

AN ACT

RELATING TO JUDICIAL REVIEW; REVISING PROCEDURES FOR JUDICIAL REVIEW OF FINAL DECISIONS BY AGENCIES; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 39-3-1.1 NMSA 1978 (being Laws 1998, Chapter 55, Section 1) is amended to read:

"39-3-1.1. 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 agency final decisions that are placed under the authority of this section by specific statutory reference.

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

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

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

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

(a) all persons who were parties in the proceeding before the agency; and

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

C. Unless standing is further limited by a specific statute, a person aggrieved by a final decision may appeal the decision to district court by filing in district court a notice of appeal within thirty days of the date of filing of the final decision. The appeal may be taken to the district court for the county in which the agency maintains its principal office or the district court of any county in which a hearing on the matter was conducted. When notices of appeal from a final decision are filed in more than one district court, all appeals not filed in the district court in which the first appeal was properly filed shall be dismissed without prejudice. An appellant whose appeal was dismissed without prejudice pursuant to the provisions of this subsection shall have fifteen days after receiving service of the notice of dismissal to file a notice of appeal in the district court in which the first appeal was properly filed.

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

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

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

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

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

F. The district court may certify to the court of appeals a final decision appealed to the district court, but undecided by that court, if the appeal involves an issue of substantial public interest that should be decided by the court of appeals. The appeal shall then be decided by the court of appeals.

G. The procedures governing appeals and petitions for writ of certiorari that may be filed pursuant to the provisions of this section shall be set forth in rules adopted by the supreme court.

H. As used in this section:

(1) "agency" means any state or local public
body or officer placed under the authority of this section by

specific statutory reference;

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

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

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

"1-4-21. REFUSAL OF REGISTRATION--APPEAL.--A qualified elector whose registration has been refused or the county chairman of any major political party who alleges that certain persons are qualified electors but have been refused registration may bring an appeal regarding the refused registration pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

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

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

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

(2) from the tax schedules of the county if any of the owners of the real estate who signed the petition are delinquent in the payment of property taxes; and

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

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

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

(2) within the urbanized area of another municipality and in compliance with Section 3-2-3 NMSA 1978, the board of county commissioners shall cause a census to be taken of the persons residing within the territory proposed to be incorporated. The census shall be completed and filed with the board of county commissioners within thirty days after the board of county commissioners authorizes the taking of the census.

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

D. If the board of county commissioners determines that the conditions for incorporation have not been met, the board of county commissioners shall notify the petitioners of its determination by publishing in a newspaper of general circulation in the territory proposed to be incorporated, once, not more than ten days after its determination, a notice of its determination that the conditions for incorporation have not been met. If there is no newspaper of general circulation in the territory proposed to be incorporated, notice of the determination shall be

posted in eight public places within the territory proposed to be incorporated.

E. After the board of county commissioners has determined that all of the conditions for incorporation of the territory as a municipality have been met, the board of county commissioners shall hold an election on the question of incorporating the territory as a municipality. Elections for the incorporation of municipalities shall only be held in odd-numbered years upon the first Tuesday in July or in any year upon the first Tuesday in January, unless that Tuesday is a holiday, in which case the election shall be held on the second Tuesday in July or the second Tuesday in January. The county clerk shall notify the secretary of finance and administration and the secretary of taxation and revenue of the date of the incorporation election within ten days after the adoption of the resolution calling the election.

F. The signers of the petition or a municipality within whose urbanized area the territory proposed to be incorporated is located may appeal any determination of the board of county commissioners to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"3-2-9. INCORPORATION COMPLETE--JUDICIAL NOTICE--
DEFECTS IN INCORPORATION--APPEAL.--

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

B. An action by a protestant against the incorporation of a municipality shall be taken to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"3-19-8. APPEAL.--Any person in interest dissatisfied with an order or determination of the planning commission, after review of the order or determination by the governing body of the municipality, may commence an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

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

A. A zoning ordinance adopted by a joint municipal-county zoning authority shall be an ordinance of the municipality and an ordinance of the county joining in the agreement pursuant to Subsection A of Section 3-21-3 NMSA 1978 and may be enforced by appropriate procedures of either the municipality or the county. The agreement entered into pursuant to Subsection A of Section 3-21-3 NMSA 1978 may specify whether the municipality or the county shall assume primary enforcement responsibility.

B. The extraterritorial zoning commission shall administer the zoning ordinance adopted by the joint municipal-county zoning authority in the manner provided in Subsection C of Section 3-21-7 NMSA 1978.

C. Appeals from the decisions of the extraterritorial zoning commission shall be taken to the joint municipal-county zoning authority in the manner provided in Section 3-21-8 NMSA 1978, and appeals from the decisions of the joint municipal-county zoning authority shall be taken to the district court in the manner provided in Section 39-3-1.1 NMSA 1978."

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

"3-21-9. ZONING--APPEAL.--A person aggrieved by a decision of the zoning authority or any officer, department, board or bureau of the zoning authority may appeal the

decision pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"3-33-13. IMPROVEMENT DISTRICT--PROVISIONAL ORDER--
PROTEST--APPEAL TO DISTRICT COURT.--

A. At the hearing of the governing body on the provisional order creating an improvement district, an interested person or owner of property to be assessed for the improvement may file a written protest or objection questioning the:

- (1) propriety and advisability of constructing the improvement;
- (2) estimated cost of the improvement;
- (3) manner of paying for the improvement; or
- (4) estimated maximum benefit to each individual tract or parcel of land.

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

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

- (1) concluded the hearing;
- (2) determined:
 - (a) the advisability of constructing the improvement; and

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

(3) created the improvement district, a person who during the hearing filed a written protest with the governing body protesting the construction of the improvement may appeal the determination of the governing body pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

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

"3-33-16. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--PROTEST--ACTION OF THE GOVERNING BODY--APPEAL TO DISTRICT COURT.--

A. At the preliminary hearing of the governing body on the question of creating an improvement district as authorized in Section 3-33-14 NMSA 1978, an owner of a tract

or parcel of land to be assessed may contest:

- (1) the proposed assessment;
- (2) the regularity of the proceedings

relating to the improvement;

- (3) the benefits of the improvement; or
- (4) any other matter relating to the

improvement district.

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

C. At the hearing, the governing body may:

- (1) correct a mistake or irregularity in any proceeding relating to the improvement;

- (2) correct an assessment made against any tract or parcel of land;

- (3) in case of any invalidity, reassess the cost of the improvement against a benefitting tract or parcel of land; or

(4) recess the hearing.

D. An owner of a tract or parcel of land assessed, whether he appeared at the hearing or not, may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

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

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

(1) the proceedings;

(2) the assessment roll;

(3) each assessment contained on the assessment roll; or

(4) the amount of the assessment levied against each tract or parcel of land, is deemed waived.

B. At the hearing, the governing body shall hear all objections that have been filed as provided in this

section and may recess the hearing and, by resolution, revise, correct, confirm or set aside an assessment and order another assessment be made de novo.

C. The governing body by ordinance shall, by reference to the assessment roll as so modified, if modified, and as confirmed by the resolution, levy the assessments contained in the assessment roll. The assessments may be levied in stages if preliminary liens are established pursuant to Section 3-33-11 NMSA 1978. The decision, resolution and ordinance of the governing body is:

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

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

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

D. An owner who has filed an objection as provided in this section may commence an appeal in district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

1965, Chapter 300, Section 14-32-30, as amended) is amended to read:

"3-33-35. IMPROVEMENT DISTRICT--NOTICE OF APPEAL--
APPEAL TO DISTRICT COURT.--After an owner has filed a written objection with the municipal clerk to a reassessment as provided in Section 3-33-22 NMSA 1978 and the governing body has determined the reassessment, an owner of a tract or parcel of land that is reassessed may file a notice of appeal to the district court. The appeal shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"3-35-3. HEARING ON PROVISIONAL ORDER--PROTEST BY PROPERTY OWNER OR INTERESTED PERSON--APPEAL.--At the hearing on a provisional order, a property owner or interested person may file a written protest and may be heard by the governing body on the order. A person filing a written protest may bring an appeal concerning the governing body's determination on the protest pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 13. Section 3-39-23 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-20-21, as amended) is amended to read:

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

A. Any person aggrieved by a decision of the

board of appeals, any taxpayer or any officer, department, board or bureau of the political subdivision may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

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

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

A. Whenever any municipality finds that there exist dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accidents or other calamities; lack of ventilation, light or sanitary facilities or due to other conditions, including those set forth in Subsection C of this section, rendering the dwellings unsafe and unsanitary or dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of the municipality, power is conferred upon the municipality to require or cause the repair, closing or demolition or removal of the dwelling

in the manner provided in this section. A "dwelling" means any building or structure or part thereof used and occupied for human habitation or intended to be so used and includes any appurtenances usually enjoyed in the dwelling.

B. Upon the adoption of an ordinance finding that dwelling conditions of the character described in Subsection A of this section exist, the governing body of the municipality is authorized to adopt ordinances relating to the dwellings within the municipality that are unfit for human habitation. The ordinances shall include the following provisions:

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

(2) whenever it appears to the public officer, on his own motion, that any dwelling is unfit for human habitation, he shall, if his preliminary investigation discloses a basis for the charges, issue and cause to be served on the owner, every mortgagee of record and all parties in interest in the dwelling, including persons in possession, a complaint stating the charges in that respect. The complaint shall contain a notice that a hearing will be held before the public officer or his designated agent at a place fixed in the complaint not less than ten days nor more than thirty days after the serving of the complaint; that the

owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person or otherwise and give testimony at the place and the time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer;

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

(a) if the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the cost as being reasonable for that purpose and require the owner, within the time specified in the order, to repair, alter or improve the dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

(b) if the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling, the ordinance of the municipality shall fix a certain percentage of the

cost as being reasonable for the purpose, and require the owner, within the time specified in the order, to remove or demolish the dwelling;

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

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

(6) the amount of the cost of the repairs, alterations or improvements or the vacating and closing or the removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling and shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining shall be deposited in the district court by the public officer and shall be secured in the manner as may be directed by the court and shall be disbursed by the court to the persons found to be entitled to the balance by final order or decree of the court.

C. An ordinance adopted by a municipality pursuant to this section shall provide that the public

officer may determine a dwelling is unfit for human habitation if he finds that conditions exist in the dwelling that are dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings or other residents of the municipality or that have a blighting influence on properties in the area. The conditions may include the following, without limitations: defects increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; overcrowding; inadequate ingress and egress; inadequate drainage; or any violation of health, fire, building or zoning regulations or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvements. The ordinance may provide additional standards to guide the public officer or his agents or employees in determining the fitness of a dwelling for human habitation.

D. Complaints or orders issued by a public officer pursuant to an ordinance adopted under the provisions of the Urban Development Law shall be served upon persons either personally or by registered mail. If the whereabouts of the persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer makes an affidavit to that effect, then

the serving of the complaint or order upon the persons may be made by publishing the complaint or order once each week for two consecutive weeks in a newspaper printed and published in the municipality or, in the absence of a newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order shall also be filed with the clerk of the county in which the dwelling is located. Filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

E. Any person affected by an order issued by the public officer may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of the Urban Development Law, including the following powers in addition to others granted in the Urban Development Law:

(1) to investigate the dwelling conditions in the municipality in order to determine which dwellings are unfit for human habitation;

(2) to administer oaths and affirmations,

examine witnesses and receive evidence;

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

(4) to appoint and fix the duties of any officers, agents and employees as he deems necessary to carry out the purposes of the ordinances; and

(5) to delegate any of his functions and powers under the ordinance to officers, agents and employees he may designate.

G. The governing body of a municipality adopting an ordinance under this section shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in the municipality for the purpose of determining the fitness of the dwellings for human habitation and for the enforcement and administration of its ordinance or ordinances adopted under this section.

H. Nothing in this section shall be construed to abrogate or impair the powers of the courts or of a department of a municipality to enforce any provisions of its

charter or its ordinances or regulations or to prevent or punish violations thereof. The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

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

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

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

A. The owner of any property within the proposed district may, not less than two days preceding the hearing, file with the clerk his specific objections in writing. Any objection to the regularity, validity and correctness of the proceedings, including the validity and amount of the preliminary fund assessment, shall be deemed waived unless presented at the time and in the manner specified in this subsection.

B. At the time and place designated for hearing the objections, the governing body of the city shall hear and determine all objections that have been filed. The governing body shall have the power to adjourn the hearing and shall have power by resolution, in its discretion, to revise,

correct or confirm any proceedings previously taken.

C. Within fifteen days after the publication of the ordinance forming the parking district, a person who has filed an objection, as provided in Subsection A of this section, shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"4-45-5. ACCOUNTS AGAINST COUNTY--APPEAL FROM DISALLOWANCE.--When a claim of a person against a county is disapproved in whole or in part by the board of county commissioners, that person may appeal the decision of the board to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"4-55A-31. IMPROVEMENT DISTRICT--APPEAL TO DISTRICT COURT.--After an owner has filed a written objection with the county clerk to any reassessment as provided in Section 4-55A-18 NMSA 1978 and the board has determined the reassessment, any owner of a tract or parcel of land that is reassessed may file a notice of appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

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

A. A person aggrieved by a decision of the administrator may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

C. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney fees."

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

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

A. A property owner may appeal an order made by the director or a county valuation protests board by filing an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The director shall notify the appropriate county assessor of the decision and order of the district court and shall direct the assessor to take appropriate action to comply with the decision and order."

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

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

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

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

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

(3) otherwise not in accordance with law.

B. A person or party, including a labor organization, affected by a final rule, order or decision of the board or a local board, may appeal to the district court for further relief pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

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

A. An employee who is dismissed, demoted or

suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appealing employee and the agency whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal.

B. An applicant denied permission to take an examination or who is disqualified may appeal to the board.

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

D. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. Costs of the transcripts, including one copy for the board, shall be paid initially by the agency. The cost of the transcripts may be assessed by the court to the losing party on appeal.

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

F. If the board finds that the action taken by the agency was without just cause, the board may modify the

disciplinary action or order the agency to reinstate the appealing employee to his former position or to a position of like status and pay. Every consideration shall be given to placing the appealing employee in the same geographical location in which he was employed prior to the disciplinary action. The board may recommend that the appealing employee be reinstated by an agency other than the one who disciplined the appealing employee. When the board orders an agency to reinstate an appealing employee, the reinstatement shall be effective within thirty days of the board's order. The board may award back pay as of the date of the dismissal, demotion or suspension or as of the later date as the board may specify.

G. A party aggrieved by the decision of the board made pursuant to this section may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

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

A. A benefit claimant shall be notified in writing of a denial of a claim for benefits within thirty days of the denial. The notification shall give the reason for the denial. A claimant may appeal the denial and request

a hearing. The appeal shall be in writing filed with the association within ninety days of the denial. The appeal shall contain a statement of the claimant's reason for claiming the denial to be improper. The retirement board shall schedule a de novo hearing of the appeal before the retirement board or, at the discretion of the retirement board, a designated hearing officer or committee of the retirement board within sixty days of receipt of the appeal. A final decision on the matter being appealed shall be made by the retirement board.

B. Appeals from a final decision of the retirement board may be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"12-8-16. PETITION FOR JUDICIAL REVIEW.--Any party who has exhausted all administrative remedies available within the agency and who is adversely affected by a final order or decision in an adjudicatory proceeding may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"13-1-183. JUDICIAL REVIEW.--All actions authorized by

the Procurement Code for judicial review of a determination shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"13-4-15. APPEALS.--

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

B. The labor and industrial commission, sitting as the appeals board, shall adopt rules as it deems necessary for the prompt disposition of appeals. A copy of the rules shall be filed with the librarian of the supreme court law library.

C. The appeals board, within ten days after the filing of the appeal, shall set the matter for an oral hearing within thirty days and, following the hearing, shall enter a decision within ten days after the close of the hearing and promptly mail copies of the decision to the

parties.

D. Decisions of the appeals board may be appealed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 26. Section 17-2-43.1 NMSA 1978 (being Laws 1995, Chapter 145, Section 8) is amended to read:

"17-2-43.1. JUDICIAL REVIEW--ADMINISTRATIVE ACTIONS.--

A. Any person adversely affected by an order of the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. Any person adversely affected by a regulation adopted by the commission may appeal to the court of appeals. All appeals shall be upon the record made at the hearing or contained in the public repository file and shall be taken to the court of appeals within thirty days following the date of the filing of the regulation by the commission pursuant to the provisions of the State Rules Act.

C. Upon appeal, the court of appeals shall set aside the regulation only if it is found to be:

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

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

(3) otherwise not in accordance with law.

D. After a hearing and a showing of good cause by the appellant, a stay of the regulation being appealed may be

granted:

(1) by the commission; or

(2) by the court of appeals if the commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

E. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals."

Section 27. Section 17-3-34 NMSA 1978 (being Laws 1912, Chapter 85, Section 35, as amended) is amended to read:

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

A. If the holder of any license, certificate or permit persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978 or of any regulations referred to in Section

17-2-10 NMSA 1978, the license, certificate or permit shall be revoked by the state game commission after reasonable notice given the accused of the alleged violation and after the accused is afforded an opportunity to appear and show cause against the charges.

B. At the hearing, the state game commission shall cause a record of the hearing to be made and shall allow the person charged to examine witnesses testifying at

the hearing. Any person whose license, certificate or permit has been revoked by the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 28. Section 19-7-17 NMSA 1978 (being Laws 1963, Chapter 237, Section 4) is amended to read:

"19-7-17. APPEAL.--A person in interest aggrieved by the decision of the commissioner in fixing the value of improvements or in collecting costs may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 29. Section 19-7-67 NMSA 1978 (being Laws 1912, Chapter 82, Section 72, as amended) is amended to read:

"19-7-67. CONTEST--COMMISSIONER--APPEAL TO DISTRICT COURT.--A person aggrieved by a decision of the commissioner may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 30. Section 19-10-23 NMSA 1978 (being Laws 1929, Chapter 125, Section 16, as amended) is amended to read:

"19-10-23. APPEAL OF COMMISSIONER'S DECISION.--A person or corporation aggrieved by a ruling or decision of the commissioner affecting his interest in any lease issued under or affected by the provisions relating to oil and gas leases of state lands may file an appeal pursuant to the

provisions of Section 39-3-1.1 NMSA 1978."

Section 31. Section 21-24-8 NMSA 1978 (being Laws 1971, Chapter 304, Section 8, as amended) is amended to read:

"21-24-8. JUDICIAL REVIEW.--Any final determination of the commission respecting the issuance, denial or revocation of a registration may be appealed to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 32. Section 22-2-15 NMSA 1978 (being Laws 1978, Chapter 129, Section 2) is amended to read:

"22-2-15. HEARINGS--SUSPENSION CONTINUANCE AND DISCONTINUANCE--APPEALS.--

A. Within ten days after suspension, or within a reasonable time as the suspended local school board may request, the state board shall give a hearing to the local school board. At this hearing, the local school board may appear and show cause why the suspension should not be continued. The state board employees who conducted evaluations upon which the suspension was based shall appear and give testimony.

B. After the hearing, the state board shall continue or discontinue the suspension of the local school board.

C. Any local school board aggrieved by the decision of the state board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 33. Section 22-10-22 NMSA 1978 (being Laws 1967, Chapter 16, Section 124, as amended) is amended to read:

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

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

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

(1) the state board serving written notice of the suspension or revocation on the person holding the certificate in accordance with the law for service of process in civil actions. The notice of the suspension or revocation shall state the grounds for the suspension or revocation of the certificate. The notice of the suspension or revocation shall describe the rights of the person holding the certificate and include instructions for requesting a hearing before the state board. A hearing shall be requested within thirty days of receipt of the notice of suspension or revocation. If a hearing is requested, the hearing shall be held not more than ninety days from the date of the request for the hearing;

(2) the state board or its designated

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

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

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

D. Any person aggrieved by a decision of the state board, after a hearing pursuant to this section, may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 34. Section 24-1-5 NMSA 1978 (being Laws 1973, Chapter 359, Section 5, as amended) is amended to read:

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

A. No health facility shall be operated without a license issued by the department. If a health facility is found to be operating without a license, in order to protect human health or safety, the secretary may issue a cease-and-desist order. The health facility may request a hearing that shall be held in the manner provided in this section. The department may also proceed pursuant to the Health Facility Receivership Act.

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

C. Except as provided in Subsection F of this section, upon receipt of an application for a license to operate a health facility, the department shall promptly inspect the health facility to determine if it is in compliance with all rules of the department. Applications

for hospital licenses shall include evidence that the bylaws or rules of the hospital apply equally to osteopathic and medical physicians. The department shall consolidate the applications and inspections for a hospital that also operates as a hospital-based primary care clinic.

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

E. A one-year nontransferable license shall be issued to any health facility complying with all rules of the department. The license shall be renewable for successive one-year periods, upon filing of a renewal application, if the department is satisfied that the health facility is in compliance with all rules of the department or, if not in compliance with a rule, has been granted a waiver or variance of that rule by the department pursuant to procedures, conditions and guidelines adopted by rule of the department. Licenses shall be posted in a conspicuous place on the licensed premises, except that child-care centers that receive no state or federal funds may apply for and receive from the department a waiver from the requirement that a

license be posted or kept on the licensed premises.

F. Any health facility that has been inspected and licensed by the department and that has received certification for participation in federal reimbursement programs and that has been fully accredited by the joint commission on accreditation of health care organizations or the American osteopathic association shall be granted a license renewal based on that accreditation. Health facilities receiving less than full accreditation by the joint commission on the accreditation of health care organizations or by the American osteopathic association may be granted a license renewal based on that accreditation. License renewals shall be issued upon application submitted by the facility upon forms prescribed by the department. This subsection does not limit in any way the department's various duties and responsibilities under other provisions of the Public Health Act or under any other subsection of this section, including any of the department's responsibilities for the health and safety of the public.

G. The department may charge a reasonable fee not to exceed three dollars (\$3.00) per bed for an in-patient health facility or one hundred dollars (\$100) for any other health facility for each license application, whether initial or renewal, of an annual license or the second consecutive issuance of a temporary license. Fees collected shall not be

refundable. All fees collected pursuant to licensure applications shall be deposited with the state treasurer for credit to the general fund.

H. The department may revoke or suspend the license of a health facility or may impose on a health facility an intermediate sanction and a civil monetary penalty provided in Section 24-1-5.2 NMSA 1978 after notice and an opportunity for a hearing before a hearing officer designated by the department to hear the matter and, except for child-care centers and facilities, may proceed pursuant to the Health Facility Receivership Act upon a determination that the health facility is not in compliance with any rule of the department. If immediate action is required to protect human health and safety, the secretary may suspend a license or impose an intermediate sanction pending a hearing, provided the hearing is held within five working days of the suspension or imposition of the sanction, unless waived by the licensee, and, except for child-care centers and facilities, may proceed ex parte pursuant to the Health Facility Receivership Act.

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

(1) within ten working days after receipt by the licensee of notice of suspension, revocation, imposition

of an intermediate sanction or civil monetary penalty or denial of an initial or renewal application;

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

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

The department shall also provide timely notice to the licensee of the date, time and place of the hearing, identity of the hearing officer, subject matter of the hearing and alleged violations.

J. Any hearing held pursuant to provisions of this section shall be conducted in accordance with adjudicatory hearing rules and procedures adopted by regulation of the department. The licensee has the right to be represented by counsel, to present all relevant evidence by means of witnesses and books, papers, documents, records, files and other evidence and to examine all opposing witnesses who appear on any matter relevant to the issues. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum prior to or after the commencement of the hearing to compel discovery and the attendance of witnesses and the

production of relevant books, papers, documents, records, files and other evidence. Documents or records pertaining to abuse, neglect or exploitation of a resident, client or patient of a health facility or other documents, records or files in the custody of the human services department or the office of the state long-term care ombudsman at the state agency on aging that are relevant to the alleged violations are discoverable and admissible as evidence in any hearing.

K. Any party may appeal the final decision of the department pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

M. Complaints received by the department pursuant to this section shall not be disclosed publicly in a manner

as to identify any individuals or health facilities if upon investigation the complaint is unsubstantiated.

N. Notwithstanding any other provision of this section, where there are reasonable grounds to believe that any child is in imminent danger of abuse or neglect while in the care of a child-care facility, whether or not licensed, or upon the receipt of a report pursuant to Section 32A-4-3 NMSA 1978, the department shall consult with the owner or operator of the child-care facility. Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child-care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator. Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child-care facility, the secretary may suspend operation of the child-care facility for a period not in excess of fifteen days. Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child-care facility of the notice and opportunity for hearing given to the owner or operator.

O. Nothing contained in this section or in the Public Health Act shall authorize either the secretary or the department to make any inspection or investigation or to

prescribe any regulations concerning group homes as defined in Section 9-8-13 NMSA 1978 except as are reasonably necessary or desirable to promote the health and safety of persons using group homes."

Section 35. Section 25-1-11 NMSA 1978 (being Laws 1977, Chapter 309, Section 11, as amended) is amended to read:

"25-1-11. JUDICIAL REVIEW OF BOARD AND DIVISION ACTIONS.--

A. Rules adopted by the board are subject to judicial review under the provisions of Section 74-1-9 NMSA 1978.

B. Any person to whom the division denies a permit or whose permit is suspended or revoked by the division may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 36. Section 25-3-12 NMSA 1978 (being Laws 1969, Chapter 89, Section 7, as amended) is amended to read:

"25-3-12. CONDEMNATION AND APPEAL.--The inspector at official establishments shall condemn all diseased or otherwise unfit carcasses and parts of carcasses, including the viscera. The condemned parts shall be removed from the slaughtering department of the plant in equipment designated for that purpose and shall be destroyed for food purposes under the supervision of the inspector. If any official

establishment wishes to appeal a decision of an inspector as to carcasses or parts of carcasses that have been condemned, the establishment may appeal the decision to the chief veterinary meat inspector or any veterinarian he designates. If the establishment is not satisfied and wishes to make a further appeal, it may submit an appeal to the board, whose decision shall be final unless the person aggrieved appeals to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 37. Section 25-3-19 NMSA 1978 (being Laws 1969, Chapter 89, Section 14, as amended) is amended to read:

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

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

(1) any provision of the Meat Inspection Act; or

(2) any rule issued pursuant to the Meat Inspection Act.

B. State meat inspection service or establishment numbers may be suspended or revoked only after a hearing before the board upon reasonable notice. Notice shall be given the licensee by service of the complaint upon him.

C. The decision of the board shall be final in any matter relating to renewal, suspension or revocation of state meat inspection service or establishment numbers unless the person aggrieved appeals to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 38. Section 25-7B-9 NMSA 1978 (being Laws 1993, Chapter 188, Section 28, as amended) is amended to read:

"25-7B-9. JUDICIAL REVIEW OF DEPARTMENT ACTIONS.--Any person to whom the department denies a permit or whose permit is suspended or revoked by the department may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 39. Section 27-3-4 NMSA 1978 (being Laws 1973, Chapter 256, Section 4, as amended) is amended to read:

"27-3-4. APPEAL.--Within thirty days after receiving written notice of the decision of the director pursuant to Section 27-3-3 NMSA 1978, an applicant or recipient may file a notice of appeal with the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 40. Section 27-5-12.1 NMSA 1978 (being Laws 1979, Chapter 146, Section 3, as amended) is amended to read:

"27-5-12.1. APPEAL.--Any hospital or ambulance service aggrieved by any decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1.1

NMSA 1978."

Section 41. Section 28-17-19 NMSA 1978 (being Laws 1989, Chapter 208, Section 19, as amended) is amended to read:

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

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

B. No person shall institute discriminatory, disciplinary or retaliatory action against any resident, employee or other person for filing a complaint, providing information to or otherwise cooperating with a representative of the office.

C. Any person who violates Subsection A of this section shall be subject to a civil penalty of up to five thousand dollars (\$5,000) per occurrence. Any person who violates Subsection B of this section shall be subject to a civil penalty of up to ten thousand dollars (\$10,000) per occurrence. The agency may assess and collect the penalty after notice and an opportunity for hearing, before a hearing officer designated by the agency to hear the matter, upon a determination that a person willfully interfered with the office or discriminated, disciplined or retaliated against an individual who communicated or disclosed information to the

office in good faith pursuant to Subsection A or B of this section. The hearing officer has the power to administer oaths on request of any party and issue subpoenas and subpoenas duces tecum. However, if the violation is against a person covered by the Personnel Act, the office shall refer the matter to the agency employing the person for disciplinary action.

D. Any party may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 42. Section 29-2-11 NMSA 1978 (being Laws 1941, Chapter 147, Section 11, as amended) is amended to read:

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

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

B. The secretary may suspend an officer for disciplinary reasons for not more than thirty days in accordance with New Mexico state police rules. Any officer holding a permanent commission who is suspended by the secretary has the right to have the suspension reviewed by the commission, but without further review or appeal.

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

D. In the event the commission finds that the person charged shall be removed, demoted or suspended for a period in excess of thirty days, the person may appeal from the decision of the commission to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 43. Section 29-10-8 NMSA 1978 (being Laws 1977, Chapter 339, Section 5, as amended) is amended to read:

"29-10-8. REVIEW OF ARREST RECORD INFORMATION--
APPEAL.--A person who believes that arrest record information concerning him is inaccurate or incomplete is, upon satisfactory verification of his identity, entitled to review the information and obtain a copy of it for the purpose of challenge or correction. In the event a law enforcement agency refuses to correct challenged information to the

satisfaction of the person to whom the inaccurate or incorrect information relates, the person is entitled to appeal to the district court to correct the information pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 44. Section 32A-2-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 33, as amended) is amended to read:

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

A. The department shall promulgate updated standards for all detention facilities, including standards for site, design, construction, equipment, care, program, personnel and clinical services. The department shall certify as approved all detention facilities in the state meeting the standards promulgated. The department may establish by rule appropriate procedures for provisional certification and the waiving of any of its standards for facilities in existence at the time of the adoption of the standards, except that it shall not allow waiver of any standard pertaining to adequate health and safety protection of the residents and staff of the facility. No child shall be detained in a detention facility unless it is certified as approved by the department, except as otherwise provided in Chapter 32A, Article 2 NMSA 1978.

B. The department shall inspect all detention facilities in the state at least once each twelve months and

shall require those reports it deems necessary from detention facilities in a form and containing the information determined by the department. If as the result of an inspection a certified detention facility is determined as failing to meet the required standards, its certification is subject to revocation or refusal for renewal by the department.

C. The department shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities' standards adoption and changes. The department shall also promulgate rules establishing procedures for facility certification, renewal of certification, refusal to renew certification and revocation of certification. The procedures adopted on these matters shall provide for adequate prior notice of intended action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision. Rules promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act.

D. Any person aggrieved by an administrative decision of the department rendered under the provisions of this section may petition for the review of the administrative decision by appealing to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. After January 1, 1994, no state or county detention facility shall hold juveniles sentenced by a federal court, unless the facility meets state standards promulgated by the department."

Section 45. Section 36-1A-9 NMSA 1978 (being Laws 1991, Chapter 175, Section 9, as amended) is amended to read:

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

A. A covered employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appellant and the agency whose action is reviewed shall have the right to be heard publicly and to present facts pertinent to the appeal.

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

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

D. Appeals may be heard, at the election of the appellant, either by the board or by a hearing officer selected by the state personnel office. If the appellant does not elect to have his case heard by a state-personnel-office-designated hearing officer as provided in this

section, the board may designate a hearing officer who may be a member of the board to preside over and take evidence at any hearing held pursuant to this section. This latter hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a final decision on the appeal, which shall include findings of fact and conclusions of law.

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

F. If the board or the state-personnel-office-designated hearing officer finds that the action taken was

without just cause, the board or the state-personnel-office-designated hearing officer may modify the disciplinary action or order the reinstatement of the appellant to his former position or to a position of like status and pay. When the board or the state-personnel-office-designated hearing officer orders a reinstatement of an appellant, the reinstatement shall be effective within thirty days after the service of a written copy of the decision on the affected party. The board or the state-personnel-office-designated hearing officer may award back pay as of the date of the dismissal, demotion or suspension or as of such later date as the order may specify.

G. A party aggrieved by the decision of the board or the state-personnel-office-designated hearing officer made pursuant to this section may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 46. Section 40-7A-6 NMSA 1978 (being Laws 1981, Chapter 171, Section 6, as amended) is amended to read:

"40-7A-6. REVOCATION OR SUSPENSION OF LICENSE--NOTICE--REINSTATEMENT--APPEAL.--

A. The division may deny, revoke, suspend, place on probation or refuse to renew the license of any child placement agency or foster home for failure to comply with the division's rules. The holder of the license sought to be

denied, revoked, suspended or placed on probation or that is not renewed shall be given notice in writing of the proposed action and the reason therefor and shall, at a date and place to be specified in the notice, be given a hearing before a hearing officer appointed by the secretary with an opportunity to produce testimony in the holder's behalf and to be assisted by counsel. The hearing shall be held no earlier than twenty days after service of notice thereof unless the time limitations are waived. A person whose license has been denied, revoked, suspended, placed on probation or not renewed may, on application to the division, have the license issued, reinstated or reissued upon proof that the noncompliance with the rules has ceased.

B. A person adversely affected by a decision of the division denying, revoking, suspending, placing on probation or refusing to renew a license may obtain a review by appealing to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. When any license is denied, suspended, revoked or not renewed, the care and custody of any child placed pursuant to the Child Placement Agency Licensing Act shall be transferred to the certifying child placement agency or the division."

Section 47. Section 42-3-14 NMSA 1978 (being Laws 1972, Chapter 41, Section 15, as amended) is amended to read:

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

A. A person aggrieved by a determination as to eligibility for relocation payments or the amount of payment received under the Relocation Assistance Act shall have the right to a hearing before the displacing agency or before a hearing officer designated by the displacing agency.

B. After the hearing, a person aggrieved or affected by a final administrative determination concerning eligibility for relocation payments or the amount of the payment under the Relocation Assistance Act may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 48. Section 47-6-15 NMSA 1978 (being Laws 1973, Chapter 348, Section 15, as amended) is amended to read:

"47-6-15. APPEALS.--

A. A party who is or may be adversely affected by a decision of a delegate of the board of county commissioners in approving or disapproving a final plat under summary review shall appeal the delegate's decision to the board of county commissioners within thirty days of the date of the delegate's decision. The board of county commissioners shall hear the appeal and shall render a decision within thirty days of the date the board receives notice of the appeal. Thereafter, the procedure for

appealing the decision of the board of county commissioners set out in Subsection B of this section shall apply.

B. A party who is or may be adversely affected by a decision of the board of county commissioners in approving or disapproving a preliminary or final plat may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 49. Section 50-9-15 NMSA 1978 (being Laws 1972, Chapter 63, Section 14, as amended) is amended to read:

"50-9-15. VALIDITY OF REGULATION--VARIANCE DETERMINATION--JUDICIAL REVIEW.--

A. Any person who is or may be affected by a regulation adopted by the board may appeal to the court of appeals for further relief. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days after filing of the regulation pursuant to the State Rules Act. The board shall be made a party to the action.

B. Upon appeal, the court of appeals shall set aside a regulation only if it is found to be:

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

C. A variance petitioner may appeal to the district court from an order of the department denying the variance. The appeal shall be filed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

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

A. If as a result of investigation the department has good cause to believe that any employer is violating any provision of the Occupational Health and Safety Act or any rule of the board, the department shall send prompt notice of the violation by certified mail to the employer believed to be in violation. The citation shall describe with particularity the provision of the Occupational Health and Safety Act or rule alleged to have been violated. The notice shall also state the time for abatement of the violation. Each citation issued pursuant to this section, or a copy thereof, shall be promptly and prominently posted by the cited employer, as prescribed in rules issued by the board, at or near the place where the violation occurred. No citation may be issued under this section after the expiration of six months following the occurrence of any violation. The board may issue a regulation prescribing procedures for the use of a notice in lieu of a citation with respect to de minimis violations that have no direct or

immediate relationship to safety or health.

B. If the department issues a citation as provided in Subsection A of this section, it shall, within a reasonable time after issuance of the citation, notify the employer by certified mail of the penalty, if any, proposed to be assessed and that the employer has fifteen working days within which to notify the department in writing that he wishes to contest the citation or proposed penalty. If within fifteen working days from the receipt of the notice issued by the department the employer fails to notify the department that he intends to contest the citation or proposed penalty and no notice is filed by an employee or employee representative as provided by Subsection D of this section within that time, the citation and the assessment of penalty, if any, as proposed shall be deemed the final order of the commission and not subject to review by any court or agency.

C. If the department has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the abatement period permitted, which period shall not begin to run until the entry of a final order by the commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the department shall notify the employer by

certified mail of the failure to correct and of the penalty proposed to be assessed by reason of the failure and that the employer has fifteen working days within which to notify the department in writing that he wishes to contest the department's notification or the proposed assessment of penalty. If within fifteen working days from the receipt of notification issued by the department the employer fails to notify the department that he intends to contest the notification or proposed assessment of penalty, the notification and assessment as proposed shall be deemed a final order of the commission and not subject to review by any court or department.

D. If any employer notifies the department in writing that he intends to contest the citation issued to him pursuant to provisions of Subsection A of this section or notification issued pursuant to provisions of Subsection B or C of this section or if within fifteen working days of the receipt of notice pursuant to the provisions of this section any employee of an employer cited or any employee's representative files a notice with the department alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the department shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a

hearing before the commission within fifteen days after the administrative review. The commission shall afford an opportunity for a hearing within thirty days after receipt of the petition. The commission shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the department's citation or the proposed penalty fixed by the department or directing other appropriate relief.

E. At any time prior to the expiration of an abatement period, an employer may notify the department in writing that he is unable to take the corrective action required within the period of abatement. The department shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the commission after the administrative review. The commission shall afford prompt opportunity for a hearing after receipt of the petition. The only grounds for modifying an abatement period provided by this subsection are a showing by the employer of a good-faith effort to comply with the abatement requirement of a citation and that abatement has not been completed because of factors beyond the employer's control.

F. Affected employees or their representatives shall be provided an opportunity to participate as parties at

both informal administrative review and commission hearings provided for in this section.

G. Any person, including the department, adversely affected by an order of the commission issued pursuant to provisions of this section may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 51. Section 53-8-91 NMSA 1978 (being Laws 1975, Chapter 217, Section 89, as amended) is amended to read:

"53-8-91. APPEAL FROM COMMISSION.--

A. If the commission fails to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by the Nonprofit Corporation Act to be approved by the commission before the same is filed in its office, the commission shall, within fifteen working days after the delivery thereof, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. The person or corporation may appeal the disapproval to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. If the commission revokes a certificate of authority to conduct affairs in New Mexico of any foreign corporation or a certificate of incorporation of a domestic

corporation, pursuant to the provisions of the Nonprofit Corporation Act, the foreign or domestic corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 52. Section 53-18-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 123, as amended) is amended to read:

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

A. If the commission fails to approve any articles of incorporation, amendment, merger, consolidation or dissolution or any other document required by the Business Corporation Act to be approved by the commission before it is filed in its office, it shall, within fifteen working days after the delivery thereof to it, give written notice of its disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From the disapproval, the person or corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. If the commission revokes the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of the Business Corporation Act, the foreign corporation may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

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

"53-19-67. APPEAL FROM COMMISSION.--If the commission fails to approve any articles of organization, articles of amendment, articles of merger or consolidation or articles of dissolution or any other document required or permitted by the Limited Liability Company Act to be approved by the commission before it is filed in its office, it shall, within fifteen working days after the delivery thereof to it, give written notice of its disapproval to the person delivering the same, specifying the reasons therefor. From the disapproval, the person may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 54. Section 57-19-36 NMSA 1978 (being Laws 1993, Chapter 98, Section 12, as amended) is amended to read:

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

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

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

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

(3) misrepresent a petroleum product as

meeting the standards of the Petroleum Products Standards Act.

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

C. The board shall establish a system of administrative penalties for violations of the Petroleum Products Standards Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt rules that meet the following minimum requirements:

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

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

(3) provisions shall be included for due process, including proper notification of administrative

proceedings, right to discovery of charges and evidence and appeal procedures; and

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

D. Appeals from decisions of the director regarding the assessment of an administrative penalty shall be to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 55. Section 58-1-45 NMSA 1978 (being Laws 1963, Chapter 305, Section 34, as amended) is amended to read:

"58-1-45. COURT REVIEW.--Any person aggrieved and directly affected by an order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 56. Section 58-10-13 NMSA 1978 (being Laws 1967, Chapter 61, Section 13, as amended) is amended to read:

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

A. Whenever the supervisor is unable to make the findings required by Section 58-10-12 NMSA 1978, he shall serve upon each party of record and his attorney, if any, a written copy of his decision denying the application by certified mail to the party's address of record. All parties

shall be deemed to have been served on the tenth day following the mailing. The decision shall include:

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

B. Any party aggrieved by the decision of the supervisor may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 57. Section 58-10-84 NMSA 1978 (being Laws 1967, Chapter 61, Section 81, as amended) is amended to read:

"58-10-84. WHEN ORDER IS FINAL--APPEAL.--

A. If a hearing has been held in regard to an order made pursuant to Section 58-10-80 or 58-10-81 NMSA 1978 and the supervisor's order is continued either in its original form or a modified form, the order is final when the supervisor enters his decision in the record of the hearing after the hearing. If no hearing is requested on the order, the order is final after the expiration of thirty days from the date the order is entered by the supervisor.

B. The supervisor's decision after any hearing under the Savings and Loan Act shall be served on each party of record and shall contain the same elements as required in Section 58-10-13 NMSA 1978. Any party aggrieved by the

decision of the supervisor after hearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 58. Section 58-11-4 NMSA 1978 (being Laws 1987, Chapter 311, Section 4) is amended to read:

"58-11-4. APPEAL RIGHTS AND COURT REVIEW.--Any person aggrieved or directly affected by a final order of the director may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 59. Section 58-13A-21 NMSA 1978 (being Laws 1985, Chapter 163, Section 21, as amended) is amended to read:

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

A. Any person aggrieved by a final order of the director may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The filing of an appeal pursuant to Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings."

Section 60. Section 58-13B-56 NMSA 1978 (being Laws 1986, Chapter 7, Section 56, as amended) is amended to read:

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

A. Any person aggrieved by a final order of the director may obtain a review of the order in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The filing of an appeal pursuant to Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings."

Section 61. Section 58-15-25 NMSA 1978 (being Laws 1955, Chapter 128, Section 23, as amended) is amended to read:

"58-15-25. REVIEW.--Any licensee or any person aggrieved by any act or order of the director pursuant to the New Mexico Small Loan Act of 1995 may file and appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 62. Section 58-19-4 NMSA 1978 (being Laws 1959, Chapter 204, Section 4, as amended) is amended to read:

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

A. Renewal of a license originally granted under the Motor Vehicle Sales Finance Act may be denied or a license may be suspended or revoked by the director on any of

the following grounds:

(1) material misstatement in application for license;

(2) willful failure to comply with any provision of that act relating to retail installment contracts;

(3) defrauding any retail buyer to the buyer's detriment while a licensee under that act;

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

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

B. If a licensee is a firm, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has acted or failed to act in the conduct of the business under its license as would be cause for suspending or revoking a license to the person

as an individual. Each licensee shall be responsible for the acts of any of its employees while acting as its agent, if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits or advantages accruing from the acts or otherwise ratified the acts.

C. No license shall be denied, suspended or revoked except after hearing. The director shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the principal place of business. The notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking a license shall recite the grounds upon which the order is based. The order shall be entered upon the records of the director and shall not be effective until after thirty days' written notice thereof, given after the entry, forwarded by certified mail to the licensee at his principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously by the licensee.

D. A person aggrieved by the denial, suspension or revocation of a license may file an appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. The director shall publish a notice that a

license has been revoked or suspended within thirty days after the revocation or suspension in a newspaper of general circulation in the county in which the licensee was doing business."

Section 63. Section 58-21-16 NMSA 1978 (being Laws 1983, Chapter 86, Section 16, as amended) is amended to read:

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

A. Any person aggrieved by a final order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

Section 64. Section 58-22-29 NMSA 1978 (being Laws 1983, Chapter 135, Section 29, as amended) is amended to read:

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

A. Any person aggrieved by a final order of the director may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

Section 65. Section 59A-4-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 67, as amended) is amended to read:

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

A. A party may appeal from an order of the superintendent made after an informal hearing or an administrative hearing. The appeal shall be taken to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. This section shall not apply as to matters arising pursuant to Chapter 59A, Article 17 NMSA 1978."

Section 66. Section 59A-11A-4 NMSA 1978 (being Laws 1989, Chapter 97, Section 4, as amended) is amended to read:

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

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

B. Any person aggrieved by the action of the superintendent in revoking, suspending or refusing to grant, renew or reissue a license may appeal that action to the district court pursuant to the provisions of Section 39-3-1.1

NMSA 1978.

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

Section 67. Section 59A-17-35 NMSA 1978 (being Laws 1984, Chapter 127, Section 330, as amended) is amended to read:

"59A-17-35. APPEALS FROM PUBLIC REGULATION COMMISSION.--Any order made by the public regulation commission pursuant to Section 59A-17-34 NMSA 1978 shall be subject to review by appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Upon institution of the appeal and for good cause shown upon motion and hearing, the court may, in the following cases, stay operation of the commission's order:

A. where, pursuant to Chapter 59A, Article 17 NMSA 1978, a rate service organization has been refused a license or an insurer has been refused a certificate of authority or had its license or certificate of authority

suspended, it may, with leave of court, be allowed to continue to engage in business, subject to the provisions of that article, pending final disposition of its application for review; or

B. where any order of the public regulation commission shall provide for, or sustain the superintendent's order for, a change in any rate or rating system that results in an increase or decrease in rates, any insurer affected may, with leave of court pending final disposition of the proceedings in the district court, continue to charge rates that existed prior to such order, on condition that the difference in the rates be deposited in a special escrow or trust account with a reputable financial institution by the insurer affected, to be held in trust by such insurer and to be retained by the insurer or paid to the holders of policies issued after the order of the court, as the court may determine."

Section 68. Section 59A-29-6 NMSA 1978 (being Laws 1985, Chapter 61, Section 6, as amended) is amended to read:

"59A-29-6. APPEALS--JUDICIAL REVIEW.--

A. A person aggrieved by an action or decision of the administrators of the FAIR plan or the underwriting association or of any insurer as a result of its participation may appeal to the superintendent within thirty days from the date of the action or the decision. The

superintendent shall, after hearing held upon thirty days' written notice, issue an order approving the action or decision or disapproving the action or decision with respect to the matter that is the subject of appeal.

B. All final orders and decisions of the superintendent shall be subject to judicial review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 69. Section 59A-42-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 761, as amended) is amended to read:

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

A. A member insurer may appeal to the superintendent from an action of the board of directors of the association by filing with the superintendent a notice of appeal within thirty days after the action appealed from.

B. A final order of the superintendent on appeal is subject to judicial review by an action in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 70. Section 59A-43-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 780, as amended) is amended to read:

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

A. A claimant whose claim is denied in whole or

in part by the association may, pursuant to Chapter 59A, Article 43 NMSA 1978, request the receivership court to review the decision of the association. A request for review shall be filed within thirty days of the denial. The receivership court shall have jurisdiction of all claims and the decision of the court shall be binding on both the claimant and the association.

B. A member insurer may appeal to the superintendent from an action of the board of directors of the association by filing with the superintendent a notice of appeal within thirty days after the action appealed from.

C. A final order of the superintendent on appeal is subject to judicial review by an action in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 71. Section 59A-47-29 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.28, as amended) is amended to read:

"59A-47-29. SETTLEMENT OF DISPUTES--APPEAL.--The parties to a dispute between a health care plan and a purveyor arising out of a health care expense payments contract may submit the dispute to the superintendent for his final decision and his final decision shall then be binding upon the parties to the contract. A party to the contract may seek review of the superintendent's decision by filing an

appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 72. Section 59A-52-22 NMSA 1978 (being Laws 1984, Chapter 127, Section 968, as amended) is amended to read:

"59A-52-22. JUDICIAL REVIEW OF ORDER.--A person aggrieved by a decision of the state fire marshal may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 73. Section 60-2B-4 NMSA 1978 (being Laws 1981, Chapter 259, Section 4, as amended) is amended to read:

"60-2B-4. LICENSING AUTHORITY--POWERS--DUTIES--
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 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 Bingo and Raffle Act and to adopt, amend and repeal rules and regulations governing the holding, operating and conducting of games of chance, the rental of premises and the purchase of equipment to the end that games of chance shall be held, operated and conducted only by licensees for the purposes and in conformity with the constitution of New Mexico and the provisions of that act;

(3) to hear and determine at public hearings all complaints against any licensee and to administer oaths and issue subpoenas to require the presence of persons and production of papers, books and records necessary to the determination of any hearing held;

(4) to keep records of all actions and

transactions of the licensing authority;

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

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

B. Proceedings brought against a licensee for a violation of the Bingo and Raffle Act shall be brought by the licensing authority by serving, in the manner provided in the rules of civil procedure, a complaint upon the licensee and notifying the licensee of the place and date, not less than twenty days after the date of service, at which a hearing shall be held. The complaint shall set forth, in the manner of complaints in civil action, the violations of the Bingo and Raffle Act or the rules and regulations of the licensing authority that the licensing authority alleges the licensee has committed. The licensing authority or the department of public safety may stop the operation of a game of chance pending hearing, in which case the hearing shall be held within ten days after notice.

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

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

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

F. When a license is ordered suspended or revoked, the licensee shall surrender the license to the licensing authority on or before the effective date of the

suspension or revocation. No license is valid beyond the effective date of the suspension or revocation, whether surrendered or not.

G. Upon the finding of a violation of the Bingo and Raffle Act or the rules and regulations, or both, that would warrant the suspension or revocation of a license, the licensing authority, in addition to any other penalties that may be imposed, may declare the violator ineligible to conduct a game of chance and to apply for a license under that act for a period not exceeding twelve months. The declaration of ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization or an organization otherwise affiliated with the violator when in the opinion of the licensing authority the circumstances of the violation warrant that action.

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

I. At the request of any party and for good cause shown, the licensing authority or the department of public safety shall issue subpoenas for the attendance of witnesses

and the production of books, records and other documents, but in no case shall a subpoena be made returnable more than five days after service.

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

K. Hearings may be convened by the licensing authority from time to time at the request of any party, but only for good cause shown. Hearings shall be held and concluded with reasonable dispatch and without unnecessary delay. The licensing authority shall decide any matter within thirty days of the hearing.

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

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

N. Any person appearing before the licensing authority in a representative capacity shall be required to

show his authority to act in that capacity.

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

P. If a person subpoenaed to attend in any investigation or hearing fails to obey the command of the subpoena without reasonable cause or if a person in attendance in any investigation or hearing refuses, without lawful cause, to be examined or to answer a legal or pertinent question or to exhibit any book, account, record or other document when ordered to do so by the representative of the licensing authority holding the hearing or by the department of public safety performing the investigation, the licensing authority or the department of public safety may apply to any judge of the district court, upon proof by affidavit of the facts, for an order returnable in not less than five nor more than ten days directing the person to show

cause before the judge why he should not comply with the subpoena or order.

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

R. Every witness is entitled to be paid for attendance or attendance and travel by the party on whose behalf he is subpoenaed, at the rates prescribed by law, before being required to testify.

S. The decision of the licensing authority in suspending or revoking any license under the Bingo and Raffle Act shall be subject to review. A licensee aggrieved by a decision of the licensing board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

T. No proceeding to vacate, reverse or modify any final order rendered by the licensing authority shall operate to stay the execution or effect of any final order

unless the district court, on application and three days' notice to the licensing authority, allows the stay. In the event a stay is ordered, the petitioner shall be required to execute his bond in a sum the court may prescribe, with sufficient surety to be approved by the judge or clerk of the court, which bond shall be conditioned upon the faithful performance by the petitioner of his obligation as a licensee and upon the prompt payment of all damages arising from or caused by the delay in the taking effect or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings."

Section 74. Section 60-6B-2 NMSA 1978 (being Laws 1981, Chapter 39, Section 38, as amended by Laws 1998, Chapter 55, Section 71 and also by Laws 1998, Chapter 93, Section 1) is amended to read:

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

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

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

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

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

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

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

(c) the name of the resident agent of the corporation authorized to accept service of process for all purposes, including orders and notices of the director, which agent shall be approved by the director with respect to

his character;

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

(e) such additional information regarding the corporation as the director may require to assure full disclosure of the corporation's structure and financial responsibility;

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

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

(b) the names and addresses of all general partners and of all limited partners contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the profits earned or other income paid by the limited partnership. No limited partnership shall receive a license if any partner designated in this subsection would not be eligible to hold a license issued pursuant to the Liquor Control Act; and

(c) such additional information regarding the limited partnership as the director may require to assure full disclosure of the limited partnership's structure and financial responsibility; and

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

B. Every applicant for a new license or for a transfer of ownership of a license, if an individual or general partnership, shall file with the application two complete sets of fingerprints of each individual, taken under the supervision of and certified to by an officer of the New Mexico state police, a county sheriff or a municipal chief of police. If the applicant is a corporation, it shall file two complete sets of fingerprints for each stockholder holding ten percent or more of the outstanding stock, principal officer, director and the agent responsible for the operation of the licensed business. The fingerprints shall be taken and certified to as provided for an individual or partnership. If the applicant is a limited partnership, it shall file two complete sets of fingerprints for each general partner and for each limited partner contributing ten percent or more of the total value of contributions made to the limited partnership or entitled to ten percent or more of the

profits earned or other compensation by way of income paid by the limited partnership. The fingerprints shall be taken and certified to as provided for an individual or partnership.

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

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

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

F. Before issuing a license, the department shall hold a public hearing within thirty days after receipt of the

application pursuant to Subsection K of this section.

G. An application for transfer of ownership shall be filed with the department no later than thirty days after the date a person acquired an ownership interest in a license. It shall contain the actual date of sale of the license and shall be accompanied by a sworn affidavit from the owner of record of the license agreeing to the sale of the license to the applicant as well as attesting to the accuracy of the information required by this section to be filed with the department. No license shall be transferred unless it will be placed into operation in an actual location within one hundred twenty days of issuance of the license, unless for good cause shown the director grants an additional extension for a length of time determined by the director.

H. Whenever it appears to the director that there will be more applications for new licenses than the available number of new licenses during any time period, a random selection method for the qualification, approval and issuance of new licenses shall be provided by the director. The random selection method shall allow each applicant an equal opportunity to obtain an available license, provided that all dispenser's and retailer's licenses issued in any calendar year shall be issued to residents of the state. For the purposes of random selection, the director shall also set a reasonable deadline by which applications for the available

licenses shall be filed. No person shall file more than one application for each available license and no more than three applications per calendar year.

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

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

K. The director shall notify the applicant by certified mail of the date, time and place of the hearing. The hearing shall be held in Santa Fe. The director may designate a hearing officer to take evidence at the hearing. The director or the hearing officer shall have the power to administer oaths.

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

M. Before any new license is issued for a location, the director shall cause a notice of the application therefor to be posted conspicuously, on a sign not smaller than thirty inches by forty inches, on the outside of the front wall or front entrance of the immediate premises for which the license is sought or, if no building or improvements exist on the premises, the notice shall be posted at the front entrance of the immediate premises for which the license is sought, on a billboard not smaller than five feet by five feet. The contents of the notice shall be in the form prescribed by the department, and such posting shall be over a continuous period of twenty days prior to

preliminary approval of the license.

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

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

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

Q. Any person aggrieved by any decision made by the director as to the approval or disapproval of the issuance of a license may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. If the disapproval is based upon local option district disapproval pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the local option district shall be a necessary party to any appeal. The decision of the director shall continue in force, pending a reversal or modification by the district court, unless otherwise ordered by the court."

Section 75. Section 60-6C-6 NMSA 1978 (being Laws 1981, Chapter 39, Section 102, as amended) is amended to read:

"60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--

APPEAL.--

A. No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action or proceeding to prevent or enjoin any finding of guilt or order of suspension or revocation or fine made by a liquor control hearing officer under the provisions of Section 60-6C-4 NMSA 1978. A licensee aggrieved or adversely affected by an order of revocation, suspension or fine shall have the right to appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

Section 76. Section 61-1-17 NMSA 1978 (being Laws 1957, Chapter 247, Section 17, as amended) is amended to read:

"61-1-17. PETITION FOR REVIEW.--A person entitled to a hearing provided for in the Uniform Licensing Act, who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA

1978."

Section 77. Section 61-18A-32 NMSA 1978 (being Laws 1987, Chapter 252, Section 32, as amended) is amended to read:

"61-18A-32. JUDICIAL REVIEW.--A person aggrieved by the decision of the director in the enforcement of the Collection Agency Regulatory Act may obtain judicial review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 78. Section 66-4-3 NMSA 1978 (being Laws 1978, Chapter 35, Section 216, as amended) is amended to read:

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

A. The department may refuse to issue a license for just cause and may cancel or suspend a license or use of temporary permits for violation of the Motor Vehicle Code. The department shall take the action authorized in this section only after hearing. Notice of hearing shall be given the party concerned as provided in Section 66-2-11 NMSA 1978.

The notice shall state the proposed action of the department and the reason for the proposed action.

B. The department shall prepare rules for the conduct of the hearing. At the hearing, the technical rules of evidence do not apply, and a party has the right to be

represented by counsel, to call witnesses in his own behalf and to cross-examine the witnesses of other parties.

C. The secretary or his designated agent shall conduct the hearing for the department and shall cause a record of hearing to be made.

D. Within ten days after completion of the hearing, the secretary shall cause to be served upon all parties, in the manner provided in Section 66-2-11 NMSA 1978, his findings and decision. The decision shall be:

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

(2) continuing a license, canceling a license or suspending a license for a time stated; or

(3) continuing use of dealer plates and temporary permits, canceling dealer plates and temporary permits or suspending use of temporary permits for a time stated.

E. A party aggrieved by the secretary's decision may file an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 79. Section 66-5-36 NMSA 1978 (being Laws 1978, Chapter 35, Section 258) is amended to read:

"66-5-36. RIGHT OF APPEAL TO COURT.--A person denied a license or whose license has been canceled, suspended or revoked by the department, except when the cancellation or

revocation is mandatory under the provisions of Chapter 66, Article 5 NMSA 1978, may file an appeal in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 80. Section 66-5-204 NMSA 1978 (being Laws 1983, Chapter 318, Section 5, as amended) is amended to read:

"66-5-204. ADMINISTRATIVE AND COURT REVIEW.--An owner of a motor vehicle registered in New Mexico who is aggrieved by the decision of the secretary made under the provisions of the Mandatory Financial Responsibility Act may appeal to the hearing officer of the department for a hearing to be held within twenty days of the receipt by the department of the appeal. A person who continues aggrieved after the decision made by the hearing officer may appeal that decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 81. Section 67-8-19 NMSA 1978 (being Laws 1959, Chapter 310, Section 5, as amended) is amended to read:

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

A. All hearings held pursuant to this section shall be public and upon not less than fifteen days' written notice of the time, place and purpose of the hearing to each utility whose services or facilities may be affected and to each municipality in which any part of the proposed highway improvement is to be located. Hearings may be held before the commission, any member or any representative designated

by it and at the place as is designated in the notice.

B. A record of the testimony shall be taken at the hearing and a transcript furnished to anyone upon request and payment of the cost.

C. The findings and orders shall be in writing and a copy served upon each party.

D. The commission may promulgate rules to govern its proceedings pursuant to this section.

E. A party aggrieved by an order may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 82. Section 67-10-2 NMSA 1978 (being Laws 1891, Chapter 44, Section 2, as amended) is amended to read:

"67-10-2. RATES AND TOLLS--APPEALS.--A corporation may, after the completion of a wagon road or any part thereof and after the completion of a bridge or ferry for and by the traveling public, apply by petition in writing to the board of county commissioners of the county in or through which the road, bridge or ferry is or has been constructed, for rates, prices and tolls to be charged and collected from the traveling public using and traveling on the toll road, bridge or ferry, which petition shall state facts in reference to a road, bridge or ferry as will be sufficient to inform the board of county commissioners as to enable the board of county commissioners to fix the rates, tolls and charges,

equal and just between the corporation owning the road, bridge or ferry and the traveling public using the same, and the rates, tolls and charges so fixed shall remain the same for two years. At the expiration of each two years, the corporation shall petition as aforesaid for the fixing of the rates, tolls and charges by the board of county commissioners. In case the corporation is dissatisfied with the rates, tolls and charges fixed by the board, it may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 83. Section 67-13-12 NMSA 1978 (being Laws 1973, Chapter 17, Section 12, as amended) is amended to read:

"67-13-12. ZONING--PETITION FOR REVIEW--RESTRAINING ORDER.--

A. A person aggrieved by a decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

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

Section 84. Section 69-6-2 NMSA 1978 (being Laws 1933, Chapter 153, Section 308, as amended) is amended to read:

"69-6-2. RIGHT OF APPEAL.--Every owner, operator or employee of a mine has a right of appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA

1978."

Section 85. Section 69-25A-30 NMSA 1978 (being Laws 1979, Chapter 291, Section 30) is amended to read:

"69-25A-30. JUDICIAL REVIEW.--

A. Any party to a proceeding before the commission who is aggrieved by a decision of the commission issued after a hearing may obtain a review of that decision, other than a promulgation of a regulation, by appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. Any person who is or may be aggrieved by any regulation, or any amendment or repeal of a regulation, adopted by the commission may appeal to the court of appeals for relief. All appeals shall be based upon the record made at the hearing before the commission and shall be filed with the court of appeals within thirty days after filing of the regulation under the State Rules Act. An appeal to the court of appeals under this subsection is perfected by the timely filing of a notice of appeal with the court of appeals with a copy attached of the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that satisfactory arrangements have been made with the commission for preparation of transcripts of the record of the hearing at the expense of the appellant for filing with the court. Upon appeal, the court of appeals shall set aside

the regulation only if determined to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) contrary to law; or
- (3) unsupported by substantial evidence on the entire record as submitted."

Section 86. Section 69-36-16 NMSA 1978 (being Laws 1993, Chapter 315, Section 16, as amended) is amended to read:

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

A. A person who is or may be affected by a rule of the commission may appeal the action of the commission by filing a notice of appeal with the court of appeals within thirty days from the filing date of the rule with the state records center. All appeals of rules shall be taken on the record made at the public hearing on the rule.

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

C. A person who is or may be affected by a final action of the commission other than a rule may appeal the action of the commission by filing a notice of appeal with the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 87. Section 70-2-25 NMSA 1978 (being Laws 1935, Chapter 72, Section 17, as amended) is amended to read:

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

A. Within twenty days after entry of an order or decision of the commission, a party of record adversely affected may file with the commission an application for rehearing in respect of any matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous. The commission shall grant or refuse the application in whole or in part within ten days after the application is filed, and failure to act on the application within that period shall be deemed a refusal and final disposition of that application. In the event the rehearing is granted, the commission may enter a new order or decision after rehearing as may be required under the circumstances.

B. A party of record to the rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 88. Section 70-5-16 NMSA 1978 (being Laws 1973, Chapter 362, Section 16, as amended) is amended to read:

"70-5-16. APPEAL.--A licensee whose license is canceled or suspended by order of the commission may appeal the decision by filing an appeal with the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 89. Section 70-5-17 NMSA 1978 (being Laws 1947, Chapter 214, Section 17, as amended) is amended to read:

"70-5-17. NO FORMAL NOTICE REQUIRED OF HEARING ON APPLICATION FOR LICENSE--APPEAL.--The same procedure, rights and penalties as specified in the LPG and CNG Act in the cases of revocation or suspension of licenses are available, where applicable, in cases where the bureau refused to grant a license, except that no formal notice of hearing on an application for license need be given an applicant, other than that he is given a reasonable opportunity to appear in support of his application before the bureau renders its order refusing him a license. Appeal shall be to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 90. Section 71-5-18 NMSA 1978 (being Laws 1975, Chapter 272, Section 18, as amended) is amended to read:

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

A. Within twenty days after entry of an order or decision of the division, a party of record adversely affected may file with the commission an application for rehearing in respect of any matter determined by the order or decision, setting forth the respect in which the order or decision is believed to be erroneous. The commission shall grant or refuse the application in whole or in part within ten days after it is filed, and failure to act within the ten-day period shall be deemed a refusal of the application and a final disposition of the application. In the event the rehearing is granted, the commission may enter a new order or decision after rehearing as may be required under the circumstances.

B. A party of record to the rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. The pendency of proceedings to review shall not of itself stay or suspend operation of the order or decision being reviewed, but during the pendency of the proceedings, the district court in its discretion may, upon its own motion or upon proper application of any party to the proceedings, stay or suspend in whole or in part operation of the order or decision pending review on terms as the court

deems just and proper and in accordance with the practice of courts exercising equity jurisdiction; provided that the court, as a condition to any staying or suspension of operation of any order or decision, may require that one or more parties secure, in a form and amount as the court may deem just and proper, one or more other parties against loss or damage due to the staying or suspension of the commission's or division's order or decision in the event that the action of the commission or division is affirmed."

Section 91. Section 73-11-29 NMSA 1978 (being Laws 1919, Chapter 20, Section 21, as amended) is amended to read:

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

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

B. The board of directors, on a date to be fixed by a standing order of the board, which shall not be later than July 1 of each year, shall estimate and determine the

amount of funds required to meet the obligations and needs of the district for the ensuing year, together with the additional amount as may be necessary to meet any deficiency in the payment of expenses or obligations previously incurred by the district and remaining unpaid, for any of the following purposes that may be required by the activities of the district:

(1) the payment of the interest upon bonds of the district and any installment on the principal of the bonds;

(2) any payment to become due under any contract with the United States, to secure which bonds have not been deposited with the United States, whether for the cost of irrigation or drainage system or for the operation and maintenance, or both; or if the lands of the district have been divided by the secretary of the interior into units, not necessarily contiguous, for repayment purposes the board shall prepare separate estimates for each unit;

(3) the portion of the expenses of operation and maintenance of the irrigation and drainage systems to be collected by tax assessment and levy, including funds required to meet obligations as provided in Section 73-11-49 NMSA 1978. This portion shall not be less than one-half of that portion required for the operation and maintenance costs for the ensuing year and shall be determined by the board of

directors of the district from year to year. The portion of the operation and maintenance expenses collected by tax assessment and levy shall be collected from all lands of the district, whether irrigated or not, except those lands as may be exempted from taxation by the terms of Chapter 73, Articles 10 and 11 NMSA 1978, and the same, when collected, shall be applied to the cost of operating and maintaining the irrigation and drainage systems. The remainder of the estimated amount shall be paid by the parties actually using the systems and water for irrigation or other purposes in accordance with the terms of their contract for water; or

(4) current and miscellaneous expense fund requirements, other than as specified in this section, and necessary to defray the expenses of maintaining the organization of the district and carrying out the purposes of Chapter 73, Articles 10 and 11 NMSA 1978, shall be determined annually at a per acre rate by the board of directors. The amounts to be collected pursuant to this paragraph may, at the option of the board of directors of the district, be collected as tolls and charges in the manner provided in Section 73-11-28 NMSA 1978.

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

distributing system or its extensions cannot furnish water at such points of delivery as the board may consider reasonable, shall not be taxed for Paragraph (3) of Subsection B of this section, provided that tax shall not be assessed for Paragraph (3) of Subsection B of this section against land involved in the boundary suit now pending in the United States supreme court between the state of Texas and the state of New Mexico until the final determination of the suit, unless the land is in cultivation and using water for irrigation; and lands shall not be taxed for Paragraphs (1) and (2) of Subsection B of this section for the periods and to the extent that, on account of seepage or other conditions, in the opinion of the directors or the secretary of the interior, as may be provided by contract with the United States, or with district bondholders, such lands are not fit for cultivation by irrigation on account of those conditions; but nothing contained in this section shall be construed to relieve the district from making provision to raise the amount required to make full payment to private creditors or to the United States for the full cost of construction or of operation and maintenance, irrespective of the exemption of any lands from taxation, unless expressly provided by the assent of the bondholders or other private creditors or by agreement with the United States, as the case may be. In determining the amount required for the

respective items aforesaid, the board shall take into consideration the gross amount of exemption and credits allowable pursuant to entries made by the board upon the assessor's certified list, as provided in Section 73-11-31 NMSA 1978. Proper entry shall be made by the district officers of all exemptions made and of credits allowed. The amount required to meet the obligations of the district, except that portion collected from tolls and charges, shall be raised by tax assessments, levy and collection, as provided in Chapter 73, Articles 10 and 11 NMSA 1978, to be extended pro rata per acre over all lands in the district or, in appropriate cases, under Paragraph (2) of Subsection B of this section, against all land in each respective unit of the district. When the board meets for the purposes prescribed, it shall consider, determine and designate the lands within the district that shall be subjected to those assessments and levies.

D. Notice of the time, place and purpose of the meeting shall be given by publication in English and Spanish in a newspaper of general circulation published within the county where the headquarters of the district are located and shall inform all the persons interested that, at the time and place specified, an opportunity will be afforded to appear before the board of directors and show cause why any particular tract of land, or any portion of it, should be

exempted from taxation under the provisions of Chapter 73, Articles 10 and 11 NMSA 1978. The notice shall be published once a week for four consecutive weeks, and the last publication shall be not less than three days prior to the date fixed for the meeting. Proof of publication shall be furnished by the publisher and shall be filed in the archives of the secretary of the district.

E. At the meeting, the board of directors, subject to reasonable rules as it may prescribe, shall afford to all persons desiring to do so an opportunity to make a showing as they may deem proper as to why any given tract of land or portion of it shall be exempted from taxation. In each case, the board of directors may make an investigation as it may deem proper, after which the board shall determine the question submitted, as right and justice may require, and shall cause its decision to be duly entered upon its minutes and a copy of it to be sent by registered mail to all parties who have made claim of exemption of land from taxation.

F. A person aggrieved by the decision may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

G. The filing of the appeal in the district court shall not stay the proceedings relating to the collection of the tax. In the event that the appellant has paid the tax before the rendition of final judgment in the suit and

judgment is rendered in the suit in favor of the appellant, the appellant shall have refunded to him a sum of money as shall be determined by the judgment of the court, together with legal interest on it and costs of court. If the appellant fails to recover in the suit, the appellant shall pay all costs of court. In case the assets and liabilities of any water users' association are taken over as provided in Section 73-10-1 NMSA 1978, the board of directors shall allow to the owner of lands, on account of which payment has been made to the association, all proper and equitable credits to which the owner may be entitled, according to the books and records of the association, which shall be prima facie evidence of the credits of its various members. The credits shall be taken into consideration by the board of directors in determining the amount of money required to meet obligations, maintenance, operating and current expenses of the district for the ensuing year, and the board of directors shall certify to the county commissioners the amount of the credits, and levy as provided for in Chapter 73, Articles 10 and 11 NMSA 1978 shall be made accordingly.

H. The term "asset" as used in this section includes any and all grants, rights, powers, privileges and appropriations conferred by law and upon any water users' association and upon taking over the assets of any water users' association as provided in Chapter 73, Articles 10 and

11 NMSA 1978 by any irrigation district. The district shall succeed to all such grants, rights, powers, privileges and appropriations, and the officers of the irrigation district are authorized and empowered to perform such duties and execute such instruments in regard thereto as the law required of the officers of the water users' association."

Section 92. Section 73-12-4 NMSA 1978 (being Laws 1929, Chapter 76, Section 4, as amended) is amended to read:

"73-12-4. PETITION HEARING--OBJECTIONS--BOUNDARIES--ELECTION--APPEALS.--

A. At the hearing before the board of county commissioners provided for in Section 73-12-3 NMSA 1978, the board shall proceed to determine whether the petition has been signed by the requisite number of petitioners; whether the lands in the proposed district are arid or semiarid lands; whether the lands are susceptible to irrigation and have a fertile soil that will warrant farming them by irrigation; whether there is a supply of water that can be made efficiently available for irrigation by the use of pumps; whether the proposed plan is practicable; and whether, on the whole, the development said to result from the introduction of power is of such interest and benefit to the whole district as to impress it with the character of public use. For the purpose of determining the public use of the operations of the proposed district and all other of the

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

B. If the board of county commissioners hearing the matter determines that the petition has been signed by the requisite number of petitioners as required by Chapter 73, Article 12 NMSA 1978 and determines that the proposed development is of such interest and benefit to the whole district as to impress with the character of public use, it shall then proceed to hear any objections, exceptions and protests that have been made in writing to the organization of the district or to the inclusion of any lands within the district or to the exclusion of lands from the district and other objections, exceptions and protests as may be presented in writing to the organization of the district. All persons whose lands have not been included in the proposed district, as defined in the petition, have the right to appear before the board at the time and place as parties interested in or affected by the organization of the district and have the right to petition that their lands be included within the district, and, if it appears to the board that the inclusion of such lands may be made without materially increasing the cost of service, the commissioners may by order include such

lands within the district.

C. If the board makes findings approving of the organization of the district, it shall then proceed to define the boundaries of the proposed district from the petition and from applications in writing for the exclusion of lands and the inclusion of lands from and in the district, as may be made in accordance with the intent of Chapter 73, Article 12 NMSA 1978. The board may adjourn the meeting from time to time not exceeding three weeks in all and shall, by final order duly entered upon its records, allow the prayer of the petition and define and establish the boundaries of the proposed district. Provided that the board shall not modify the proposed boundaries described in the petition so as to change the objects of the petition or so as to exempt from the operation of Chapter 73, Article 12 NMSA 1978 any land within the boundaries proposed by the petition susceptible to irrigation by the same system or power works applicable to other lands in the proposed district. No land that will not, in the judgment of the board, be benefited by the proposed system shall be included in the district if its owner makes written application at the hearing to withdraw it.

D. Any persons aggrieved by the decision of the board of county commissioners, upon the hearing provided for in this section, are given the right of appeal to the district court pursuant to the provisions of Section 39-3-1.1

NMSA 1978.

E. When the petition has been allowed and the boundaries established and the name of the proposed district designated, which shall be _____ electrical district, the board of county commissioners shall, by further order duly entered upon its records, call an election of the qualified electors of the district to be held for the purpose of determining whether the district shall be organized under the provisions of Chapter 73, Article 12 NMSA 1978 and by such order shall submit the names of one or more persons from each of three divisions of the district, as provided in this section, to be voted for as directors therein, and for the purpose of the election shall divide the district into three divisions, as nearly equal in size as may be practicable, to be numbered, respectively, 1, 2 and 3 and shall provide that a qualified elector of each of the three divisions shall be elected as a member of the board of directors of the district by the qualified electors of the whole district. Each of the divisions shall constitute an election precinct and the commissioners shall appoint three judges for each of the precincts, one of whom shall act as clerk of the election."

Section 93. Section 74-3-9 NMSA 1978 (being Laws 1971, Chapter 284, Section 7, as amended) is amended to read:

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

A. It is unlawful for any person to possess, use,

store, dispose of, manufacture, process, repair or alter any radioactive material unless he holds:

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

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

(3) a license issued by the agency.

B. The agency shall issue licenses and shall approve requests for reciprocity in accordance with procedures prescribed by rule of the board. License applications shall be made on forms provided by the agency. The agency shall not issue a license unless the applicant has demonstrated the capability of complying with all applicable rules of the board.

C. The board may, by rule, exempt from the requirements of licensure specific quantities of any radioactive material determined by the board not to constitute a health or environmental hazard.

D. The holding of a license issued by the agency, the nuclear regulatory commission or an agreement state does not relieve the licensee from the responsibility of complying with all applicable rules of the board.

E. A person who is or may be affected by

licensing action of the agency may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 94. Section 74-4B-14 NMSA 1978 (being Laws 1992, Chapter 5, Section 3, as amended) is amended to read:

"74-4B-14. CLEANUP OF ORPHAN HAZARDOUS MATERIALS--DEPARTMENT RECOURSE--APPEAL.--The department may assess charges against a party identified as responsible for orphan hazardous materials, for costs the department incurs in cleanup of the orphan hazardous materials and for damage to state property. Amounts received in payment of assessments for cleanup of the orphan hazardous materials shall be deposited in the orphan material recovery fund. Amounts received in payment of assessments for damage to state property shall be used to repair the damage. A person who is assessed charges pursuant to this section may appeal the assessment to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 95. Section 75-3-11 NMSA 1978 (being Laws 1965, Chapter 235, Section 11, as amended) is amended to read:

"75-3-11. JUDICIAL REVIEW.--Rulings by the commission on the issuance, refusal or revocation of a license are subject to review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Section 96. REPEAL.--Sections 19-7-68 and 19-7-69 NMSA 1978 (being Laws 1912, Chapter 82, Sections 73 and 74, as amended) are repealed.

Section 97. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____