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HOUSE BILL 356

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

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

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1 promptly:

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

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

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

10 (a) all ~~[parties whose rights are~~  
11 ~~adjudged by the final decision]~~ persons who were parties in  
12 the proceeding before the agency; and

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

16 C. Unless standing is further limited by a  
17 specific statute, a person aggrieved by a final decision may  
18 appeal the decision to district court by filing in district  
19 court a notice of appeal within thirty days of the date of  
20 filing of the final decision. The appeal may be taken to the  
21 district court for the county in which the agency maintains  
22 its principal office or the district court of any county in  
23 which a hearing on the matter was conducted. When notices of  
24 appeal from a final decision are filed in more than one  
25 district court, all appeals not filed in the district court in

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1 which the first appeal was properly filed shall be dismissed  
2 without prejudice. An appellant whose appeal was dismissed  
3 without prejudice pursuant to the provisions of this  
4 subsection shall have fifteen days after receiving service of  
5 the notice of dismissal to file a notice of appeal in the  
6 district court in which the first appeal was properly filed.

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

- 10 (1) the agency acted fraudulently,  
11 arbitrarily or capriciously;
- 12 (2) the final decision was not supported by  
13 substantial evidence; or
- 14 (3) the agency did not act in accordance with  
15 law.

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

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

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1 court of appeals. The appeal shall then be decided by the  
2 court of appeals.

3 [F-] G. The procedures governing appeals and  
4 petitions for writ of certiorari that may be filed pursuant to  
5 the provisions of this section shall be set forth in rules  
6 adopted by the supreme court.

7 [G-] H. As used in this section:

8 (1) "agency" means any state or local public  
9 body or officer placed under the authority of this section by  
10 specific statutory reference;

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

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

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

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1           "1-4-21. REFUSAL OF REGISTRATION--APPEAL.-- A qualified  
2 elector whose registration has been refused or the county  
3 chairman of any major political party who alleges that certain  
4 persons are qualified electors but have been refused  
5 registration may bring an appeal regarding the refused  
6 registration pursuant to the provisions of Section [ ~~12-8A-1~~  
7 39-3-1.1 NMSA 1978. "

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

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

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

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

24                   (2) from the tax schedules of the county if  
25 any of the owners of the real estate who signed the petition

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1 are delinquent in the payment of property taxes; and

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

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

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

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

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

25 D. If the board of county commissioners determines

. 125052. 2

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

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

25 F. The signers of the petition or a municipality

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1 within whose urbanized area the territory proposed to be  
2 incorporated is located may appeal any determination of the  
3 board of county commissioners to the district court pursuant  
4 to the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

7 "3-2-9. INCORPORATION COMPLETE-- JUDICIAL NOTICE-- DEFECTS  
8 IN INCORPORATION-- APPEAL. --

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

18 B. An action by a protestant against the  
19 incorporation of a municipality shall be taken to the district  
20 court pursuant to the provisions of Section [~~12-8A-1~~] 39-3-1.1  
21 NMSA 1978. "

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

24 "3-19-8. APPEAL. -- Any person in interest dissatisfied  
25 with an order or determination of the planning commission,

. 125052. 2



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1 after review of the order or determination by the governing  
2 body of the municipality, may commence an appeal in the  
3 district court pursuant to the provisions of Section [ ~~12-8A-1~~  
4 39-3-1.1 NMSA 1978. "

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

7 "3-21-4. EXTRATERRITORIAL ZONING ORDINANCE-- ENFORCEMENT  
8 AND ADMINISTRATION-- APPEALS. --

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

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

22 C. Appeals from the decisions of the  
23 extraterritorial zoning commission shall be taken to the joint  
24 municipal-county zoning authority in the manner provided in  
25 Section 3-21-8 NMSA 1978, and appeals from the decisions of

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1 the joint municipal-county zoning authority shall be taken to  
2 the district court in the manner provided in Section [ ~~12-8A-1~~]  
3 39-3-1.1 NMSA 1978. "

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

6 "3-21-9. ZONING--APPEAL. --A person aggrieved by a  
7 decision of the zoning authority or any officer, department,  
8 board or bureau of the zoning authority may appeal the  
9 decision pursuant to the provisions of Section [ ~~12-8A-1~~]  
10 39-3-1.1 NMSA 1978. "

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

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

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

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

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

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

5                   (1) concluded the hearing;

6                   (2) determined:

7                           (a) the advisability of constructing  
8 the improvement; and

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

11                   (3) created the improvement district, a  
12 person who during the hearing filed a written protest with the  
13 governing body protesting the construction of the improvement  
14 may appeal the determination of the governing body pursuant to  
15 the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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

25           Section 9. Section 3-33-16 NMSA 1978 (being Laws 1965,

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1 Chapter 300, Section 14-32-9, as amended) is amended to read:

2 "3-33-16. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--  
3 PROTEST--ACTION OF THE GOVERNING BODY--APPEAL TO DISTRICT  
4 COURT. --

5 A. At the preliminary hearing of the governing  
6 body on the question of creating an improvement district as  
7 authorized in Section 3-33-14 NMSA 1978, an owner of a tract  
8 or parcel of land to be assessed may contest:

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

11 relating to the improvement;

- 12 (3) the benefits of the improvement; or

- 13 (4) any other matter relating to the  
14 improvement district.

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

24 C. At the hearing, the governing body may:

- 25 (1) correct a mistake or irregularity in any

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1 proceeding relating to the improvement;

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

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

7 (4) recess the hearing.

8 D. An owner of a tract or parcel of land assessed,  
9 whether he appeared at the hearing or not, may commence an  
10 appeal in district court pursuant to the provisions of Section  
11 [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

14 "3-33-22. IMPROVEMENT DISTRICT-- FILING OF OBJECTIONS--  
15 ASSESSMENT HEARING-- ACTION OF THE GOVERNING BODY-- APPEAL TO  
16 DISTRICT COURT. --

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

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

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1 assessment roll; or

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

4 B. At the hearing, the governing body shall hear  
5 all objections that have been filed as provided in this  
6 section and may recess the hearing and, by resolution, revise,  
7 correct, confirm or set aside an assessment and order another  
8 assessment be made de novo.

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

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

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

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

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1           D. An owner who has filed an objection as provided  
2 in this section may commence an appeal in district court  
3 pursuant to the provisions of Section [ ~~12-8A-1~~] 39-3-1.1 NMSA  
4 1978. "

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

7           "3-33-35. IMPROVEMENT DISTRICT--NOTICE OF APPEAL--APPEAL  
8 TO DISTRICT COURT.--After an owner has filed a written  
9 objection with the municipal clerk to a reassessment as  
10 provided in Section 3-33-22 NMSA 1978 and the governing body  
11 has determined the reassessment, an owner of a tract or parcel  
12 of land that is reassessed may file a notice of appeal to the  
13 district court. The appeal shall be filed pursuant to the  
14 provisions of Section [ ~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

17           "3-35-3. HEARING ON PROVISIONAL ORDER--PROTEST BY  
18 PROPERTY OWNER OR INTERESTED PERSON--APPEAL.--At the hearing  
19 on a provisional order, a property owner or interested person  
20 may file a written protest and may be heard by the governing  
21 body on the order. A person filing a written protest may  
22 bring an appeal concerning the governing body's determination  
23 on the protest pursuant to the provisions of Section [ ~~12-8A-1~~]  
24 39-3-1.1 NMSA 1978. "

25           Section 13. Section 3-39-23 NMSA 1978 (being Laws 1965,

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1 Chapter 300, Section 14-20-21, as amended) is amended to read:

2 "3-39-23. JUDICIAL REVIEW. --

3 A. Any person aggrieved by a decision of the board  
4 of appeals, any taxpayer or any officer, [~~any~~] department,  
5 [~~any~~] board or [~~any~~] bureau of the political subdivision may  
6 file an appeal pursuant to the provisions of Section [ ~~12-8A-1~~]  
7 39-3-1.1 NMSA 1978.

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

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

14 "3-46-43. ORDINANCES RELATING TO REPAIR, CLOSING AND  
15 DEMOLITION OF DWELLINGS UNFIT FOR HUMAN HABITATION--  
16 COMPLAINT--SERVICE OF COMPLAINT--APPEAL. --

17 A. Whenever any municipality finds that there  
18 exist dwellings that are unfit for human habitation due to  
19 dilapidation; defects increasing the hazards of fire,  
20 accidents or other calamities; lack of ventilation, light or  
21 sanitary facilities or due to other conditions, including  
22 those set forth in Subsection C of this section, rendering  
23 the dwellings unsafe and unsanitary or dangerous or  
24 detrimental to the health, safety or morals or otherwise  
25 inimical to the welfare of the residents of the municipality,

. 125052. 2



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1 power is conferred upon the municipality to require or cause  
2 the repair, closing or demolition or removal of the dwelling  
3 in the manner provided in this section. A "dwelling" means  
4 any building or structure or part thereof used and occupied  
5 for human habitation or intended to be so used and includes  
6 any appurtenances usually enjoyed in the dwelling.

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

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

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

. 125052. 2

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

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

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

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

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

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

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

11 (6) the amount of the cost of the repairs,  
12 alterations or improvements or the vacating and closing or the  
13 removal or demolition by the public officer shall be a lien  
14 against the real property upon which the cost was incurred.

15 If the dwelling is removed or demolished by the public  
16 officer, he shall sell the materials of the dwelling and shall  
17 credit the proceeds of the sale against the cost of the  
18 removal or demolition. Any balance remaining shall be  
19 deposited in the district court by the public officer and  
20 shall be secured in the manner as may be directed by the court  
21 and shall be disbursed by the court to the persons found to be  
22 entitled to the balance by final order or decree of the court.

23 C. An ordinance adopted by a municipality pursuant  
24 to this section shall provide that the public officer may  
25 determine a dwelling is unfit for human habitation if he finds

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1 that conditions exist in the dwelling that are dangerous or  
2 injurious to the health, safety or morals of the occupants of  
3 the dwelling, the occupants of neighboring dwellings or other  
4 residents of the municipality or that have a blighting  
5 influence on properties in the area. The conditions may  
6 include the following, without limitations: defects  
7 increasing the hazards of fire, accident or other calamities;  
8 lack of adequate ventilation, light or sanitary facilities;  
9 dilapidation; disrepair; structural defects; uncleanliness;  
10 overcrowding; inadequate ingress and egress; inadequate  
11 drainage; or any violation of health, fire, building or zoning  
12 regulations or any other laws or regulations relating to the  
13 use of land and the use and occupancy of buildings and  
14 improvements. The ordinance may provide additional standards  
15 to guide the public officer or his agents or employees in  
16 determining the fitness of a dwelling for human habitation.

17 D. Complaints or orders issued by a public officer  
18 pursuant to an ordinance adopted under the provisions of the  
19 Urban Development Law shall be served upon persons either  
20 personally or by registered mail. If the whereabouts of the  
21 persons are unknown and cannot be ascertained by the public  
22 officer in the exercise of reasonable diligence and the public  
23 officer makes an affidavit to that effect, then the serving of  
24 the complaint or order upon the persons may be made by  
25 publishing the complaint or order once each week for two

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1 consecutive weeks in a newspaper printed and published in the  
2 municipality or, in the absence of a newspaper, in one printed  
3 and published in the county and circulating in the  
4 municipality in which the dwellings are located. A copy of  
5 the complaint or order shall be posted in a conspicuous place  
6 on the premises affected by the complaint or order. A copy of  
7 the complaint or order shall also be filed with the clerk of  
8 the county in which the dwelling is located. Filing of the  
9 complaint or order shall have the same force and effect as  
10 other lis pendens notices provided by law.

11 E. Any person affected by an order issued by the  
12 public officer may file an appeal pursuant to the provisions  
13 of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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

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

23 (2) to administer oaths and affirmations,  
24 examine witnesses and receive evidence;

25 (3) to enter upon premises for the purpose of

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

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

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

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

21 H. Nothing in this section shall be construed to  
22 abrogate or impair the powers of the courts or of a department  
23 of a municipality to enforce any provisions of its charter or  
24 its ordinances or regulations or to prevent or punish  
25 violations thereof. The powers conferred by this section

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1 shall be in addition and supplemental to the powers conferred  
2 by any other law.

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

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

9 "3-51-12. FORMATION OF DISTRICT--PROVISIONAL ORDER  
10 HEARING--CONDUCT--APPEAL. --

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

19 B. At the time and place designated for hearing  
20 the objections, the governing body of the city shall hear and  
21 determine all objections that have been filed. The governing  
22 body shall have the power to adjourn the hearing and shall  
23 have power by resolution, in its discretion, to revise,  
24 correct or confirm any proceedings previously taken.

25 C. Within fifteen days after the publication of

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1 the ordinance forming the parking district, a person who has  
2 filed an objection, as provided in Subsection A of this  
3 section, shall have the right to appeal to the district court  
4 pursuant to the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA  
5 1978. "

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

8 "4-45-5. ACCOUNTS AGAINST COUNTY--APPEAL FROM  
9 DISALLOWANCE.--When a claim of a person against a county is  
10 disapproved in whole or in part by the board of county  
11 commissioners, that person may appeal the decision of the  
12 board to the district court pursuant to the provisions of  
13 Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

16 "4-55A-31. IMPROVEMENT DISTRICT--APPEAL TO DISTRICT  
17 COURT.--After an owner has filed a written objection with the  
18 county clerk to any reassessment as provided in Section  
19 4-55A-18 NMSA 1978 and the board has determined the  
20 reassessment, any owner of a tract or parcel of land that is  
21 reassessed may file a notice of appeal pursuant to the  
22 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

25 "7-8A-16. APPEAL--ACTION TO ESTABLISH CLAIM --



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1           A. A person aggrieved by a decision of the  
2 administrator may file an appeal pursuant to the provisions of  
3 Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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

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

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

14           "7-38-28. APPEALS FROM ORDERS OF THE DIRECTOR OR COUNTY  
15 VALUATION PROTESTS BOARDS. --

16           A. A property owner may appeal an order made by  
17 the director or a county valuation protests board by filing an  
18 appeal pursuant to the provisions of Section [~~12-8A-1~~]  
19 39-3-1.1 NMSA 1978.

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

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

1           "10-7D-23. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW. --

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

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

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

14                   (3) otherwise not in accordance with law.

15           B. A person or party, including a labor  
16 organization, affected by a final rule, order or decision of  
17 the board or a local board, may appeal to the district court  
18 for further relief pursuant to the provisions of Section  
19 [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

22           "10-9-18. APPEALS BY EMPLOYEES TO THE BOARD. --

23           A. An employee who is dismissed, demoted or  
24 suspended may, within thirty days after the dismissal,  
25 demotion or suspension, appeal to the board. The appealing

. 125052. 2

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1 employee and the agency whose action is reviewed have the  
2 right to be heard publicly and to present facts pertinent to  
3 the appeal.

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

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

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

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

22 F. If the board finds that the action taken by the  
23 agency was without just cause, the board may modify the  
24 disciplinary action or order the agency to reinstate the  
25 appealing employee to his former position or to a position of

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

12 G. A party aggrieved by the decision of the board  
13 made pursuant to this section may appeal the decision to the  
14 district court pursuant to the provisions of Section [ ~~12-8A-1~~]  
15 39-3-1.1 NMSA 1978. "

16 Section 22. Section 10-11-120 NMSA 1978 (being Laws  
17 1987, Chapter 253, Section 120, as amended) is amended to  
18 read:

19 "10-11-120. DENIAL OF BENEFIT CLAIM - APPEALS. --

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

. 125052. 2

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

9 B. Appeals from a final decision of the retirement  
10 board may be filed pursuant to the provisions of Section  
11 [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

14 "12-8-16. PETITION FOR JUDICIAL REVIEW. -- Any party who  
15 has exhausted all administrative remedies available within the  
16 agency and who is adversely affected by a final order or  
17 decision in an adjudicatory proceeding may appeal pursuant to  
18 the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

21 "13-1-183. JUDICIAL REVIEW. -- All actions authorized by  
22 the Procurement Code for judicial review of a determination  
23 shall be filed pursuant to the provisions of Section [~~12-8A-1~~]  
24 39-3-1.1 NMSA 1978. "

25 Section 25. Section 13-4-15 NMSA 1978 (being Laws 1963,

. 125052. 2

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1 Chapter 304, Section 5, as amended) is amended to read:

2 "13-4-15. APPEALS. --

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

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

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

21 D. Decisions of the appeals board may be appealed  
22 pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1 NMSA  
23 1978. "

24 Section 26. Section 17-2-43.1 NMSA 1978 (being Laws  
25 1995, Chapter 145, Section 8) is amended to read:

. 125052. 2

1 "17-2-43.1. JUDICIAL REVIEW - ADMINISTRATIVE ACTIONS. --

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

5 ~~[A.]~~ B. Any person adversely affected by [ an  
6 ~~administrative action taken by]~~ a regulation adopted by the  
7 ~~commission may~~ appeal to the court of appeals. All appeals  
8 shall be upon the record made at the hearing or contained in  
9 the public repository file and shall be taken to the court of  
10 appeals within thirty days following the date of the [ ~~action~~

11 ~~[B. For appeals of regulations, the date of the~~  
12 ~~action shall be the date of the filing of the regulation by~~  
13 ~~the commission pursuant to the provisions of the State Rules~~  
14 ~~Act]~~ filing of the regulation by the commission pursuant to  
15 the provisions of the State Rules Act.

16 C. Upon appeal, the court of appeals shall set  
17 aside the [ ~~action~~] regulation only if it is found to be:

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

23 ~~[D. After a hearing and a showing of good cause by~~  
24 ~~the appellant, a stay of the action being appealed may be~~  
25 ~~granted:]~~

. 125052. 2

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~~(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 [ ~~12-8A-1~~ ] 39-3-1.1 NMSA



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1 1978. "

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

4 "19-7-17. APPEAL. -- A person in interest aggrieved by the  
5 decision of the commissioner in fixing the value of  
6 improvements or in collecting costs may appeal to the district  
7 court pursuant to the provisions of Section [~~12-8A-1~~] 39-3-1.1  
8 NMSA 1978. "

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

11 "19-7-67. CONTEST-- COMMISSIONER-- APPEAL TO DISTRICT  
12 COURT. -- [~~Sec. 73.~~] A person aggrieved by a decision of the  
13 commissioner may appeal to the district court pursuant to the  
14 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

17 "19-10-23. APPEAL OF COMMISSIONER'S DECISION. -- A person  
18 or corporation aggrieved by a ruling or decision of the  
19 commissioner affecting his interest in any lease issued under  
20 or affected by the provisions relating to oil and gas leases  
21 of state lands may file an appeal pursuant to the provisions  
22 of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

25 "21-24-8. JUDICIAL REVIEW. -- Any final determination of  
. 125052. 2

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1 the commission respecting the issuance, denial or revocation  
2 of a registration may be appealed to the district court  
3 pursuant to the provisions of Section [ ~~12-8A-1~~] 39-3-1.1 NMSA  
4 1978. "

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

7 "22-2-15. HEARINGS--SUSPENSION CONTINUANCE AND  
8 DISCONTINUANCE--APPEALS. --

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

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

20 C. Any local school board aggrieved by the  
21 decision of the state board [ ~~of education~~] may [ ~~within thirty~~  
22 ~~days from the date of the decision, appeal such decision to~~  
23 ~~the court of appeals. If the court finds that the decision of~~  
24 ~~the state board was prejudicial to the school district because~~  
25 ~~the state board's findings, inferences or conclusions are:~~

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1                   ~~(1) in violation of the constitution;~~  
2                   ~~(2) in excess of statutory authority;~~  
3                   ~~(3) made upon unlawful procedure; or~~  
4                   ~~(4) arbitrary or capricious or~~  
5 ~~characterized by abuse of discretion or clearly unwarranted~~  
6 ~~exercise of discretion, it shall remand the proceedings to~~  
7 ~~the state board for the taking and consideration of further~~  
8 ~~evidence or testimony or it shall reverse the decision of~~  
9 ~~the state board and terminate the suspension]~~ appeal to the  
10 district court pursuant to the provisions of Section  
11 39-3-1.1 NMSA 1978. "

12                   Section 33. Section 22-10-22 NMSA 1978 (being Laws  
13 1967, Chapter 16, Section 124, as amended) is amended to  
14 read:

15                   "22-10-22. SUSPENSION AND REVOCATION OF CERTIFICATES--  
16 APPEAL. --

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

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

23                   (1) the state board serving written notice  
24 of the suspension or revocation on the person holding the  
25 certificate in accordance with the law for service of

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1 process in civil actions. The notice of the suspension or  
2 revocation shall state the grounds for the suspension or  
3 revocation of the certificate. The notice of the suspension  
4 or revocation shall describe the rights of the person  
5 holding the certificate and include instructions for  
6 requesting a hearing before the state board. A hearing  
7 shall be requested within thirty days of receipt of the  
8 notice of suspension or revocation. If a hearing is  
9 requested, the hearing shall be held not more than ninety  
10 days from the date of the request for the hearing;

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

17 (3) the state board rendering a written  
18 decision in accordance with the law and based upon evidence  
19 presented and admitted at the hearing. The written decision  
20 shall include findings of fact and conclusions of law and  
21 shall be based upon the findings of fact and the conclusions  
22 of law. A written copy of the decision of the state board  
23 shall be served upon the person holding the certificate within  
24 sixty days from the date of the hearing. Service of the  
25 written copy of the decision shall be in accordance with the

. 125052. 2

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1 law for service of process in civil actions or by certified  
2 mail to the person's address of record.

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

12 D. Any person aggrieved by a decision of the state  
13 board, after a hearing pursuant to this section, may appeal  
14 the decision to the district court pursuant to the provisions  
15 of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

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

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

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1 department may also proceed pursuant to the Health Facility  
2 Receivership Act.

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

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

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

24 E. A one-year nontransferable license shall be  
25 issued to any health facility complying with all rules of the

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

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

. 125052. 2

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

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

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

. 125052. 2



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1 the hearing is held within five working days of the suspension  
2 or imposition of the sanction, unless waived by the licensee,  
3 and, except for child-care centers and facilities, may proceed  
4 ex parte pursuant to the Health Facility Receivership Act.

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

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

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

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

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

23 J. Any hearing held pursuant to provisions of this  
24 section shall be conducted in accordance with adjudicatory  
25 hearing rules and procedures adopted by regulation of the

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

18 K. Any party may appeal the final decision of the  
19 department pursuant to the provisions of Section [ ~~12-8A-1~~  
20 39-3-1.1 NMSA 1978.

21 L. Every complaint about a health facility  
22 received by the department pursuant to this section shall be  
23 promptly investigated to substantiate the allegation and to  
24 take appropriate action if substantiated. The department  
25 shall coordinate with the human services department, the

. 125052. 2

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1 office of the state long-term care ombudsman at the state  
2 agency on aging and any other appropriate agency to develop a  
3 joint protocol establishing responsibilities and procedures to  
4 assure prompt investigation of complaints, including prompt  
5 and appropriate referrals and necessary action regarding  
6 allegations of abuse, neglect or exploitation of residents,  
7 clients or patients in a health facility.

8 M. Complaints received by the department pursuant  
9 to this section shall not be disclosed publicly in a manner as  
10 to identify any individuals or health facilities if upon  
11 investigation the complaint is unsubstantiated.

12 N. Notwithstanding any other provision of this  
13 section, where there are reasonable grounds to believe that  
14 any child is in imminent danger of abuse or neglect while in  
15 the care of a child-care facility, whether or not licensed, or  
16 upon the receipt of a report pursuant to Section 32A-4-3 NMSA  
17 1978, the department shall consult with the owner or operator  
18 of the child-care facility. Upon a finding of probable cause,  
19 the department shall give the owner or operator notice of its  
20 intent to suspend operation of the child-care facility and  
21 provide an opportunity for a hearing to be held within three  
22 working days, unless waived by the owner or operator. Within  
23 seven working days from the day of notice, the secretary shall  
24 make a decision, and, if it is determined that any child is in  
25 imminent danger of abuse or neglect in the child-care

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1 facility, the secretary may suspend operation of the child-  
2 care facility for a period not in excess of fifteen days.  
3 Prior to the date of the hearing, the department shall make a  
4 reasonable effort to notify the parents of children in the  
5 child-care facility of the notice and opportunity for hearing  
6 given to the owner or operator.

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

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

16 "25-1-11. JUDICIAL REVIEW OF BOARD AND DIVISION  
17 ACTIONS. --

18 A. Rules adopted by the board are subject to  
19 judicial review under the provisions of Section 74-1-9 NMSA  
20 1978.

21 B. Any person to whom the division denies a permit  
22 or whose permit is suspended or revoked by the division may  
23 appeal to the district court pursuant to the provisions of  
24 Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

25 Section 36. Section 25-3-12 NMSA 1978 (being Laws 1969,  
. 125052. 2

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1 Chapter 89, Section 7, as amended) is amended to read:

2 "25-3-12. CONDEMNATION AND APPEAL. --The inspector at  
3 official establishments shall condemn all diseased or  
4 otherwise unfit carcasses and parts of carcasses, including  
5 the viscera. The condemned parts shall be removed from the  
6 slaughtering department of the plant in equipment designated  
7 for that purpose and shall be destroyed for food purposes  
8 under the supervision of the inspector. If any official  
9 establishment wishes to appeal a decision of an inspector as  
10 to carcasses or parts of carcasses that have been condemned,  
11 the establishment may appeal the decision to the chief  
12 veterinary meat inspector or any veterinarian he designates.  
13 If the establishment is not satisfied and wishes to make a  
14 further appeal, it may submit an appeal to the board, whose  
15 decision shall be final unless the person aggrieved appeals to  
16 the district court pursuant to the provisions of Section  
17 [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

20 "25-3-19. SUSPENSION OR REVOCATION OF INSPECTION SERVICE  
21 OR ESTABLISHMENT NUMBER-- HEARING-- APPEAL. --

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

. 125052. 2

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

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

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

9 C. The decision of the board shall be final in any  
10 matter relating to renewal, suspension or revocation of state  
11 meat inspection service or establishment numbers unless the  
12 person aggrieved appeals to the district court pursuant to the  
13 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

16 "25-7B-9. JUDICIAL REVIEW OF DEPARTMENT ACTIONS. -- Any  
17 person to whom the department denies a permit or whose permit  
18 is suspended or revoked by the department may appeal to the  
19 district court pursuant to the provisions of Section [~~12-8A-1~~]  
20 39-3-1.1 NMSA 1978. "

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

23 "27-3-4. APPEAL. -- Within thirty days after receiving  
24 written notice of the decision of the director pursuant to  
25 Section 27-3-3 NMSA 1978, an applicant or recipient may file a

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1 notice of appeal with the district court pursuant to the  
2 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

3 Section 40. Section 27-5-12.1 NMSA 1978 (being Laws  
4 1979, Chapter 146, Section 3, as amended) is amended to read:

5 "27-5-12.1. APPEAL. -- Any hospital or ambulance service  
6 aggrieved by any decision of the board may appeal to the  
7 district court pursuant to the provisions of Section [~~12-8A-1~~]  
8 39-3-1.1 NMSA 1978. "

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

11 "28-17-19. INTERFERENCE WITH THE OFFICE AND RETALIATION  
12 PROHIBITED-- PENALTY-- CIVIL-- APPEAL. --

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

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

21 C. Any person who violates Subsection A of this  
22 section shall be subject to a civil penalty of up to five  
23 thousand dollars (\$5,000) per occurrence. Any person who  
24 violates Subsection B of this section shall be subject to a  
25 civil penalty of up to ten thousand dollars (\$10,000) per

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1 occurrence. The agency may assess and collect the penalty  
2 after notice and an opportunity for hearing, before a hearing  
3 officer designated by the agency to hear the matter, upon a  
4 determination that a person willfully interfered with the  
5 office or discriminated, disciplined or retaliated against an  
6 individual who communicated or disclosed information to the  
7 office in good faith pursuant to [ ~~Subsections~~ ] Subsection A  
8 [ ~~and~~ ] or B of this section. The hearing officer has the power  
9 to administer oaths on request of any party and issue  
10 subpoenas and subpoenas duces tecum. However, if the  
11 violation is against a person covered by the Personnel Act,  
12 the office shall refer the matter to the agency employing the  
13 person for disciplinary action.

14 D. Any party may appeal to the district court  
15 pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1 NMSA  
16 1978. "

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

19 "29-2-11. DISCIPLINARY PROCEEDINGS--APPEAL. --

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



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

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

18           D. In the event the commission finds that the  
19 person charged shall be removed, demoted or suspended for a  
20 period in excess of thirty days, the person may appeal from  
21 the decision of the commission to the district court pursuant  
22 to the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

25           "29-10-8. REVIEW OF ARREST RECORD INFORMATION--

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1 APPEAL. -- A person who believes that arrest record information  
2 concerning him is inaccurate or incomplete is, upon  
3 satisfactory verification of his identity, entitled to review  
4 the information and obtain a copy of it for the purpose of  
5 challenge or correction. In the event a law enforcement  
6 agency refuses to correct challenged information to the  
7 satisfaction of the person to whom the inaccurate or incorrect  
8 information relates, the person is entitled to appeal to the  
9 district court to correct the information pursuant to the  
10 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

13 "32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS--  
14 APPEALS. --

15 A. The department shall promulgate updated  
16 standards for all detention facilities, including standards  
17 for site, design, construction, equipment, care, program,  
18 personnel and clinical services. The department shall certify  
19 as approved all detention facilities in the state meeting the  
20 standards promulgated. The department may establish by rule  
21 appropriate procedures for provisional certification and the  
22 waiving of any of its standards for facilities in existence at  
23 the time of the adoption of the standards, except that it  
24 shall not allow waiver of any standard pertaining to adequate  
25 health and safety protection of the residents and staff of the

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1 facility. No child shall be detained in a detention facility  
2 unless it is certified as approved by the department, except  
3 as otherwise provided in Chapter 32A, Article 2 NMSA 1978.

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

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

25 D. Any person aggrieved by an administrative

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1 decision of the department rendered under the provisions of  
2 this section may petition for the review of the administrative  
3 decision by appealing to the district court pursuant to the  
4 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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

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

11 "36-1A-9. APPEALS BY COVERED EMPLOYEES TO THE BOARD--  
12 JUDICIAL REVIEW. --

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

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

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

25 D. Appeals may be heard, at the election of the

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1 appellant, either by the board or by a hearing officer  
2 selected by the state personnel office. If the appellant does  
3 not elect to have his case heard by a state-personnel-office-  
4 designated hearing officer as provided in this section, the  
5 board may designate a hearing officer who may be a member of  
6 the board to preside over and take evidence at any hearing  
7 held pursuant to this section. This latter hearing officer  
8 shall prepare and submit to the board a summary of the  
9 evidence taken at the hearing and proposed findings of fact.  
10 The board shall render a final decision on the appeal, which  
11 shall include findings of fact and conclusions of law.

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

. 125052. 2

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1 the final decision.

2 F. If the board or the state-personnel-office-  
3 designated hearing officer finds that the action taken was  
4 without just cause, the board or the state-personnel-office-  
5 designated hearing officer may modify the disciplinary action  
6 or order the reinstatement of the appellant to his former  
7 position or to a position of like status and pay. When the  
8 board or the state-personnel-office-designated hearing officer  
9 orders a reinstatement of an appellant, the reinstatement  
10 shall be effective within thirty days after the service of a  
11 written copy of the decision on the affected party. The board  
12 or the state-personnel-office-designated hearing officer may  
13 award back pay as of the date of the dismissal, demotion or  
14 suspension or as of such later date as the order may specify.

15 G. A party aggrieved by the decision of the board  
16 or the state-personnel-office-designated hearing officer made  
17 pursuant to this section may appeal the decision to the  
18 district court pursuant to the provisions of Section [ ~~12-8A-1~~]  
19 39-3-1.1 NMSA 1978. "

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

22 "40-7A-6. REVOCATION OR SUSPENSION OF LICENSE--NOTICE--  
23 REINSTATEMENT--APPEAL. --

24 A. The division may deny, revoke, suspend, place  
25 on probation or refuse to renew the license of any child

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1 placement agency or foster home for failure to comply with the  
2 division's rules. The holder of the license sought to be  
3 denied, revoked, suspended or placed on probation or that is  
4 not renewed shall be given notice in writing of the proposed  
5 action and the reason therefor and shall, at a date and place  
6 to be specified in the notice, be given a hearing before a  
7 hearing officer appointed by the secretary with an opportunity  
8 to produce testimony in the holder's behalf and to be assisted  
9 by counsel. The hearing shall be held no earlier than twenty  
10 days after service of notice thereof unless the time  
11 limitations are waived. A person whose license has been  
12 denied, revoked, suspended, placed on probation or not renewed  
13 may, on application to the division, have the license issued,  
14 reinstated or reissued upon proof that the noncompliance with  
15 the rules has ceased.

16 B. A person adversely affected by a decision of  
17 the division denying, revoking, suspending, placing on  
18 probation or refusing to renew a license may obtain a review  
19 by appealing to the district court pursuant to the provisions  
20 of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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

. 125052. 2

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

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

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

9           B. After the hearing, a person aggrieved or  
10 affected by a final administrative determination concerning  
11 eligibility for relocation payments or the amount of the  
12 payment under the Relocation Assistance Act may appeal to the  
13 district court pursuant to the provisions of Section [ ~~12-8A-1~~]  
14 39-3-1.1 NMSA 1978. "

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

17           "47-6-15. APPEALS. --

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



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1 procedure for appealing the decision of the board of county  
2 commissioners set out in Subsection B of this section shall  
3 apply.

4 B. A party who is or may be adversely affected by  
5 a decision of the board of county commissioners in approving  
6 or disapproving a preliminary or final plat may appeal to the  
7 district court pursuant to the provisions of Section [ ~~12-8A-1~~]  
8 39-3-1.1 NMSA 1978. "

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

11 "50-9-15. VALIDITY OF REGULATION--VARIANCE  
12 DETERMINATION--JUDICIAL REVIEW.--

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

20 ~~[B.—A variance petitioner may appeal to the court~~  
21 ~~of appeals from an order of the department denying the~~  
22 ~~variance.—All appeals shall be upon the record made at the~~  
23 ~~hearing and shall be taken to the court of appeals within~~  
24 ~~thirty days from the date the order is made.—The department~~  
25 ~~shall be made a party to the action.—~~

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1            ~~C.]~~ B. Upon appeal, the court of appeals shall set  
2 aside a regulation [~~or order~~] only if it is found to be:

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

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

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

14            "50-9-17. ENFORCEMENT--APPEALS. --

15            A. If as a result of investigation the department  
16 has good cause to believe that any employer is violating any  
17 provision of the Occupational Health and Safety Act or any  
18 rule of the board, the department shall send prompt notice of  
19 the violation by certified mail to the employer believed to be  
20 in violation. The citation shall describe with particularity  
21 the provision of the Occupational Health and Safety Act or  
22 rule alleged to have been violated. The notice shall also  
23 state the time for abatement of the violation. Each citation  
24 issued pursuant to this section, or a copy thereof, shall be  
25 promptly and prominently posted by the cited employer, as

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1 prescribed in rules issued by the board, at or near the place  
2 where the violation occurred. No citation may be issued under  
3 this section after the expiration of six months following the  
4 occurrence of any violation. The board may issue a regulation  
5 prescribing procedures for the use of a notice in lieu of a  
6 citation with respect to de minimis violations that have no  
7 direct or immediate relationship to safety or health.

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

23 C. If the department has reason to believe that an  
24 employer has failed to correct a violation for which a  
25 citation has been issued within the abatement period

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

17 D. If any employer notifies the department in  
18 writing that he intends to contest the citation issued to him  
19 pursuant to provisions of Subsection A of this section or  
20 notification issued pursuant to provisions of Subsection B or  
21 C of this section or if within fifteen working days of the  
22 receipt of notice pursuant to the provisions of this section  
23 any employee of an employer cited or any employee's  
24 representative files a notice with the department alleging  
25 that the period of time fixed in the citation for the

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1 abatement of the violation is unreasonable, the department  
2 shall provide prompt opportunity for informal administrative  
3 review. If the matter is not successfully resolved at the  
4 informal administrative review, the petitioner may request a  
5 hearing before the commission within fifteen days after the  
6 administrative review. The commission shall afford an  
7 opportunity for a hearing within thirty days after receipt of  
8 the petition. The commission shall thereafter issue an order,  
9 based on findings of fact, affirming, modifying or vacating  
10 the department's citation or the proposed penalty fixed by the  
11 department or directing other appropriate relief.

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

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1 control.

2 F. Affected employees or their representatives  
3 shall be provided an opportunity to participate as parties at  
4 both informal administrative review and commission hearings  
5 provided for in this section.

6 G. Any person, including the department, adversely  
7 affected by an order of the commission issued pursuant to  
8 provisions of this section may obtain a review of the order in  
9 the district court pursuant to the provisions of Section  
10 [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

13 "53-8-91. APPEAL FROM [~~CORPORATION~~] COMMISSION. --

14 A. If the [~~corporation~~] commission fails to  
15 approve any articles of incorporation, amendment, merger,  
16 consolidation or dissolution, or any other document required  
17 by the Nonprofit Corporation Act to be approved by the  
18 [~~corporation~~] commission before the same is filed in its  
19 office, the commission shall, within fifteen working days  
20 after the delivery thereof, give written notice of its  
21 disapproval to the person or corporation, domestic or foreign,  
22 delivering the same, specifying the reasons therefor. The  
23 person or corporation may appeal the disapproval to the  
24 district court pursuant to the provisions of Section  
25 [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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1           B. If the [~~corporation~~] commission revokes a  
2 certificate of authority to conduct affairs in New Mexico of  
3 any foreign corporation or a certificate of incorporation of a  
4 domestic corporation, pursuant to the provisions of the  
5 Nonprofit Corporation Act, the foreign or domestic corporation  
6 may appeal to the district court pursuant to the provisions of  
7 Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

10           "53-18-2. APPEAL FROM COMMISSION. --

11           A. If the commission fails to approve any articles  
12 of incorporation, amendment, merger, consolidation or  
13 dissolution or any other document required by the Business  
14 Corporation Act to be approved by the commission before it is  
15 filed in its office, it shall, within fifteen working days  
16 after the delivery thereof to it, give written notice of its  
17 disapproval to the person or corporation, domestic or foreign,  
18 delivering the same, specifying the reasons therefor. From  
19 the disapproval, the person or corporation may appeal to the  
20 district court pursuant to the provisions of Section [~~12-8A-1~~]  
21 39-3-1.1 NMSA 1978.

22           B. If the commission revokes the certificate of  
23 authority to transact business in this state of any foreign  
24 corporation pursuant to the provisions of the Business  
25 Corporation Act, the foreign corporation may appeal to the

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1 district court pursuant to the provisions of Section [ ~~12-8A-1~~  
2 39-3-1.1 NMSA 1978. "

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

5 "53-19-67. APPEAL FROM COMMISSION. --If the commission  
6 fails to approve any articles of organization, articles of  
7 amendment, articles of merger or consolidation or articles of  
8 dissolution or any other document required or permitted by the  
9 Limited Liability Company Act to be approved by the commission  
10 before it is filed in its office, it shall, within fifteen  
11 working days after the delivery thereof to it, give written  
12 notice of its disapproval to the person delivering the same,  
13 specifying the reasons therefor. From the disapproval, the  
14 person may appeal to the district court pursuant to the  
15 provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1 NMSA 1978. "

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

18 "57-19-36. PENALTIES-- ADMINISTRATIVE PROCEDURES--  
19 APPEALS. --

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

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

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



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

3 B. Any person who violates Subsection A of this  
4 section is guilty of a petty misdemeanor and shall be  
5 sentenced in accordance with the provisions of Section  
6 31-19-1 NMSA 1978.

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

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

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

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

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

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

7 D. Appeals from decisions of the director  
8 regarding the assessment of an administrative penalty shall be  
9 to the district court pursuant to the provisions of Section  
10 [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

13 "58-1-45. COURT REVIEW. --Any person aggrieved and  
14 directly affected by an order of the director may appeal to  
15 the district court pursuant to the provisions of Section  
16 [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

19 "58-10-13. REFUSAL OF CHARTER APPLICATION-- APPEAL. --

20 A. Whenever the supervisor is unable to make the  
21 findings required by Section 58-10-12 NMSA 1978, he shall  
22 serve upon each party of record and his attorney, if any, a  
23 written copy of his decision denying the application by  
24 certified mail to the party's address of record. All parties  
25 shall be deemed to have been served on the tenth day following

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1 the mailing. The decision shall include:  
2 (1) findings of fact made by the supervisor;  
3 (2) conclusions of law reached by the  
4 supervisor; and  
5 (3) the decision of the supervisor based upon  
6 the findings of fact and conclusions of law.

7 B. Any party aggrieved by the decision of the  
8 supervisor may appeal the decision to the district court  
9 pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1 NMSA  
10 1978. "

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

13 "58-10-84. WHEN ORDER IS FINAL--APPEAL. --

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

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

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1 decision of the supervisor after hearing may appeal to the  
2 district court pursuant to the provisions of Section [ ~~12-8A-1~~  
3 39-3-1.1 NMSA 1978. "

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

6 "58-11-4. APPEAL RIGHTS AND COURT REVIEW. -- Any person  
7 aggrieved or directly affected by [ ~~an order, rule or~~  
8 ~~regulation~~] a final order of the director may [ ~~appeal to the~~  
9 ~~court of appeals within thirty days after issuance of the~~  
10 ~~order~~] obtain a review of the order in the district court  
11 pursuant to the provisions of Section 39-3-1.1 NMSA 1978. "

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

14 "58-13A-21. JUDICIAL REVIEW OF ORDERS. --

15 A. Any person aggrieved by a final order of the  
16 director may obtain a review of the order in the district  
17 court pursuant to the provisions of Section [ ~~12-8A-1~~] 39-3-1.1  
18 NMSA 1978.

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

24 Section 60. Section 58-13B-56 NMSA 1978 (being Laws  
25 1986, Chapter 7, Section 56, as amended) is amended to read:

1 "58-13B-56. JUDICIAL REVIEW OF ORDERS. --

2 A. Any person aggrieved by a final order of the  
3 director may obtain a review of the order in the district  
4 court pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1  
5 NMSA 1978.

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

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

13 "58-15-25. REVIEW. -- Any licensee or any person  
14 aggrieved by any act or order of the director pursuant to the  
15 New Mexico Small Loan Act of 1995 may file and appeal in the  
16 district court pursuant to the provisions of Section [ ~~12-8A-1~~ ]  
17 39-3-1.1 NMSA 1978. "

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

20 "58-19-4. SUSPENSION OR REVOCATION OF LICENSES--RENEWAL  
21 LICENSE DENIED--APPEALS. --

22 A. Renewal of a license originally granted under  
23 the Motor Vehicle Sales Finance Act may be denied or a license  
24 may be suspended or revoked by the director on any of the  
25 following grounds:

. 125052. 2

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1 (1) material misstatement in application for  
2 license;

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

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

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

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

17 B. If a licensee is a firm, association or  
18 corporation, it shall be sufficient cause for the suspension  
19 or revocation of a license that any officer, director or  
20 trustee of a licensed firm, association or corporation, or any  
21 member of a licensed partnership, has acted or failed to act  
22 in the conduct of the business under its license as would be  
23 cause for suspending or revoking a license to the person as an  
24 individual. Each licensee shall be responsible for the acts  
25 of any of its employees while acting as its agent, if the

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1 licensee after actual knowledge of the acts retained the  
2 benefits, proceeds, profits or advantages accruing from the  
3 acts or otherwise ratified the acts.

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

19 D. A person aggrieved by the denial, suspension or  
20 revocation of a license may file an appeal to the district  
21 court pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1  
22 NMSA 1978.

23 E. The director shall publish a notice that a  
24 license has been revoked or suspended within thirty days after  
25 the revocation or suspension in a newspaper of general

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1 circulation in the county in which the licensee was doing  
2 business. "

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

5 "58-21-16. REVIEW OF ORDER OF DIRECTOR. --

6 A. Any person aggrieved by a final order of the  
7 director may appeal to the district court pursuant to the  
8 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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

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

15 "58-22-29. REVIEW OF ORDER OF DIRECTOR. --

16 A. Any person aggrieved by a final order of the  
17 director may appeal to the district court pursuant to the  
18 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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

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

25 "59A-4-20. APPEAL TO COURT. --



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1           A. A party may appeal from an order of the  
2 superintendent made after an informal hearing or an  
3 administrative hearing. The appeal shall be taken to the  
4 district court pursuant to the provisions of Section [ ~~12-8A-1~~]  
5 39-3-1.1 NMSA 1978.

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

8           Section 66. Section 59A-11A-4 NMSA 1978 (being Laws  
9 1989, Chapter 97, Section 4, as amended) is amended to read:

10           "59A-11A-4. INSURANCE CONSULTANT LICENSE--SUSPENSION OR  
11 REVOCATION--APPEAL--PENALTY. --

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

18           B. Any person aggrieved by the action of the  
19 superintendent in revoking, suspending or refusing to grant,  
20 renew or reissue a license may appeal that action to the  
21 district court pursuant to the provisions of Section [ ~~12-8A-1~~]  
22 39-3-1.1 NMSA 1978.

23           C. The superintendent may at any time require such  
24 information as he deems necessary in respect to the business  
25 methods, policies and transactions of a licensee. Any person

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1 who fails or refuses to furnish the superintendent in the form  
2 he may require any such information within ten days after  
3 receiving a written request for it is guilty of a misdemeanor  
4 and upon conviction shall be fined not less than fifty dollars  
5 (\$50.00) or more than five hundred dollars (\$500). "

6 Section 67. Section 59A-17-35 NMSA 1978 (being Laws  
7 1984, Chapter 127, Section 330, as amended) is amended to  
8 read:

9 "59A-17-35. APPEALS FROM [~~INSURANCE BOARD~~] PUBLIC  
10 REGULATION COMMISSION. -- Any order made by the [~~insurance~~  
11 ~~board~~] public regulation commission pursuant to Section 59A-  
12 17-34 NMSA 1978 shall be subject to review by appeal to the  
13 district court pursuant to the provisions of Section [~~12-8A-1~~]  
14 39-3-1.1 NMSA 1978. Upon institution of the appeal and for  
15 good cause shown upon motion and hearing, the court may, in  
16 the following cases, stay operation of the [~~insurance board's~~]  
17 commission's order:

18 A. where, pursuant to Chapter 59A, Article 17  
19 NMSA 1978, a rate service organization has been refused a  
20 license or an insurer has been refused a certificate of  
21 authority or had its license or certificate of authority  
22 suspended, it may, with leave of court, be allowed to continue  
23 to engage in business, subject to the provisions of that  
24 article, pending final disposition of its application for  
25 review; or

. 125052. 2

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

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

16                   "59A-29-6. APPEALS-- JUDICIAL REVIEW. --

17                   A. A person aggrieved by an action or decision of  
18 the administrators of the FAIR plan or the underwriting  
19 association or of any insurer as a result of its participation  
20 may appeal to the superintendent within thirty days from the  
21 date of the action or the decision. The superintendent  
22 shall, after hearing held upon thirty days' written notice,  
23 issue an order approving the action or decision or  
24 disapproving the action or decision with respect to the matter  
25 that is the subject of appeal.

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1           B. All final orders and decisions of the  
2 superintendent shall be subject to judicial review in the  
3 district court pursuant to the provisions of Section [ ~~12-8A-1~~]  
4 39-3-1.1 NMSA 1978. "

5           Section 69. Section 59A-42-12 NMSA 1978 (being Laws  
6 1984, Chapter 127, Section 761, as amended) is amended to  
7 read:

8           "59A-42-12. APPEALS. --

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

13           B. A final order of the superintendent on appeal  
14 is subject to judicial review by an action in the district  
15 court pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1  
16 NMSA 1978. "

17           Section 70. Section 59A-43-14 NMSA 1978 (being Laws  
18 1984, Chapter 127, Section 780, as amended) is amended to  
19 read:

20           "59A-43-14. APPEALS. --

21           A. A claimant whose claim is denied in whole or in  
22 part by the association may, pursuant to Chapter 59A, Article  
23 43 NMSA 1978, request the receivership court to review the  
24 decision of the association. A request for review shall be  
25 filed within thirty days of the denial. The receivership

. 125052. 2

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1 court shall have jurisdiction of all claims and the decision  
2 of the court shall be binding on both the claimant and the  
3 association.

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

8 C. A final order of the superintendent on appeal  
9 is subject to judicial review by an action in the district  
10 court pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1  
11 NMSA 1978. "

12 Section 71. Section 59A-47-29 NMSA 1978 (being Laws  
13 1984, Chapter 127, Section 879.28, as amended) is amended to  
14 read:

15 "59A-47-29. SETTLEMENT OF DISPUTES--APPEAL. --The parties  
16 to a dispute between a health care plan and a purveyor arising  
17 out of a health care expense payments contract may submit the  
18 dispute to the superintendent for his final decision and his  
19 final decision shall then be binding upon the parties to the  
20 contract. A party to the contract may seek review of the  
21 superintendent's decision by filing an appeal in the district  
22 court pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1  
23 NMSA 1978. "

24 Section 72. Section 59A-52-22 NMSA 1978 (being Laws  
25 1984, Chapter 127, Section 968, as amended) is amended to

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1 read:

2 "59A-52-22. JUDICIAL REVIEW OF ORDER. -- A person  
3 aggrieved by a decision of the state fire [ ~~board~~ ] marshal may  
4 appeal to the district court pursuant to the provisions of  
5 Section [ ~~12-8A-1~~ ] 39-3-1.1 NMSA 1978. "

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

8 "60-2B-4. LICENSING AUTHORITY-- POWERS-- DUTIES--  
9 HEARINGS-- APPEALS. --

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

16 (1) to grant or refuse licenses under the  
17 Bingo and Raffle Act. In addition, the licensing authority  
18 has the power, on its own motion based on reasonable grounds  
19 or on complaint made and after investigation by the special  
20 investigations division of the department of public safety  
21 and public hearing at which the licensee shall be afforded an  
22 opportunity to be heard, to assess administrative fines to the  
23 licensee and to suspend or revoke any license issued by the  
24 licensing authority for any violation by the licensee or any  
25 officer, director, agent, member or employee of the licensee

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1 of the provisions of that act or any rule or regulation  
2 authorized under that act. Notice of suspension or  
3 revocation, as well as notice of the hearing, shall be given  
4 by certified mail to the licensee at the address contained in  
5 the license. Any license may be temporarily suspended for a  
6 period not to exceed thirty days pending any prosecution,  
7 investigation or public hearing;

8 (2) to supervise the administration of the  
9 Bingo and Raffle Act and to adopt, amend and repeal rules and  
10 regulations governing the holding, operating and conducting of  
11 games of chance, the rental of premises and the purchase of  
12 equipment to the end that games of chance shall be held,  
13 operated and conducted only by licensees for the purposes and  
14 in conformity with the constitution of New Mexico and the  
15 provisions of that act;

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

21 (4) to keep records of all actions and  
22 transactions of the licensing authority;

23 (5) to prepare and transmit annually, in the  
24 form and manner prescribed by the licensing authority pursuant  
25 to the provisions of law, a report accounting to the governor

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1 and the legislature for the efficient discharge of all  
2 responsibilities assigned by law or directive to the licensing  
3 authority; and

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

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

22 C. The licensing authority shall cause the notice  
23 of hearing to be served personally upon an officer of the  
24 licensee or the member in charge of the conduct of the game of  
25 chance or to be sent by registered or certified mail to the



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1 licensee at the address shown in the license.

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

9 E. For the first violation by a licensee of the  
10 Bingo and Raffle Act, the licensing authority may assess an  
11 administrative fine of not to exceed one thousand dollars  
12 (\$1,000). For a second or subsequent violation by the  
13 licensee of that act, the licensing authority may assess an  
14 administrative fine of not to exceed two thousand five hundred  
15 dollars (\$2,500). The amount of the administrative fine shall  
16 be determined by the severity and nature of the violation of  
17 the Bingo and Raffle Act and by the number of prior violations  
18 of that act.

19 F. When a license is ordered suspended or revoked,  
20 the licensee shall surrender the license to the licensing  
21 authority on or before the effective date of the suspension or  
22 revocation. No license is valid beyond the effective date of  
23 the suspension or revocation, whether surrendered or not.

24 G. Upon the finding of a violation of the Bingo  
25 and Raffle Act or the rules and regulations, or both, that

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1 would warrant the suspension or revocation of a license, the  
2 licensing authority, in addition to any other penalties that  
3 may be imposed, may declare the violator ineligible to conduct  
4 a game of chance and to apply for a license under that act for  
5 a period not exceeding twelve months. The declaration of  
6 ineligibility may be extended to include, in addition to the  
7 violator, any of its subsidiary organizations, its parent  
8 organization or an organization otherwise affiliated with the  
9 violator when in the opinion of the licensing authority the  
10 circumstances of the violation warrant that action.

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

17 I. At the request of any party and for good cause  
18 shown, the licensing authority or the department of public  
19 safety shall issue subpoenas for the attendance of witnesses  
20 and the production of books, records and other documents, but  
21 in no case shall a subpoena be made returnable more than five  
22 days after service.

23 J. Whenever oral testimony of witnesses is taken  
24 at the hearing, the licensing authority or the department of  
25 public safety shall have a certified reporter present to

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1 prepare a record of the proceedings. The original transcript  
2 shall be filed with the licensing authority. Any party is  
3 entitled to secure a copy from the reporter at his own  
4 expense.

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

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

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

18 N. Any person appearing before the licensing  
19 authority in a representative capacity shall be required to  
20 show his authority to act in that capacity.

21 O. No person shall be excused from testifying or  
22 producing any book or document in any investigation or hearing  
23 when ordered to do so by the licensing authority upon the  
24 ground that testimony or documentary evidence required of him  
25 may tend to incriminate or subject him to penalty or

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1 forfeiture, but no person may be prosecuted, punished or  
2 subjected to any penalty or forfeiture on account of any  
3 matter or thing concerning which he, under oath, testified or  
4 produced documentary evidence, except that he shall not be  
5 exempt from prosecution or punishment for any perjury  
6 committed by him in his testimony.

7 P. If a person subpoenaed to attend in any  
8 investigation or hearing fails to obey the command of the  
9 subpoena without reasonable cause or if a person in attendance  
10 in any investigation or hearing refuses, without lawful cause,  
11 to be examined or to answer a legal or pertinent question or  
12 to exhibit any book, account, record or other document when  
13 ordered to do so by the representative of the licensing  
14 authority holding the hearing or by the department of public  
15 safety performing the investigation, the licensing authority  
16 or the department of public safety may apply to any judge of  
17 the district court, upon proof by affidavit of the facts, for  
18 an order returnable in not less than five nor more than ten  
19 days directing the person to show cause before the judge why  
20 he should not comply with the subpoena or order.

21 Q. Upon return of the order, the judge before whom  
22 the matter comes for hearing shall examine the person under  
23 oath. If the judge determines after giving the person an  
24 opportunity to be heard that he refused without lawful excuse  
25 to comply with the subpoena or the order of the licensing

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1 authority or the department of public safety holding the  
2 investigation, the judge may order the person to comply with  
3 the subpoena or order forthwith, and any failure to obey the  
4 order of the judge may be punished as a contempt of the  
5 district court.

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

10 S. The decision of the licensing authority in  
11 suspending or revoking any license under the Bingo and Raffle  
12 Act shall be subject to review. A licensee aggrieved by a  
13 decision of the licensing board may appeal to the district  
14 court pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1  
15 NMSA 1978.

16 T. No proceeding to vacate, reverse or modify any  
17 final order rendered by the licensing authority shall operate  
18 to stay the execution or effect of any final order unless the  
19 district court, on application and three days' notice to the  
20 licensing authority, allows the stay. In the event a stay is  
21 ordered, the petitioner shall be required to execute his bond  
22 in a sum the court may prescribe, with sufficient surety to be  
23 approved by the judge or clerk of the court, which bond shall  
24 be conditioned upon the faithful performance by the petitioner  
25 of his obligation as a licensee and upon the prompt payment of

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1 all damages arising from or caused by the delay in the taking  
2 effect or enforcement of the order complained of and for all  
3 costs that may be assessed or required to be paid in  
4 connection with the proceedings. "

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

9 "60-6B-2. APPLICATIONS--APPEALS. --

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

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

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

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

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

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

14 (c) the name of the resident agent of  
15 the corporation authorized to accept service of process for  
16 all purposes, including orders and notices of the director,  
17 which agent shall be approved by the director with respect to  
18 his character;

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

. 125052. 2

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

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

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

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

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

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



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1           B. Every applicant for a new license or for a  
2 transfer of ownership of a license, if an individual or  
3 general partnership, shall file with the application two  
4 complete sets of fingerprints of each individual, taken under  
5 the supervision of and certified to by an officer of the New  
6 Mexico state police, a county sheriff or a municipal chief of  
7 police. If the applicant is a corporation, it shall file two  
8 complete sets of fingerprints for each stockholder holding ten  
9 percent or more of the outstanding stock, principal officer,  
10 director and the agent responsible for the operation of the  
11 licensed business. The fingerprints shall be taken and  
12 certified to as provided for an individual or partnership. If  
13 the applicant is a limited partnership, it shall file two  
14 complete sets of fingerprints for each general partner and for  
15 each limited partner contributing ten percent or more of the  
16 total value of contributions made to the limited partnership  
17 or entitled to ten percent or more of the profits earned or  
18 other compensation by way of income paid by the limited  
19 partnership. The fingerprints shall be taken and certified to  
20 as provided for an individual or partnership.

21           C. Upon submission of a sworn affidavit from each  
22 person who is required to file fingerprints stating that the  
23 person has not been convicted of a felony in any jurisdiction  
24 and pending the results of background investigations, a  
25 temporary license for ninety days may be issued. The

. 125052. 2

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1 temporary license may be extended by the director for an  
2 additional ninety days if the director determines there is not  
3 sufficient time to complete the background investigation or  
4 obtain reviews of fingerprints from appropriate agencies. A  
5 temporary license shall be surrendered immediately upon order  
6 of the director.

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

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

16 F. Before issuing a license, the department shall  
17 hold a public hearing within thirty days after receipt of the  
18 application pursuant to Subsection K of this section.

19 G. An application for transfer of ownership shall  
20 be filed with the department no later than thirty days after  
21 the date a person acquired an ownership interest in a license;  
22 shall contain documentation of the actual purchase price paid  
23 for the license, and the actual date of sale of the license;  
24 and shall be accompanied by a sworn affidavit from the owner  
25 of record of the license agreeing to the sale of the license

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1 to the applicant as well as attesting to the accuracy of the  
2 information required by this section to be filed with the  
3 department. No license shall be transferred unless it will be  
4 placed into operation in an actual location within one hundred  
5 twenty days of issuance of the license, unless for good cause  
6 shown the director grants an additional extension not to  
7 exceed one hundred twenty days.

8 H. Whenever it appears to the director that there  
9 will be more applications for new licenses than the available  
10 number of new licenses during any time period, a random  
11 selection method for the qualification, approval and issuance  
12 of new licenses shall be provided by the director. The random  
13 selection method shall allow each applicant an equal  
14 opportunity to obtain an available license, provided that all  
15 dispenser's and retailer's licenses issued in any calendar  
16 year shall be issued to residents of the state. For the  
17 purposes of random selection, the director shall also set a  
18 reasonable deadline by which applications for the available  
19 licenses shall be filed. No person shall file more than one  
20 application for each available license and no more than three  
21 applications per calendar year.

22 I. After the deadline set in accordance with  
23 Subsection H of this section, no more than ten applications  
24 per available license shall be selected at random for priority  
25 of qualification and approval. Within thirty days after the

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1 random selection for the ten priority positions for each  
2 license, a hearing pursuant to Subsection K of this section  
3 shall be held to determine the qualifications of the applicant  
4 having the highest priority for each available license. If  
5 necessary, a hearing shall be held on each selected  
6 application by priority until a qualified applicant for each  
7 available license is approved. Further random selections for  
8 priority positions shall also be held pursuant to this section  
9 as necessary.

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

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

19 L. In determining whether a license shall be  
20 issued, the director shall take into consideration all  
21 requirements of the Liquor Control Act. In the issuance of a  
22 license, the director shall specifically consider the nature  
23 and number of prior violations of the Liquor Control Act by  
24 the applicant or of any citations issued within the prior five  
25 years against a license held by the applicant or in which the

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1 applicant had an ownership interest required to be disclosed  
2 under the Liquor Control Act. The director shall disapprove  
3 the issuance or give preliminary approval of the issuance of  
4 the license based upon a review of all documentation submitted  
5 and any investigation deemed necessary by the director.

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

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

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

23 P. It is unlawful for any person to remove or  
24 deface any notice posted in accordance with this section. Any  
25 person convicted of a violation of this subsection shall be

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1 punished by a fine of not more than three hundred dollars  
2 (\$300) or by imprisonment in the county jail for not more than  
3 one hundred twenty days or by both.

4 Q. A person aggrieved by a decision made by the  
5 director as to the approval or disapproval of the issuance of  
6 a license may appeal to the district court pursuant to the  
7 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. If the  
8 disapproval is based upon local option district disapproval  
9 pursuant to Subsection H of Section 60-6B-4 NMSA 1978, the  
10 local option district shall be a necessary party to any  
11 appeal. The decision of the director shall continue in force,  
12 pending a reversal or modification by the district court,  
13 unless otherwise ordered by the court. "

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

16 "60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED--APPEAL. --

17 A. No injunction or writ of mandamus or other  
18 legal or equitable process shall issue in any suit, action or  
19 proceeding to prevent or enjoin any finding of guilt or order  
20 of suspension or revocation or fine made by a liquor control  
21 hearing officer under the provisions of Section 60-6C-4 NMSA  
22 1978. A licensee aggrieved or adversely affected by an order  
23 of revocation, suspension or fine shall have the right to  
24 appeal to the district court pursuant to the provisions of  
25 Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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

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

10           "61-1-17. PETITION FOR REVIEW. --A person entitled to a  
11 hearing provided for in the Uniform Licensing Act, who is  
12 aggrieved by an adverse decision of a board issued after  
13 hearing, may obtain a review of the decision in the district  
14 court pursuant to the provisions of Section [ ~~12-8A-1~~ ] 39-3-1.1  
15 NMSA 1978. "

16           Section 77. Section 61-18A-32 NMSA 1978 (being Laws  
17 1987, Chapter 252, Section 32, as amended) is amended to read:

18           "61-18A-32. JUDICIAL REVIEW. --A person aggrieved by the  
19 decision of the director in the enforcement of the Collection  
20 Agency Regulatory Act may obtain judicial review in the  
21 district court pursuant to the provisions of Section [ ~~12-8A-1~~ ]  
22 39-3-1.1 NMSA 1978. "

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

25           "66-4-3. REFUSAL TO ISSUE LICENSE-- CANCELLATION OR

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1 SUSPENSION OF LICENSE OR USE OF TEMPORARY PERMITS-- HEARING--  
2 APPEAL. --

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

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

17 C. The [~~director~~] secretary or his designated  
18 agent shall conduct the hearing for the [~~division~~] department  
19 and shall cause a record of hearing to be made.

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

- 24 (1) granting a license or refusing to grant a  
25 license;



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

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

7 E. A party aggrieved by the [~~director's~~]  
8 secretary's decision may file an appeal in the district court  
9 pursuant to the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA  
10 1978. "

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

13 "66-5-36. RIGHT OF APPEAL TO COURT. --A person denied a  
14 license or whose license has been canceled, suspended or  
15 revoked by the [~~division~~] department, except when the  
16 cancellation or revocation is mandatory under the provisions  
17 of Chapter 66, Article 5 NMSA 1978, may file an appeal in the  
18 district court pursuant to the provisions of Section [~~12-8A-1~~]  
19 39-3-1.1 NMSA 1978. "

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

22 "66-5-204. ADMINISTRATIVE AND COURT REVIEW. --An owner of  
23 a motor vehicle registered in New Mexico who is aggrieved by  
24 the decision of the [~~director~~] secretary made under the  
25 provisions of the Mandatory Financial Responsibility Act may

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1 appeal to the hearing officer of the [~~division~~] department for  
2 a hearing to be held within twenty days of the receipt by the  
3 [~~division~~] department of the appeal. A person who continues  
4 aggrieved after the decision made by the hearing officer may  
5 appeal that decision in the district court pursuant to the  
6 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

9 "67-8-19. PROCEDURE--APPEAL. --

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

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

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

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

25 E. A party aggrieved by an order may appeal to the

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1 district court pursuant to the provisions of Section [ ~~12-8A-1~~  
2 39-3-1.1 NMSA 1978. "

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

5 "67-10-2. RATES AND TOLLS--APPEALS. --A corporation may,  
6 after the completion of a wagon road or any part thereof and  
7 after the completion of a bridge or ferry for and by the  
8 traveling public, apply by petition in writing to the board of  
9 county commissioners of the county in or through which the  
10 road, bridge or ferry is or has been constructed, for rates,  
11 prices and tolls to be charged and collected from the  
12 traveling public using and traveling on the toll road, bridge  
13 or ferry, which petition shall state facts in reference to a  
14 road, bridge or ferry as will be sufficient to inform the  
15 board of county commissioners as to enable the board of county  
16 commissioners to fix the rates, tolls and charges, equal and  
17 just between the corporation owning the road, bridge or ferry  
18 and the traveling public using the same, and the rates, tolls  
19 and charges so fixed shall remain the same for two years. At  
20 the expiration of each two years, the corporation shall  
21 petition as aforesaid for the fixing of the rates, tolls and  
22 charges by the board of county commissioners. In case the  
23 corporation is dissatisfied with the rates, tolls and charges  
24 fixed by the board, it may appeal to the district court  
25 pursuant to the provisions of Section [ ~~12-8A-1~~ 39-3-1.1 NMSA

. 125052. 2

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1 1978. "

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

4 "67-13-12. ZONING--PETITION FOR REVIEW-RESTRAINING  
5 ORDER. --

6 A. A person aggrieved by a decision of the board  
7 may appeal to the district court pursuant to the provisions of  
8 Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

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

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

14 "69-6-2. RIGHT OF APPEAL. --Every owner, operator or  
15 employee of a mine has a right of appeal to the district court  
16 pursuant to the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA  
17 1978. "

18 Section 85. Section 69-25A-30 NMSA 1978 (being Laws  
19 1979, Chapter 291, Section 30) is amended to read:

20 "69-25A-30. JUDICIAL REVIEW. --

21 A. Any party to a proceeding before the commission  
22 who is aggrieved by a decision of the commission issued after  
23 a hearing may obtain a review of that decision, other than a  
24 promulgation of a regulation, [~~in the district court of Santa~~  
25 ~~Fe county. In order to obtain a review, such party must,~~

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1 ~~within thirty days after the decision is rendered, file with~~  
2 ~~the court a petition for review, a copy of which shall be~~  
3 ~~served upon the chairman of the commission and the attorney~~  
4 ~~general. The petition shall state all exceptions to the~~  
5 ~~decision, and the court shall not consider any exceptions not~~  
6 ~~contained in the petition. Failure to file such petition in~~  
7 ~~the manner and within the time specified shall operate as a~~  
8 ~~waiver of the right to judicial review.~~

9           ~~B. Within thirty days after service of the copy of~~  
10 ~~the petition for review, the commission shall prepare, certify~~  
11 ~~and file, with the clerk of the district court, the record of~~  
12 ~~the case, comprising a copy of the complete transcript of the~~  
13 ~~testimony taken at the hearing; copies of all pertinent~~  
14 ~~documents and other written evidence introduced at the~~  
15 ~~hearing; a copy of the decision of the commission; and a copy~~  
16 ~~of the petition for review containing the exceptions filed to~~  
17 ~~the decision. For good cause shown within the time stated,~~  
18 ~~the judge of the district court may issue an order granting~~  
19 ~~one extension of time not to exceed sixty days. With~~  
20 ~~permission of the court, the record may be shortened by~~  
21 ~~stipulation of all parties to the review proceeding. The~~  
22 ~~court may require or permit subsequent corrections to the~~  
23 ~~record when deemed desirable. At any time before or during~~  
24 ~~the review proceeding, the aggrieved party may apply to the~~  
25 ~~reviewing court for an order staying the operation of the~~

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1 ~~commission's decision pending the outcome of the review. The~~  
2 ~~court may grant such relief, under such conditions as it may~~  
3 ~~prescribe, if:~~

4 (1) ~~a hearing has been held on the request~~  
5 ~~for temporary relief in which all parties were given an~~  
6 ~~opportunity to be heard;~~

7 (2) ~~the applicant shows that there is~~  
8 ~~substantial likelihood that the findings of the director will~~  
9 ~~be favorable to him; and~~

10 (3) ~~such relief will not adversely affect the~~  
11 ~~health or safety of the public or cause significant imminent~~  
12 ~~environmental harm to land, air or water resources.~~

13 C. ~~Upon the review of any commission decision, the~~  
14 ~~judge shall sit without a jury and may hear oral arguments and~~  
15 ~~receive written briefs, but no evidence not offered at the~~  
16 ~~hearing shall be taken, except that in cases of alleged~~  
17 ~~omissions or errors in the record, testimony thereon may be~~  
18 ~~taken by the court. The court may affirm the decision of the~~  
19 ~~commission or remand the case for further proceedings or it~~  
20 ~~may reverse the decision, if the substantial rights of the~~  
21 ~~petitioner have been prejudiced because the administrative~~  
22 ~~findings, inferences, conclusions or decisions are:~~

23 (1) ~~in violation of constitutional~~  
24 ~~provisions;~~

25 (2) ~~in excess of the statutory authority or~~

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1 ~~jurisdiction of the commission or made upon unlawful~~  
2 ~~procedure;~~

3 ~~(3) affected by other error of law;~~

4 ~~(4) unsupported by substantial evidence on~~  
5 ~~the entire record as submitted; or~~

6 ~~(5) unlawful, arbitrary or capricious.~~

7 ~~If the court reverses or remands the decision of the~~  
8 ~~commission, the judge shall set out in writing, which writing~~  
9 ~~shall become a part of the record, the reasons for such~~  
10 ~~reversal or remand.~~

11 ~~D. Any party to the review proceeding in district~~  
12 ~~court, including the commission, may appeal to the supreme~~  
13 ~~court under the rules of procedure applicable in other civil~~  
14 ~~eases] by appeal to the district court pursuant to the~~  
15 ~~provisions of Section 39-3-1.1 NMSA 1978.~~

16 [E.] B. Any person who is or may be aggrieved by  
17 any regulation, or any amendment or repeal of a regulation,  
18 adopted by the commission may appeal to the court of appeals  
19 for relief. All appeals shall be based upon the record made  
20 at the hearing before the commission and shall be filed with  
21 the court of appeals within thirty days after filing of the  
22 regulation under the State Rules Act. An appeal to the court  
23 of appeals under this subsection is perfected by the timely  
24 filing of a notice of appeal with the court of appeals with a  
25 copy attached of the regulation from which the appeal is

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1 taken. The appellant shall certify in his notice of appeal  
2 that satisfactory arrangements have been made with the  
3 commission for preparation of transcripts of the record of the  
4 hearing at the expense of the appellant for filing with the  
5 court. Upon appeal, the court of appeals shall set aside the  
6 regulation only if determined to be:

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

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

14 "69-36-16. JUDICIAL REVIEW. --

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

21 B. A party, intervenor or any other person upon a  
22 showing of good cause for not appearing at the public hearing  
23 on a rule may appeal a decision of the commission adopting,  
24 amending or repealing the rule by filing a written notice of  
25 appeal with the court of appeals within forty-five days after



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1 entry of the commission's decision. Copies of the notice of  
2 appeal shall be served at the time of filing, either  
3 personally or by certified mail, upon all parties to the  
4 proceeding before the commission.

5 C. A person who is or may be affected by a final  
6 action of the commission other than a rule may appeal the  
7 action of the commission by filing a notice of appeal with the  
8 district court pursuant to the provisions of Section [ ~~12-8A-1~~]  
9 39-3-1.1 NMSA 1978. "

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

12 "70-2-25. REHEARINGS--APPEALS. --

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

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1           B. A party of record to the rehearing proceeding  
2 dissatisfied with the disposition of the application for  
3 rehearing may appeal to the district court pursuant to the  
4 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

7           "70-5-16. APPEAL. --A licensee whose license is canceled  
8 or suspended by order of the commission may appeal the  
9 decision by filing an appeal with the district court pursuant  
10 to the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

13           "70-5-17. NO FORMAL NOTICE REQUIRED OF HEARING ON  
14 APPLICATION FOR LICENSE--APPEAL. --The same procedure, rights  
15 and penalties as specified in the LPG and CNG Act in the cases  
16 of revocation or suspension of licenses are available, where  
17 applicable, in cases where the bureau refused to grant a  
18 license, except that no formal notice of hearing on an  
19 application for license need be given an applicant, other than  
20 that he is given a reasonable opportunity to appear in support  
21 of his application before the bureau renders its order  
22 refusing him a license. Appeal shall be to the district court  
23 pursuant to the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA  
24 1978. "

25           Section 90. Section 71-5-18 NMSA 1978 (being Laws 1975,

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1 Chapter 272, Section 18, as amended) is amended to read:

2 "71-5-18. REHEARINGS--APPEALS. --

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

16 B. A party of record to the rehearing proceeding  
17 dissatisfied with the disposition of the application for  
18 rehearing may appeal to the district court pursuant to the  
19 provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

20 C. The pendency of proceedings to review shall not  
21 of itself stay or suspend operation of the order or decision  
22 being reviewed, but during the pendency of the proceedings,  
23 the district court in its discretion may, upon its own motion  
24 or upon proper application of any party to the proceedings,  
25 stay or suspend in whole or in part operation of the order or

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1 decision pending review on terms as the court deems just and  
2 proper and in accordance with the practice of courts  
3 exercising equity jurisdiction; provided that the court, as a  
4 condition to any staying or suspension of operation of any  
5 order or decision, may require that one or more parties  
6 secure, in a form and amount as the court may deem just and  
7 proper, one or more other parties against loss or damage due  
8 to the staying or suspension of the commission's or division's  
9 order or decision in the event that the action of the  
10 commission or division is affirmed. "

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

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

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

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

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

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

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

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

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

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

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

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

. 125052. 2

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1 shall take into consideration the gross amount of exemption  
2 and credits allowable pursuant to entries made by the board  
3 upon the assessor's certified list, as provided in Section  
4 73-11-31 NMSA 1978. Proper entry shall be made by the  
5 district officers of all exemptions made and of credits  
6 allowed. The amount required to meet the obligations of the  
7 district, except that portion collected from tolls and  
8 charges, shall be raised by tax assessments, levy and  
9 collection, as provided in Chapter 73, Articles 10 and 11 NMSA  
10 1978, to be extended pro rata per acre over all lands in the  
11 district or, in appropriate cases, under Paragraph (2) of  
12 Subsection B of this section, against all land in each  
13 respective unit of the district. When the board meets for the  
14 purposes prescribed, it shall consider, determine and  
15 designate the lands within the district that shall be  
16 subjected to those assessments and levies.

17 D. Notice of the time, place and purpose of the  
18 meeting shall be given by publication in English and Spanish  
19 in a newspaper of general circulation published within the  
20 county where the headquarters of the district are located and  
21 shall inform all the persons interested that, at the time and  
22 place specified, an opportunity will be afforded to appear  
23 before the board of directors and show cause why any  
24 particular tract of land, or any portion of it, should be  
25 exempted from taxation under the provisions of Chapter 73,

. 125052. 2



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1 Articles 10 and 11 NMSA 1978. The notice shall be published  
2 once a week for four consecutive weeks, and the last  
3 publication shall be not less than three days prior to the  
4 date fixed for the meeting. Proof of publication shall be  
5 furnished by the publisher and shall be filed in the archives  
6 of the secretary of the district.

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

18 F. A person aggrieved by the decision may appeal  
19 to the district court pursuant to the provisions of Section  
20 [~~12-8A-1~~] 39-3-1.1 NMSA 1978.

21 G. The filing of the appeal in the district court  
22 shall not stay the proceedings relating to the collection of  
23 the tax. In the event that the appellant has paid the tax  
24 before the rendition of final judgment in the suit and  
25 judgment is rendered in the suit in favor of the appellant,

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1 the appellant shall have refunded to him a sum of money as  
2 shall be determined by the judgment of the court, together  
3 with legal interest on it and costs of court. If the  
4 appellant fails to recover in the suit, the appellant shall  
5 pay all costs of court. In case the assets and liabilities of  
6 any water users' association are taken over as provided in  
7 Section 73-10-1 NMSA 1978, the board of directors shall allow  
8 to the owner of lands, on account of which payment has been  
9 made to the association, all proper and equitable credits to  
10 which the owner may be entitled, according to the books and  
11 records of the association, which shall be prima facie  
12 evidence of the credits of its various members. The credits  
13 shall be taken into consideration by the board of directors in  
14 determining the amount of money required to meet obligations,  
15 maintenance, operating and current expenses of the district  
16 for the ensuing year, and the board of directors shall certify  
17 to the county commissioners the amount of the credits, and  
18 levy as provided for in Chapter 73, Articles 10 and 11 NMSA  
19 1978 shall be made accordingly.

20 H. The term "asset" as used in this section  
21 includes any and all grants, rights, powers, privileges and  
22 appropriations conferred by law and upon any water users'  
23 association and upon taking over the assets of any water  
24 users' association as provided in Chapter 73, Articles 10 and  
25 11 NMSA 1978 by any irrigation district. The district shall

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1 succeed to all such grants, rights, powers, privileges and  
2 appropriations, and the officers of the irrigation district  
3 are authorized and empowered to perform such duties and  
4 execute such instruments in regard thereto as the law required  
5 of the officers of the water users' association. "

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

8 "73-12-4. PETITION HEARING-- OBJECTIONS-- BOUNDARIES--  
9 ELECTION-- APPEALS. --

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

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1 inferior court and its decisions shall be binding upon all  
2 persons interested unless reversed on appeal as provided in  
3 this section, and if modified or affirmed, it shall be so  
4 binding.

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

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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 [ ~~12-8A-1~~ ] 39-3-1.1 NMSA 1978.

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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

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1 radioactive material unless he holds:

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

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

8 (3) a license issued by the agency.

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

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

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

24 E. A person who is or may be affected by licensing  
25 action of the agency may appeal to the district court pursuant

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1 to the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

4 "74-4B-14. CLEANUP OF ORPHAN HAZARDOUS MATERIALS--  
5 DEPARTMENT RECOURSE--APPEAL.--The department may assess  
6 charges against a party identified as responsible for orphan  
7 hazardous materials, for costs the department incurs in  
8 cleanup of the orphan hazardous materials and for damage to  
9 state property. Amounts received in payment of assessments  
10 for cleanup of the orphan hazardous materials shall be  
11 deposited in the orphan material recovery fund. Amounts  
12 received in payment of assessments for damage to state  
13 property shall be used to repair the damage. A person who is  
14 assessed charges pursuant to this section may appeal the  
15 assessment to the district court pursuant to the provisions of  
16 Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

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

19 "75-3-11. JUDICIAL REVIEW.--Rulings by the commission on  
20 the issuance, refusal or revocation of a license are subject  
21 to review in the district court pursuant to the provisions of  
22 Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. "

23 Section 96. REPEAL.--Sections 19-7-68 and 19-7-69 NMSA  
24 1978 (being Laws 1912, Chapter 82, Sections 73 and 74, as  
25 amended) are repealed.



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

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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5  
6 February 19, 1999

7  
8 Mr. Speaker:

9  
10 Your JUDICIARY COMMITTEE, to whom has been referred

11  
12 HOUSE BILL 356

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS.

16  
17 Respectfully submitted,

18  
19  
20 \_\_\_\_\_  
21 R. David Pederson, Chairman  
22  
23  
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25

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HJ/HB 356

Page 123

4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

6 (Chief Clerk)

(Chief Clerk)

8 Date \_\_\_\_\_

10 The roll call vote was 8 For 0 Against

11 Yes: 8

12 Excused: Luna, Rios, Thompson, Sanchez

13 Absent: None

15 J: \99BillsWP\H0356

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1 FORTY- FOURTH LEGI SLATURE

2 FIRST SESSION, 1999

HB 356/a

3  
4 March 17, 1999

5  
6 Mr. President:

7  
8 Your JUDI CIARY COMMI TTEE, to whom has been referred

9 HOUSE BILL 356

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

13  
14 1. On page 31, lines 23 through 25 and on page 32, lines 1  
15 through 6, remove the brackets and line-through.

16  
17 2. On page 31, line 24, strike "action" and insert in lieu  
18 thereof "regulation".

19  
20 3. On page 86, strike lines 5 through 25, strike pages 87  
21 through 93, on page 94, strike lines 1 through 13, and insert in  
22 lieu thereof the following new section:

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

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/HB 356

Page 125

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:

. 125052. 2

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/HB 356

Page 126

(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

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/HB 356

Page 127

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

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/HB 356

Page 128

(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

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

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SJC/HB 356

Page 129

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,

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/HB 356

Page 130

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

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/HB 356

Page 131

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.

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/HB 356

Page 132

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.

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/HB 356

Page 133

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

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

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

20  
21 P. It is unlawful for any person to remove or deface  
22 any notice posted in accordance with this section. Any person  
23 convicted of a violation of this subsection shall be punished by  
24 a fine of not more than three hundred dollars (\$300) or by  
25 imprisonment in the county jail for not more than one hundred

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION, 1999

SJC/HB 356

Page 134

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 ~~[ of jurisdiction by filing a petition in the court within thirty days from the date of the decision of the director, and a hearing on the matter may be held in 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. ~~[ Any appeal from the decision of the district court to the supreme court shall be permitted as in other cases of appeals from the district court to the supreme court.]~~ "".

Respectfully submitted,

FORTY- FOURTH LEGI SLATURE  
FIRST SESSI ON, 1999

SJC/HB 356

Page 135

Michael S. Sanchez, Chair man

Adopted \_\_\_\_\_ Not

Adopted \_\_\_\_\_

(Chi ef Clerk)

(Chi ef Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Aragon, Stockard

Absent: None

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