothing
18 [~~herein~~] contained in this section shall be construed to
19 relieve the district from making provision to raise the amount
20 required to make full payment to private creditors or to the
21 United States for the full cost of construction or of operation
22 and maintenance, irrespective of the exemption of any lands
23 from taxation, unless expressly provided by the assent of the
24 bondholders or other private creditors or by agreement with the
25 United States, as the case may be [~~and~~]. In determining the

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1 amount required for the respective items aforesaid, the board
2 shall take into consideration the gross amount of exemption and
3 credits allowable pursuant to entries made by the board upon
4 the assessor's certified list, as provided in Section
5 ~~[22 (§ 77-2331) of this act provided]~~ 73-11-31 NMSA 1978.

6 Proper entry shall be made by the district officers of all
7 exemptions made and of credits allowed. The amount required to
8 meet the obligations of the district, except ~~[the]~~ that portion
9 ~~[thereof]~~ collected from tolls and charges, shall be raised by
10 tax assessments, levy and collection, as ~~[hereinafter]~~ provided
11 in Chapter 73, Articles 10 and 11 NMSA 1978, to be extended pro
12 rata per acre over all lands in the ~~[said]~~ district or, in
13 appropriate cases, under ~~[Item Two above]~~ Paragraph (2) of
14 Subsection B of this section, against all land in each
15 respective unit of the district. When the board ~~[shall~~
16 ~~assemble]~~ meets for the purposes ~~[hereinbefore]~~ prescribed, it
17 shall consider, determine and designate the lands within ~~[said]~~
18 the district ~~[which]~~ that shall be subjected to ~~[the]~~ those
19 assessments and levies ~~[hereinbefore mentioned].~~

20 D. Notice of the time, place and purpose of ~~[such]~~
21 the meeting shall be given by publication in English and
22 Spanish in ~~[some]~~ a newspaper ~~[or newspapers]~~ of general
23 circulation published within the county ~~[wherein]~~ where the
24 headquarters of the district are located and shall inform all
25 the persons interested that, at the time and place specified,

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1 an opportunity will be afforded to appear before the board of
2 directors and show cause why any particular tract of land, or
3 any portion [~~there of~~] of it, should be exempted from taxation
4 under the provisions of [~~this act. Such~~] Chapter 73, Articles
5 10 and 11 NMSA 1978. The notice shall be published once a week
6 for four [~~(4)~~] consecutive weeks, and the last publication
7 shall be not less than three [~~(3)~~] days prior to the date fixed
8 for [~~such~~] the meeting. Proof of [~~such~~] publication shall be
9 furnished by the publisher and shall be filed in the archives
10 of the secretary of the district.

11 E. At [~~such~~] the meeting, [~~said~~] the board of
12 directors, subject to [~~such~~] reasonable [~~regulations~~] rules as
13 it may prescribe, shall afford to all persons desiring to do so
14 an opportunity to make [~~such~~] a showing as they may deem proper
15 as to why any given tract of land or portion [~~thereof~~] of it
16 shall be exempted from taxation [~~as aforesaid~~]. In each case,
17 the board of directors may [~~cause to be made such~~] make an
18 investigation as it may deem proper, after which the board
19 shall determine the question submitted, as right and justice
20 may require, and shall cause its decision to be duly entered
21 upon its minutes and a copy [~~thereof~~] of it to be sent by
22 registered mail to all parties who have made claim of exemption
23 of land from taxation [~~as aforesaid~~].

24 F. [~~Any~~] A person [~~feeling himself~~] aggrieved by
25 [~~such~~] the decision, [~~as aforesaid~~] may appeal [~~therefrom~~] to

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1 the district court [~~of the county wherein the decision is~~
2 ~~rendered at any time within thirty (30) days from and after the~~
3 ~~rendition and mailing as aforesaid of said copy of the decision~~
4 ~~complained of, by serving upon the secretary of the district~~
5 ~~written notice of such action and filing a copy thereof,~~
6 ~~together with the copy of the decision complained of, in the~~
7 ~~office of the clerk of the court to which the appeal is taken.~~
8 ~~Upon being served with such notice, the secretary of the~~
9 ~~district shall forthwith transmit to the clerk of such court a~~
10 ~~certified transcript of all the papers and records pertaining~~
11 ~~to the case which may have been filed in connection there with.~~
12 ~~Upon such appeal, the case shall be tried in such district~~
13 ~~court, subject to the law, rules and practice governing such~~
14 ~~court as upon writ of certiorari] pursuant to the provisions of
15 Section 12-8A-1 NMSA 1978.~~

16 G. The filing of [~~said~~] the appeal in [~~said~~] the
17 district court shall not stay the proceedings relating to the
18 collection of [~~said~~] the tax [~~but~~]. In the event that the
19 appellant has paid [~~said~~] the tax before the rendition of final
20 judgment in [~~said~~] the suit and judgment is rendered in [~~said~~]
21 the suit in favor of the appellant, the appellant shall have
22 refunded to him [~~such~~] a sum of money as shall be determined by
23 the judgment of the court, together with legal interest
24 [~~thereon~~] on it and costs of court. [~~But~~] If the appellant
25 fails to recover in [~~said~~] the suit, the appellant shall pay

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1 all costs of court. In case the assets and liabilities of any
2 water users' association are taken over as provided in Section
3 [~~1 (§ 77-2201) of this act provided~~] 73-10-1 NMSA 1978, the
4 board of directors shall allow to the owner of lands, on
5 account of which payment [~~shall have~~] has been made to [~~said~~]
6 the association, all proper and equitable credits to which the
7 [~~said~~] owner may be entitled, according to the books and
8 records of [~~said~~] the association, which shall be prima facie
9 evidence of the credits of its various members [~~and such~~]. The
10 credits shall be taken into consideration by the board of
11 directors in determining the amount of money required to meet
12 obligations, maintenance, operating and current expenses of the
13 district for the ensuing year, and the board of directors shall
14 certify to the county commissioners the amount of [~~such~~] the
15 credits, and levy [~~hereinafter~~] as provided for in Chapter 73,
16 Articles 10 and 11 NMSA 1978 shall be made accordingly.

17 H. The term "asset" as used [~~herein~~] in this
18 section includes any and all grants, rights, powers, privileges
19 and appropriations [~~heretofore~~] conferred by [~~any~~] law [~~general~~
20 ~~or special~~] and upon any water users' association and upon
21 taking over the assets of any water users' association as
22 [~~hereinbefore~~] provided in Chapter 73, Articles 10 and 11 NMSA
23 1978 by any irrigation district. [~~Said~~] The district shall
24 succeed to all such grants, rights, powers, privileges and
25 appropriations, and the officers of [~~said~~] the irrigation

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1 district are authorized and empowered to perform such duties
2 and execute such instruments in regard thereto as [~~said~~] the
3 law required of the officers of [~~said~~] the water users'
4 association. "

5 Section 90. Section 73-12-4 NMSA 1978 (being Laws 1929,
6 Chapter 76, Section 4) is amended to read:

7 "73-12-4. [~~THE~~] PETITION HEARING [~~ON THE PETITION AND~~
8 ~~ANY~~] -- OBJECTIONS [~~TO ORGANIZATION: ESTABLISH~~] -- BOUNDARIES
9 [~~CALLING AN~~] -- ELECTION -- [~~AND PROVIDING FOR~~] APPEALS. --

10 A. At the hearing before the board of county
11 commissioners provided for in [~~the preceding~~] Section 73-12-3
12 NMSA 1978, the [~~said~~] board shall proceed to determine whether
13 [~~said~~] the petition has been signed by the requisite number of
14 petitioners; whether [~~or not~~] the lands in the proposed
15 district are arid or semiarid lands; whether [~~such~~] the lands
16 are [~~suseptable~~] susceptible [~~of~~] to irrigation and have a
17 fertile soil that will warrant farming [~~the same~~] them by
18 irrigation; whether there is a supply of water [~~which~~] that can
19 be made efficiently available for irrigation by the use of
20 pumps; whether the proposed plan is practicable; and whether,
21 on the whole, the development said to result from the
22 introduction of power is of such interest and benefit to the
23 whole district as to impress it with the character of public
24 use. For the purpose of determining the public use of the
25 operations of the proposed district and all other of the

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1 foregoing questions, the board of county commissioners is
2 [hereby] established as an inferior court and its decisions
3 shall be binding upon all persons interested unless reversed on
4 appeal as [hereinafter] provided in this section, and if
5 modified or affirmed, it shall be so binding.

6 B. If the board of county commissioners hearing the
7 matter [~~shall determine~~] determines that the petition has been
8 signed by the requisite number of petitioners as required by
9 [~~this act~~] Chapter 73, Article 12 NMSA 1978 and [~~shall~~
10 ~~determine~~] determines that [~~such~~] the proposed development is
11 of such interest and benefit to the whole district as to
12 impress with the character of public use, it shall then proceed
13 to hear any [~~and all~~] objections, exceptions and protests
14 [~~which~~] that have been made in writing to the organization of
15 [~~such~~] the district or to the inclusion of any lands within
16 [~~such~~] the district or to the exclusion of lands from [~~such~~]
17 the district and [~~such~~] other objections, exceptions and
18 protests as may be presented in writing to the organization of
19 the district. All persons whose lands have not been included
20 in the proposed district, as defined in the petition, [~~shall~~]
21 have the right to appear before [~~said~~] the board at [~~such~~] the
22 time and place as parties interested in or affected by the
23 organization of the district and [~~shall~~] have the right to
24 petition that their lands be included within [~~such~~] the
25 district, and, if it [~~shall appear~~] appears to the board that

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1 the inclusion of such lands may be made without materially
2 increasing the cost of service, the commissioners may by order
3 include such lands within [~~said~~] the district.

4 C. If the board [~~shall make~~] makes findings
5 approving of the organization of [~~such~~] the district, it shall
6 then proceed to define the boundaries of [~~such~~] the proposed
7 district from [~~said~~] the petition and from [~~such~~] applications
8 in writing for the exclusion of lands [~~therefrom~~] and the
9 inclusion of lands [~~therein~~] from and in the district, as may
10 be made in accordance with the intent of [~~this Act~~] Chapter 73,
11 Article 12 NMSA 1978. The board may adjourn [~~such~~] the meeting
12 from time to time not exceeding three weeks in all and shall,
13 by final order duly entered upon [~~their~~] its records, allow the
14 prayer of [~~said~~] the petition and define and establish the
15 boundaries of [~~such~~] the proposed district. Provided that
16 [~~said~~] the board shall not modify [~~such~~] the proposed
17 boundaries described in the petition so as to change the
18 objects of [~~said~~] the petition or so as to exempt from the
19 operation of [~~this Act~~] Chapter 73, Article 12 NMSA 1978 any
20 land within the boundaries proposed by the petition
21 [~~suseptable~~] susceptible to irrigation by the same system or
22 power works applicable to other lands in [~~such~~] the proposed
23 district [~~nor shall any~~]. No land [~~which~~] that will not, in
24 the judgment of the board, be benefited by [~~such~~] the proposed
25 system shall be included in [~~such~~] the district if [~~the~~] its

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1 owner [~~thereof shall make~~] makes written application at [~~such~~]
2 the hearing to withdraw [~~the same~~] it.

3 D. Any persons aggrieved by the decision of the
4 board of county commissioners, upon the hearing [~~hereinbefore~~]
5 provided for [~~is hereby~~] in this section, are given the right
6 of appeal [~~from such decision or any part thereof to the~~
7 ~~district court in and for the county in which said hearing was~~
8 ~~held. Said appeal shall be taken and perfected by the service~~
9 ~~of notice within fifteen days from the time of the decision and~~
10 ~~not thereafter. Such notice of appeal shall be served upon~~
11 ~~each of the three members of the committee presenting the~~
12 ~~petition, herein provided for, to the board of county~~
13 ~~commissioners] to the district court pursuant to the provisions
14 of Section 12-8A-1 NMSA 1978.~~

15 E. When the petition has been allowed and the
16 boundaries established and the name of the proposed district
17 designated, which shall be _____ electrical
18 district, the [~~said~~] board of county commissioners shall, by
19 further order duly entered upon [~~their~~] its records, call an
20 election of the qualified electors of [~~said~~] the district to be
21 held for the purpose of determining whether [~~such~~] the district
22 shall be organized under the provisions of [~~this Act~~] Chapter
23 73, Article 12 NMSA 1978 and by such order shall submit the
24 names of one or more persons from each of three divisions of
25 [~~said~~] the district, as [~~hereinafter~~] provided in this section,

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1 to be voted for as directors therein, and for the purpose of
2 [~~said~~] the election shall [~~divide said~~] divide the district
3 into three divisions, as nearly equal in size as may be
4 practicable, to be numbered, respectively, [~~I, II~~] 1, 2 and
5 [~~III~~] 3 and shall provide that a qualified elector of each of
6 [~~said~~] the three divisions shall be elected as a member of the
7 board of directors of [~~said~~] the district by the qualified
8 electors of the whole district. Each of [~~said~~] the divisions
9 shall constitute an election precinct and the commissioners
10 shall appoint three judges for each of [~~such~~] the precincts,
11 one of whom shall act as clerk of [~~said~~] the election.

12 [~~Upon appeal having been taken, as in this section~~
13 ~~provided, the clerk of the court of the county wherein such~~
14 ~~proceedings have been instituted shall transmit a certified~~
15 ~~copy of the petition and of all orders and findings made by the~~
16 ~~board of county commissioners in said cause and of all written~~
17 ~~objections, exceptions or protests or applications of~~
18 ~~whatsoever nature filed in such matter with the board of county~~
19 ~~commissioners to the district court of such county. Such~~
20 ~~certified copy of such proceedings must be transmitted to said~~
21 ~~district court within fifteen days from the date which such~~
22 ~~appeal is taken. The district court shall determine all~~
23 ~~questions submitted to the said board of county commissioners~~
24 ~~on their merits, and appeals from the decision of the district~~
25 ~~court in such matters may be taken to the supreme court of the~~

Underscored material = new
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1 ~~state in the same manner as appeals are taken to the supreme~~
2 ~~court from the district courts of the state in civil matters.~~
3 ~~The findings of fact in the district court shall have the~~
4 ~~effect as the findings of fact in that court in all civil cases~~
5 ~~at law.]"~~

6 Section 91. Section 74-3-9 NMSA 1978 (being Laws 1971,
7 Chapter 284, Section 7, as amended) is amended to read:

8 "74-3-9. LICENSING OF RADIOACTIVE MATERIAL -- APPEAL. --

9 A. It is unlawful for any person to possess, use,
10 store, dispose of, manufacture, process, repair or alter any
11 radioactive material unless he holds:

12 (1) a license issued by the nuclear regulatory
13 commission and notification by the licensee to the agency of
14 license identification;

15 (2) a license issued by an agreement state and
16 notification by the licensee to the agency of license
17 identification; or

18 (3) a license issued by the agency.

19 B. The agency shall issue licenses and shall
20 approve requests for reciprocity in accordance with procedures
21 prescribed by [~~regulation~~] rule of the board. License
22 applications shall be made on forms provided by the agency.
23 The agency shall not issue a license unless the applicant has
24 demonstrated the capability of complying with all applicable
25 [~~regulations~~] rules of the board.

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1 C. The board may, by [~~regulation~~] rule, exempt from
2 the requirements of licensure specific quantities of any
3 radioactive material determined by the board not to constitute
4 a health or environmental hazard.

5 D. The holding of a license issued by the agency,
6 the nuclear regulatory commission or an agreement state does
7 not relieve the licensee from the responsibility of complying
8 with all applicable [~~regulations~~] rules of the board.

9 E. [~~Any~~] A person who is or may be affected by
10 licensing action of the agency may appeal [~~for further relief~~]
11 to the district court [~~in which the subject facilities or~~
12 ~~activities are located. All such appeals shall be upon the~~
13 ~~agency's administrative records and shall be taken within~~
14 ~~thirty days from the date the decision is final. Upon appeal,~~
15 ~~the district court shall set aside the licensing action only if~~
16 ~~found to be:~~

- 17 (1) ~~arbitrary, capricious or an abuse of~~
 - 18 ~~discretion;~~
 - 19 (2) ~~not supported by substantial evidence in~~
 - 20 ~~the record; or~~
 - 21 (3) ~~otherwise not in accordance with law]~~
- 22 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

23 Section 92. Section 74-4B-14 NMSA 1978 (being Laws 1992,
24 Chapter 5, Section 3) is amended to read:

25 "74-4B-14. CLEANUP OF ORPHAN HAZARDOUS MATERIALS--

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1 DEPARTMENT RECOURSE. -- APPEAL. -- The department may assess
2 charges against ~~[persons]~~ a party identified as responsible for
3 orphan hazardous materials, for costs the department incurs in
4 cleanup of the orphan hazardous materials and for damage to
5 state property. Amounts received in payment of assessments for
6 cleanup of the orphan hazardous materials shall be deposited in
7 the orphan material recovery fund. Amounts received in payment
8 of assessments for damage to state property shall be used to
9 repair the damage. ~~[Any]~~ A person who is assessed charges
10 pursuant to this section may appeal the assessment to the
11 district court ~~[within thirty days of receipt of notice of the~~
12 ~~assessment]~~ pursuant to the provisions of Section 12-8A-1 NMSA
13 1978. "

14 Section 93. Section 75-3-11 NMSA 1978 (being Laws 1965,
15 Chapter 235, Section 11) is amended to read:

16 "75-3-11. JUDICIAL REVIEW. -- Rulings by the commission on
17 the issuance, refusal or revocation of a license are subject to
18 review ~~[only in the district court for Santa Fe county and the~~
19 ~~state supreme court]~~ in the district court pursuant to the
20 provisions of Section 12-8A-1 NMSA 1978. "

21 Section 94. REPEAL. -- Sections 4-45-6, 12-8-17 through
22 12-8-22, 61-1-18, 61-1-20, 61-1-22, 61-1-23, 61-1-26, 61-18A-24
23 and 61-27A-15 NMSA 1978 (being Laws 1876, Chapter 1, Section
24 23, Laws 1969, Chapter 252, Sections 17 through 22, Laws 1957,
25 Chapter 247, Sections 18, 20, 22, 23 and 26, Laws 1987, Chapter

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252, Section 24 and Laws 1993, Chapter 212, Section 15, as amended) are repealed.

Section 95. EFFECTIVE DATE.--The effective date of the provisions of this act is September 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
3
4
5

6 January 28, 1998
7

8 Mr. Speaker:
9

10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 HOUSE BILL 84
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

- 16 1. On page 37, line 20, after "organization" insert a
17 comma.
18
19 2. On page 53, line 13, strike "Sections" and insert in
20 lieu thereof "Section".
21
22 3. On page 63, line 16, strike "provision" and insert in
23 lieu thereof "provisions".
24
25 4. On page 81, line 24, after "Subsection A" insert "of
this section".

. 119929. 2

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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5. On page 132, line 23, after "12-8A-1" insert "NMSA
1978".

6. On page 144, line 17, before "rule" insert "the".

Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

3 HJC/HB 84

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4 The roll call vote was 11 For 0 Against

5 Yes: 11

6 Excused: Alwin, Sanchez

7 Absent: None

10 121892.1

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25 . 119929. 2

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

HB 84/a

3
4 February 11, 1998

5
6 Mr. President:

7
8 Your JUDICIARY COMMITTEE, to whom has been referred

9 HOUSE BILL 84, as amended

10
11 has had it under consideration and reports same with
12 recommendation that it DO PASS, amended as follows:

13
14 1. On page 1, line 22, after "of" insert the word "agency"
15 and strike the words "by agencies".

16
17 2. On page 1, line 24, after "reference" insert a period
18 and delete the remainder of the line.

19 3. On page 1, line 25, delete the entire line.

20
21 4. On page 2, line 1, delete the entire line.

22
23 5. On page 4, line 5, after "reference" insert a semicolon
24 and delete the remainder of the line.

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. 119929. 2

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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6. On page 4, line 6, delete the entire line.
7. On page 4, line 7, delete the entire line.

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Sanchez, Vernon

Absent: None

. 119929. 2

Underscored material = new
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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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