GOVERNMENT RESTRUCTURING TASK FORCE

November 22-23, 2010

Proposed Legislation for Consideration

GOVERNMENT STRUCTURE

Bill Drafts
1-5

11/19/10

BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; CREATING THE COMMERCE DEPARTMENT; REPLACING THE ECONOMIC DEVELOPMENT DEPARTMENT, THE TOURISM DEPARTMENT AND THE WORKFORCE SOLUTIONS DEPARTMENT; PROVIDING POWERS AND DUTIES; ELIMINATING CERTAIN AUTHORITIES, BOARDS, COMMISSIONS, COUNCILS AND COMMITTEES; TRANSFERRING FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 26 of this act may be cited as the "Commerce Department Act".

SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the Commerce Department Act is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the economic development department, the tourism department and the workforce solutions department.

SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the Commerce Department Act:

A. "department" means the commerce department; and

B. "secretary" means the secretary of commerce.

SECTION 4. [NEW MATERIAL] DEPARTMENT CREATED--ORGANIZATIONAL UNITS.--

A. The "commerce department" is created as a cabinet department and includes the following organizational units:

(1) office of the secretary;

(2) administrative services division, including:

(a) economic research and analysis bureau; and

(b) information technology bureau;

(3) economic development division, including:

(a) international trade bureau;

(b) marketing bureau;

(c) New Mexico film bureau; and

(d) enterprise development bureau;

(4) labor relations division, including:

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(a) human rights bureau;

(b) apprenticeship bureau; and

(c) labor and industrial bureau;

(5) tourism development division, including:

(a) New Mexico magazine bureau; and

(b) welcome centers bureau; and

(6) work force transition services division.

B. The secretary may establish, merge or eliminate organizational units of the department for better efficiency and effectiveness, but a reorganization of statutory divisions or bureaus shall be reported to the next regular session of the legislature.

SECTION 5. [NEW MATERIAL] ADMINISTRATIVELY ATTACHED AGENCIES.--

A. The following boards, commissions, committees, administrations, authorities and councils are administratively attached agencies of the department:

(1) apprenticeship council;

(2) economic development and tourism commission;

(3) human rights commission;

(4) labor and industrial commission;

(5) New Mexico-Chihuahua commission;

(6) New Mexico-Sonora commission;

(7) spaceport authority;

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(8) state fair commission;

(9) workers' compensation administration; and

(10) state workforce development board.

B. The department shall provide administrative services to administratively attached agencies.

SECTION 6. [NEW MATERIAL] SECRETARY OF COMMERCE.--The chief executive and administrative officer of the department is the "secretary of commerce". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet.

SECTION 7. [NEW MATERIAL] SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the secretary's duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except when authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

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(1) except as otherwise provided in the Commerce Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units that the secretary deems will enable it to function most efficiently;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution the secretary is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the residents of the state;

(7) provide for courses of instruction and practical training for employees of the department and other

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persons involved in the administration of programs, with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department based on the five-year economic development and tourism plans;

(9) provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies; and

(10) appoint a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary.

C. The secretary may apply for and receive in the name of the department any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary, unless otherwise provided by statute. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before

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the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules shall be filed in accordance with the State Rules Act.

SECTION 8. [NEW MATERIAL] BUREAUS--CHIEFS.--The secretary shall establish with each division such "bureaus" as deemed necessary to carry out the provisions of the Commerce Department Act. The secretary shall employ a "chief" to be the administrative head of each bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act unless otherwise provided by law.

SECTION 9. [NEW MATERIAL] ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved.

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However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and the secretary shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 7 of the Commerce Department Act. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law. Any information obtained by the department that is proprietary technical information or related to the possible relocation or expansion of a business shall be deemed confidential and withheld from inspection pursuant to the Inspection of Public Records Act.

SECTION 10. [NEW MATERIAL] COOPERATION WITH FEDERAL GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE AGENCY STATUS.--

A. The department is authorized to cooperate with the federal government in the administration of employment, training and public assistance programs under the jurisdiction of the department in which financial or other participation by the federal government is authorized or mandated under federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement employment, training and public assistance programs

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subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may designate the department or any organizational unit of the department as the single state agency for the administration of any employment, training or public assistance program related to employment, either by the governor's or the secretary's own discretion or when such designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

SECTION 11. [NEW MATERIAL] ECONOMIC DEVELOPMENT AND TOURISM COMMISSION CREATED--MEMBERSHIP--ADMINISTRATIVELY ATTACHED TO THE DEPARTMENT--POWERS AND DUTIES.--

A. The "economic development and tourism commission" is created and is administratively attached to the department. The department shall provide administrative support for the commission. The commission is a planning commission that provides advice to the department on policy matters. The commission is responsible for the annual approval and update of the state's five-year economic development and tourism plans.

B. The commission consists of fifteen members who

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shall be qualified electors of the state, no more than eight of whom at the time of their appointment shall be members of the same political party and at least two of whom shall be Native American. Members shall be appointed by the governor and confirmed by the senate. Seven members shall be appointed from their respective planning districts, three members shall be appointed from their respective congressional districts, two members shall be Native American and represent the interests of Indian nations, tribes and pueblos and three members shall represent the public at large. Appointments shall be made for staggered five-year terms expiring on January 1 of the appropriate year. The governor shall determine the terms at the time of initial appointments. A vacancy on the commission shall be filled by appointment by the governor in the same manner as the original appointment for the unexpired term.

C. Annually, the governor shall designate a chair of the commission from among the members. The commission shall meet at the call of the chair, not less than once each calendar quarter, and shall invite representatives of appropriate legislative committees, other state agencies and interested persons to its meetings for the purpose of information exchange and coordination.

D. Commission members shall not vote by proxy. A majority of the members constitutes a quorum for the conduct of business.

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E. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office; provided, however, that no removal shall be made without notice of hearing and an opportunity to be heard having first been given to the member being removed. The senate shall be given exclusive original jurisdiction over proceedings to remove members of the commission under such rules as it may promulgate. The senate's decision in connection with such matters shall be final.

F. Commission members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.

G. The commission shall:

(1) develop and recommend policies and provide policy and program guidance for the department;

(2) review, modify and approve annual updates to the state's five-year economic development and tourism plans generated by the department;

(3) advise, assist and promote the department on matters relating to economic development, tourism, tribal tourism, technology, technology-based new business development and technology commercialization projects, including small business needs;

(4) review federal technology-based programs

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requiring state matching funds and authorize any expenditure or pledge of the state match fund for such programs; and

(5) establish such rules for its own operations as are necessary to achieve the purposes of the Commerce Department Act. Rules of the commission shall be adopted in the same procedural manner as rules of the department are adopted and shall be filed in accordance with the State Rules Act.

SECTION 12. [NEW MATERIAL] ADDITIONAL ECONOMIC DEVELOPMENT DUTIES.--The department shall:

A. provide a coordinated statewide perspective with regard to economic development activities;

B. work with and provide staff support to the economic development and tourism commission in formulating and implementing the state's five-year economic development plan;

C. maintain and update records on the status of all completed and ongoing economic development projects of the department;

D. develop, maintain and provide economic and demographic information to the governor, the legislature, other state agencies and local governments;

E. serve as lead agency in coordination of the census program at the state data center;

F. provide a database for local and regional economic development groups and serve as a comprehensive source

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of information and assistance to businesses wishing to locate or expand in New Mexico;

G. actively encourage new economic enterprises to locate in New Mexico and assist existing businesses to expand;

H. monitor the progress of state-supported economic development activities and prepare annual reports of those activities and their status and impact;

I. create and encourage methods designed to provide rapid economic diversification development that will create new employment opportunities for the residents of the state, including the issuance of grants and loans to municipalities and counties for economic enhancement projects;

J. provide for technology commercialization projects as an incentive to industry locating or expanding in the state;

K. support technology transfer programs;

L. promote New Mexico as a technology conference center;

M. promote and market federal and state technology commercialization programs;

N. develop and implement enhanced statewide procurement programs;

O. provide support and assistance in the creation and operation of development finance mechanisms such as business development corporations to ensure capital

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availability for business expansion and economic diversification; and

P. serve as the lead agency in coordination of the census program at the state data center.

SECTION 13. [NEW MATERIAL] ADDITIONAL TOURISM PROMOTION DUTIES.--The department shall:

A. provide a coordinated statewide perspective with regard to tourism activities;

B. work with and provide staff support to the economic development and tourism commission in formulating and implementing the state's five-year tourism plan;

C. provide a database for local and regional tourism groups and serve as a comprehensive source of information and assistance to tourism-related businesses wishing to locate, expand or do business in New Mexico;

D. monitor the progress of state-supported tourism activities and prepare annual reports of those activities and their status and impact; and

E. maintain and update records on the status of all completed and ongoing tourism-related projects of the department.

SECTION 14. [NEW MATERIAL] ADDITIONAL DUTIES--INDIAN ARTS, CRAFTS AND CULTURE--PROMOTION.--The department shall:

A. encourage the preservation and development of Indian arts and crafts among the Indian nations, tribes and

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pueblos of the state to increase the knowledge and appreciation of those arts and crafts;

B. encourage the preservation of traditional rites and ceremonials of Indian nations, tribes and pueblos to increase knowledge and appreciation of those rites and ceremonials; and

C. promote the intertribal ceremonial.

SECTION 15. [NEW MATERIAL] ADDITIONAL DUTIES--DEFENSE CONVERSION TECHNOLOGY AND OTHER TECHNOLOGY.--

A. The department is the lead agency to promote defense conversion technology, to coordinate the transfer of defense technology and other technology from federal, state and local government facilities to private sector industries and to promote private-public partnership and business development programs. The department shall coordinate or accept federal and state funds appropriated for conversion of defense technologies and to coordinate technology transfer in accordance with the state's technology development plan.

B. The department may contract with appropriate partnership intermediaries to assist in the coordination of defense conversion duties.

C. The department shall:

(1) oversee the activities of the manufacturing productivity center and manufacturing extension programs;

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(2) coordinate the activities of small business incubators to encourage the development and viability of technology spin-off companies in the private sector;

(3) coordinate appropriate divisions in the department to provide technology export assistance;

(4) coordinate small business development and assistance programs for new and existing businesses;

(5) work with appropriate entities to identify sources of funding for capital expenditure programs and initial venture programs;

(6) coordinate the development of regional technology clusters; and

(7) provide support and coordination assistance as deemed necessary by the economic development and tourism commission and the secretary to assist the state in developing defense conversion industries.

SECTION 16. [NEW MATERIAL] DEPARTMENT COOPERATION WITH LOCAL AND REGIONAL ECONOMIC DEVELOPMENT AGENCIES.--The department shall cooperate with local and regional development agencies, including:

A. coordinating activities of the department and local or regional development agencies;

B. assisting in gathering information on local and regional assets;

C. assisting in the establishment of procedures for

handling potential clients;

D. assisting in the development of a plan for the expansion of the local or regional economic base;

E. assisting in marketing the benefits of local communities by providing matching funds through the state cooperative advertising program, which shall include as eligible expenses travel and related costs to attract new business investment into the communities;

F. assisting in the establishment of programs to attract new labor forces or to train local labor forces; and

G. identifying barriers to local or regional economic development and developing plans to overcome such barriers.

SECTION 17. [NEW MATERIAL] ADMINISTRATIVE SERVICES DIVISION.--

A. The administrative services division shall provide administrative services to the department, including:

(1) keeping all official records of the department and administratively attached agencies;

(2) providing personnel administration, financial management, procurement and budget preparation services for the department and administratively attached agencies; and

(3) performing economic research and analysis for the department and the economic development and tourism

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commission.

B. The division shall, in addition to its other duties, administer programs and grants that have been assigned generally to the department by the governor or the economic development and tourism commission or by statute.

SECTION 18. [NEW MATERIAL] TOURISM ENTERPRISE FUND--CREATED--ADMINISTRATION.--The "tourism enterprise fund" is created as a nonreverting fund in the state treasury. Money appropriated to the fund or accruing to it through sales of souvenirs and sundries at visitor centers, web-site-related sales, television special program rights, gifts, grants, fees, bequests or any other source shall be delivered to the state treasurer and deposited in the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the duties of the department. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of commerce.

SECTION 19. [NEW MATERIAL] ECONOMIC DEVELOPMENT DIVISION.--

A. The economic development division shall:

(1) enhance the business climate to encourage the start-up, relocation, development and growth of technology-based industry in New Mexico;

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(2) promote an expanded, diversified technology-based economy, emphasizing areas that:

(a) derive from the state's technological strengths;

(b) provide a commercial advantage;

(c) lend themselves to a distributed technology-based industry network; and

(d) use imaginative state, federal and private partnerships;

(3) support in-state industries and attract new industries to New Mexico;

(4) formulate and submit to the economic development and tourism commission a five-year state technology development plan;

(5) develop agreements with federal research, development, testing and evaluating organizations and universities to facilitate the transfer and commercialization of technology;

(6) recommend to the secretary proposed projects and contracts in accordance with the policies, procedures and guidelines established by the department;

(7) subject to the approval of the secretary, apply for and accept any federal funds or grants and private donations;

(8) develop requests for proposals in

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technology commercialization areas given priority in the state's economic development and tourism plans; receive and refer with commentary to the secretary proposals submitted in response to requests for proposals; confer with research investigators to assist them when needed; monitor progress on state-funded research and development projects; maintain contact with research and development offices of universities, federal laboratories and private research operations; and receive reports of individual projects;

(9) prepare an annual report on:

(a) the status of ongoing research and development projects;

(b) the results obtained from completed projects and the dissemination of those results; and

(c) other activities of the division;

(10) maintain and update records on the status of all completed and ongoing projects;

(11) request from each entity under contract with the division a detailed description of tasks and associated budgets for review and approval by the economic development and tourism commission; and

(12) perform such other duties as assigned by the secretary.

B. Any information obtained by the economic development division that is deemed by the director and the

secretary to be proprietary technical or business information shall be held in confidence. Proprietary technical or business information shall not be deemed a public record under the Public Records Act or be open to inspection under Section 14-2-1 NMSA 1978. The economic development division shall take such steps as are necessary to safeguard the confidentiality of the information.

C. Notwithstanding Sections 10-15-1 through 10-15-4 NMSA 1978 or any other law requiring meetings of public bodies to be open to the public, meetings of the economic development and tourism commission shall be closed when proprietary technical or business information is discussed.

SECTION 20. [NEW MATERIAL] ENTERPRISE DEVELOPMENT BUREAU DUTIES--BUSINESS INCUBATORS.--

A. The enterprise development bureau of the economic development division shall:

(1) provide information and assistance to businesses wishing to relocate to New Mexico or to expand within New Mexico by providing a centralized information service and assistance center;

(2) develop and maintain a comprehensive statewide business information database and referral service;

(3) establish a mechanism for advertising the existence of the bureau and its referral service;

(4) provide professional assistance and

information regarding licensing, permitting and taxation procedures; and

(5) establish a reporting procedure to monitor the success of the referral service.

B. Business incubators receiving state funds shall be required to pass a state incubator certification program administered by the bureau. The bureau shall certify business incubators that submit documentation to the bureau that the incubator has:

(1) a mission statement that defines the incubator's role to assist entrepreneurs and support the growth of businesses;

(2) a formal feasibility study indicating an appropriate market and local community support and a business plan;

(3) an effective governing board or an appropriate oversight advisory board committed to the incubator's mission;

(4) qualified management and staff to achieve the mission of the incubator and to help businesses;

(5) an ongoing business assistance program that places the greatest value on client assistance and adds value to client businesses by developing programs and coordinating activities such as:

(a) technical assistance and consulting;

(b) coaching and mentoring, business training workshops and seminars;

(c) providing marketing assistance;

(d) fostering networking opportunities and links with other business service providers; and

(e) providing assistance in obtaining financing;

(6) a facility that encourages innovation and provides dedicated space for incubator client firms with flexible leases and that includes a common area meeting space and business equipment;

(7) a process for client businesses that involves a screening and selection process and graduation policy for client companies;

(8) a system for program evaluation;

(9) all applicable required licenses and permits and a functional accounting system; and

(10) membership in the national business incubation association.

SECTION 21. [NEW MATERIAL] ARTISANS BUSINESS DEVELOPMENT PROGRAM--FUND CREATED.--

A. The "New Mexico artisans business development program" is created within the economic development division to promote, in conjunction with the arts division of the cultural affairs department, the New Mexico artisans industry by

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establishing a greater demand for New Mexico artisans' wares and by providing technical and marketing assistance to New Mexico artisans. The purposes of the program include:

(1) educational workshops and seminars in cooperation with the small business development centers for artisans to assist the centers in the development of their businesses and marketing of their wares;

(2) an assessment of a full range of marketing strategies for artisan wares and relating those wares to target markets;

(3) production of a promotional brochure of New Mexico artisans and their products;

(4) development and publishing of a marketing catalog of New Mexico artisans;

(5) establishment of a network of state and national distribution points and gift and trade shows for the promotion and export of New Mexico artisans' wares;

(6) development of a state and national marketing and exhibitions calendar;

(7) participation in state and national promotional shows by New Mexico artisans; and

(8) development of a marketing network with private-sector distributors, catalog producers and retailers.

B. The "New Mexico artisans business development fund" is created as a nonreverting fund in the state treasury.

The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. The fund shall be administered by the enterprise development bureau, and expenditures may be made from the fund on warrants issued by the secretary of finance and administration pursuant to vouchers signed by the secretary of commerce and economic development to carry out the purposes of the New Mexico artisans business development program.

SECTION 22. [NEW MATERIAL] TECHNOLOGY-BASED PROPOSALS--STATE MATCH FUND--CREATED.--

A. The "state match fund" is created in the state treasury. Money in the fund is appropriated to the department to provide a pool of matching funds for technology-based proposals submitted to the federal government on behalf of the state. Money in the fund shall only be expended upon review and approval of the economic development and tourism commission.

B. No money in the fund appropriated to it or accruing to it in any manner shall be transferred to another fund or encumbered or dispersed in any manner except for the purposes set forth in this section. Disbursements from the fund shall only be made upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of commerce or the secretary's authorized representative.

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SECTION 23. [NEW MATERIAL] INTERNATIONAL TRADE BUREAU DUTIES.--The international trade bureau is responsible for conducting and coordinating the state's relations with other countries and promoting New Mexico and its products and services. The bureau shall:

A. coordinate activities of the department and other state agencies as those activities relate to improving New Mexico's relations and trade with other countries;

B. promote New Mexico to international investors;

C. promote New Mexico products and services to potential international consumers;

D. establish a central registry for New Mexico products and services;

E. develop, maintain and use a database of potential domestic and international investors and consumers for New Mexico and its products and services;

F. foster, coordinate and support private efforts in the promotion of New Mexico and its businesses, products and services to consumers in other countries; and

G. work with persons outside of state government to formulate a trade promotion plan for inclusion in the department's five-year economic development and tourism plans.

SECTION 24. [NEW MATERIAL] MEXICAN TRADE--INTERNATIONAL TRADE BUREAU DUTIES.--The international trade bureau is responsible for:

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A. conducting and coordinating the state's relations with the Republic of Mexico and the state of Chihuahua;

B. promoting New Mexico products and services in Mexico;

C. coordinating activities of the department, the cultural affairs department, the department of transportation, the department of health, the department of environment, the department of public safety, the New Mexico-Chihuahua commission and the joint border research institute at New Mexico state university as those activities relate to improving New Mexico-Mexico relations and trade and encouraging or funding appropriate border development;

D. establishing and annually updating the New Mexico trade registry of New Mexico businesses and the products and services they offer to consumers; and

E. providing periodic reports to the New Mexico finance authority oversight committee on its activities and the activities of the state pertaining to New Mexico-Mexico relations, trade and border development.

SECTION 25. [NEW MATERIAL] MINORITY BUSINESS ASSISTANCE--ECONOMIC DEVELOPMENT DIVISION DUTIES.--

A. As used in this section, "minority business" means a business, with its principal place of business in New Mexico:

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(1) the majority ownership of which is held by persons who are residents of New Mexico and who are African Americans, Hispanic Americans, Asian Americans or Native Americans; and

(2) that employs twenty or fewer people.

B. The economic development division shall develop and implement a minority business assistance program to facilitate the entrance of minority businesses, located throughout the state, into the marketplace. As part of the development and implementation of the program, the division shall:

(1) develop a process to define and identify minority businesses that may benefit from additional assistance and training in the areas of general business practices, accounting principles, business ethics, technical expertise, marketing and government procurement;

(2) develop a registry of well-established businesses, persons within those businesses, retirees and other persons that have the expertise and skills that may be needed by minority businesses and that have expressed a desire to volunteer as a mentor or otherwise to assist minority businesses;

(3) develop an outreach and marketing program so that minority businesses may become aware of the assistance available and so that needed, experienced persons are aware of

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the opportunity to mentor and assist minority businesses;

(4) develop training materials and in-house training expertise; and

(5) create a mentorship program in which employees or agents of the division or department or volunteers with business experience will visit minority businesses for the purpose of training, mentoring, advising and otherwise assisting the minority businesses in the development or improvement of general business practices, accounting principles, business ethics, technical expertise, marketing and government procurement.

C. In performing its duties pursuant to this section, the division may:

(1) to the extent money has been appropriated for such purposes, develop a grant program for minority businesses to acquire the expertise necessary to compete effectively; and

(2) do all other things necessary and proper to effectuate the purpose of this section.

D. All state agencies shall cooperate with the division in carrying out the provisions of this section and shall, as the opportunity arises, assist minority businesses and encourage other businesses and persons to register as volunteers pursuant to this section.

SECTION 26. [NEW MATERIAL] MINORITY BUSINESS ASSISTANCE

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FUND--CREATED.--The "minority business assistance fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations, bequests and income from investment of the fund. Money in the fund is subject to appropriation by the legislature to the department for the purposes of carrying out the provisions of Section 25 of the Commerce Department Act. Disbursements from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of commerce or the secretary's designee.

SECTION 27. Section 3-60B-4 NMSA 1978 (being Laws 1985, Chapter 88, Section 4, as amended) is amended to read:

"3-60B-4. MAIN STREET PROGRAM--CREATED--COORDINATOR--POWERS AND DUTIES.--

A. [~~There is created~~] The "main street program" is created in the [~~economic development~~] commerce department. The secretary of [~~the economic development department~~] commerce shall employ a "coordinator" to oversee the program.

B. The coordinator shall:

(1) carry out state responsibilities pursuant to contract with the national main street center of the national trust for historic preservation;

(2) coordinate activities of the program in consultation with the historic preservation division of the [~~office of~~] cultural affairs department;

(3) advise the New Mexico community development council on the development of criteria for requests for proposals and selection of local government grantees for the program to be funded through community development block grants;

(4) monitor the progress of main street projects;

(5) assist local main street project managers; and

(6) perform other duties necessary to carry out the provisions of the Main Street Act."

SECTION 28. Section 3-60C-4 NMSA 1978 (being Laws 2007, Chapter 103, Section 4, as amended) is amended to read:

"3-60C-4. MAIN STREET REVOLVING LOAN COMMITTEE--COMMITTEE AND DIVISION DUTIES.--

A. The "main street revolving loan committee" is created, consisting of six members as follows:

(1) the director of the division or the director's designee;

(2) the coordinator of the main street program under the Main Street Act or the coordinator's designee;

(3) the chair of the cultural properties review committee or the chair's designee;

(4) the director of the local government division of the department of finance and administration or the

director's designee;

(5) a member appointed by the governor with expertise in small loans; and

(6) the chair of the board of directors of friends of New Mexico mainstreet, inc., or the chair's designee.

B. [~~Public~~] Members of the committee shall not [~~be paid but shall be reimbursed for~~] receive per diem and mileage [~~pursuant to the Per Diem and Mileage Act~~] or other compensation for their services.

C. The committee shall:

(1) elect a chair and such other officers as it deems necessary;

(2) meet at the call of the chair but no less than four times per year;

(3) by rule establish eligibility criteria for properties and owners, establish procedures to govern the application outreach and marketing of the loan program and promulgate such other rules as are necessary to carry out the provisions of the Main Street Revolving Loan Act;

(4) after considering the recommendations of the division, make awards of loans or loan subsidies; and

(5) approve expenditures by the division for marketing, managing and administering the loan program.

D. A member of the committee may participate in a

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meeting of the committee by means of a conference telephone or other similar communications equipment as provided in the Open Meetings Act. Participation by conference telephone or other similar communications equipment shall constitute presence in person at a meeting.

E. The division shall:

(1) review applications for loans and loan subsidies and make recommendations to the committee;

(2) administer all loans and loan subsidies;

(3) serve as staff to the committee; and

(4) report annually to the governor, the legislative finance committee and the legislature on loans made, loan payments received and all other activities conducted pursuant to the Main Street Revolving Loan Act."

SECTION 29. Section 5-10-3 NMSA 1978 (being Laws 1993, Chapter 297, Section 3, as amended) is amended to read:

"5-10-3. DEFINITIONS.--As used in the Local Economic Development Act:

A. "arts and cultural district" means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act;

B. "cultural facility" means a facility that is owned by the state, a county, a municipality or a qualifying entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale,

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including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;

C. "department" means the [~~economic development~~] commerce department;

D. "economic development project" or "project" means the provision of direct or indirect assistance to a qualifying entity by a local or regional government and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying entity; payments for professional services contracts necessary for local or regional governments to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; technical assistance to cultural facilities; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the county infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities; purchase of land for a publicly held industrial park or a publicly owned

cultural facility; and the construction of a building for use by a qualifying entity;

E. "governing body" means the city council, city commission or board of trustees of a municipality or the board of county commissioners of a county;

F. "local government" means a municipality or county;

G. "municipality" means an incorporated city, town or village;

H. "person" means an individual, corporation, association, partnership or other legal entity;

I. "qualifying entity" means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:

(1) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;

(2) a commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in Paragraph (5) or (6) of this subsection, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

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(3) a business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph (5) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;

(4) an Indian nation, tribe or pueblo or a federally chartered tribal corporation;

(5) a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;

(6) a facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;

(7) a business that is the developer of a metropolitan redevelopment project; and

(8) a cultural facility; and

J. "regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement."

SECTION 30. Section 6-21-31 NMSA 1978 (being Laws 1992, Chapter 61, Section 31) is amended to read:

"6-21-31. POWERS AND DUTIES.--The New Mexico finance authority oversight committee shall:

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A. monitor and oversee the operation of the New Mexico finance authority;

B. meet on a regular basis to receive and review reports from the authority on implementation of the provisions of the New Mexico Finance Authority Act and to review and approve [~~regulations~~] rules proposed for adoption pursuant to that act;

C. monitor and provide assistance and advice on the public project financing program of the New Mexico finance authority;

D. oversee and monitor state and local government capital planning and financing and take testimony from state and local officials on state and local capital needs;

E. provide advice and assistance to the New Mexico finance authority and cooperate with the executive branch of state government and local governments on planning, setting priorities for and financing of state and local capital projects;

F. undertake an ongoing examination of the statutes, constitutional provisions, regulations and court decisions governing state and local government capital financing in New Mexico; [~~and~~]

G. monitor and provide advice and assistance on border economic development activities, particularly state and local government capital planning and financing of border and

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port-of-entry capital projects; and

[~~G.~~] H. report its findings and recommendations, including recommended legislation or necessary changes, to the governor and to each session of the legislature. The report and proposed legislation shall be made available on or before December 15 each year."

SECTION 31. Section 6-25-3 NMSA 1978 (being Laws 2003, Chapter 349, Section 3, as amended) is amended to read:

"6-25-3. DEFINITIONS.--As used in the Statewide Economic Development Finance Act:

A. "authority" means the New Mexico finance authority;

B. "department" means the [~~economic development~~] commerce department;

C. "community development entity" means an entity designed to take advantage of the federal new markets tax credit program;

D. "economic development assistance provisions" means the economic development assistance provisions of Subsection D of Article 9, Section 14 of the constitution of New Mexico;

E. "project revenue bonds" means bonds, notes or other instruments authorized in Section 6-25-7 NMSA 1978 and issued by the authority pursuant to the Statewide Economic Development Finance Act on behalf of eligible entities;

F. "economic development goal" means:

(1) assistance to rural and underserved areas designed to increase business activity;

(2) retention and expansion of existing business enterprises;

(3) attraction of new business enterprises; or

(4) creation and promotion of an environment suitable for the support of start-up and emerging business enterprises within the state;

G. "economic development revolving fund bonds" means bonds, notes or other instruments payable from the fund and issued by the authority pursuant to the Statewide Economic Development Finance Act;

H. "eligible entity" means a for-profit or not-for-profit business enterprise, including a corporation, limited liability company, partnership or other entity, determined by the department to be engaged in an enterprise that serves an economic development goal and is suitable for financing assistance;

I. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the Internal Revenue Code, as that section may be amended or renumbered, and regulations issued pursuant to that section;

J. "financing assistance" means project revenue bonds, loans, loan participations or loan guarantees provided

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by the authority to or for eligible entities pursuant to the Statewide Economic Development Finance Act;

K. "fund" means the economic development revolving fund;

L. "mortgage" means a mortgage, deed of trust or pledge of any assets as a collateral security;

M. "opt-in agreement" means an agreement entered into between the department and a qualifying county, a school district and, if applicable, a qualifying municipality that provides for county, school district and, if applicable, municipal approval of a project, subject to compliance with all local zoning, permitting and other land use rules, and for payments in lieu of taxes to the qualifying county, school district and, if applicable, qualifying municipality as provided by the Statewide Economic Development Finance Act;

N. "payment in lieu of taxes" means the total annual payment, including any state in-lieu payment, paid as compensation for the tax impact of a project, in an amount negotiated and determined in the opt-in agreement between the department and the qualifying county, the school district and, if applicable, the qualifying municipality, which payment shall be distributed to the county, municipality and school district in the same proportion as property tax revenues are normally distributed to those recipients;

O. "standard project" means land, buildings,

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improvements, machinery and equipment, operating capital and other personal property for which financing assistance is provided for adequate consideration, taking into account the anticipated quantifiable benefits of the standard project, for use by an eligible entity as:

(1) industrial or manufacturing facilities;

(2) commercial facilities, including facilities for wholesale sales and services;

(3) health care facilities, including hospitals, clinics, laboratory facilities and related office facilities;

(4) educational facilities, including schools;

(5) arts, entertainment or cultural facilities, including museums, theaters, arenas or assembly halls; and

(6) recreational and tourism facilities, including parks, pools, trails, open space and equestrian facilities;

P. "project" means a standard project or a state project;

Q. "qualifying municipality or county" means a municipality or county that enters into an opt-in agreement;

R. "quantifiable benefits" means a project's advancement of an economic development goal as measured by a variety of factors, including:

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(1) the benefits an eligible entity contracts to provide, such as local hiring quotas, job training commitments and installation of public facilities or infrastructure; and

(2) other benefits such as the total number of direct and indirect jobs created by the project, total amount of annual salaries to be paid as a result of the project, total gross receipts and occupancy tax collections, total property tax collections, total state corporate and personal income tax collections and other fee and revenue collections resulting from the project;

S. "school district" means a school district where a project is located that is exempt from property taxes pursuant to the Statewide Economic Development Finance Act;

T. "state in-lieu payment" means an annual payment, in an amount determined by the department, that will be distributed to a qualifying county, a school district and, if applicable, a qualifying municipality in the same proportion as property tax revenues are normally distributed to those recipients;

U. "state project" means land, buildings or infrastructure for facilities to support new or expanding eligible entities for which financing assistance is provided pursuant to the economic development assistance provisions; and

V. "tax impact of a project" means the annual

reduction in property tax revenue to affected property tax revenue recipients directly resulting from the conveyance of a project to the department."

SECTION 32. Section 12-13A-1 NMSA 1978 (being Laws 2003, Chapter 9, Section 1) is amended to read:

"12-13A-1. SHORT TITLE.--[~~This act~~] Chapter 12, Article 13A NMSA 1978 may be cited as the "New Mexico-Chihuahua Commission Act"."

SECTION 33. Section 12-13A-4 NMSA 1978 (being Laws 2003, Chapter 9, Section 4) is amended to read:

"12-13A-4. NEW MEXICO-CHIHUAHUA COMMISSION CREATED--MEMBERS--ADMINISTRATION.--

A. The "New Mexico-Chihuahua commission" is created and is administratively attached to the [~~economic development~~] commerce department.

B. The members of the commission representing New Mexico shall be:

(1) the governor of New Mexico;

(2) the secretary of [~~economic development~~] commerce;

[~~(3) the secretary of tourism;~~

~~(4)~~] (3) other state officials as assigned by the governor; and

[~~(5)~~] (4) no more than ten members of the public appointed by the governor of New Mexico.

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C. The members of the commission representing Chihuahua shall be appointed or assigned according to the customary procedure of the executive branch of the government of that state.

D. The [~~economic development~~] commerce department shall provide administrative assistance to the commission as needed.

E. The [~~economic development~~] commerce department shall keep records of commission proceedings.

F. The co-chairs of the commission shall be the governors of New Mexico and Chihuahua.

G. Meetings of the commission shall be at the call of the co-chairs or pursuant to the request of a majority of the members of the commission.

H. Terms for public members of the commission appointed by the governor of New Mexico shall be for two years with reappointment to additional terms at the discretion of the governor.

I. A vacancy in a term of a commission member representing New Mexico shall be filled by appointment by the governor of New Mexico for the remainder of the term of the position vacated.

J. The public members of the commission appointed by the governor of New Mexico shall not receive per diem and mileage [~~pursuant to the Per Diem and Mileage Act~~] or other

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compensation for performance of official duties required by the commission [~~and shall receive no other compensation, perquisite or allowance~~]."

SECTION 34. Section 12-13B-1 NMSA 1978 (being Laws 2009, Chapter 108, Section 1) is amended to read:

"12-13B-1. SHORT TITLE.--[~~This act~~] Chapter 12, Article 13B NMSA 1978 may be cited as the "New Mexico-Sonora Commission Act"."

SECTION 35. Section 12-13B-3 NMSA 1978 (being Laws 2009, Chapter 108, Section 3) is amended to read:

"12-13B-3. NEW MEXICO-SONORA COMMISSION CREATED--MEMBERS--ADMINISTRATION.--

A. The "New Mexico-Sonora commission" is created and is administratively attached to the [~~economic development~~] commerce department.

B. The members of the commission representing New Mexico shall be:

(1) the governor of New Mexico;

(2) the secretary of [~~economic development~~] commerce;

[~~(3) the secretary of tourism;~~

~~(4)~~] (3) other state officials as assigned by the governor; and

[~~(5)~~] (4) no more than nine members of the public appointed by the governor of New Mexico.

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C. The members of the commission representing Sonora shall be appointed or assigned according to regulations and procedures governing commissions in that state.

D. The [~~economic development~~] commerce department shall provide administrative assistance to the commission as needed.

E. The [~~economic development~~] commerce department shall keep a record of commission proceedings.

F. The co-chairs of the commission shall be the governors of New Mexico and Sonora.

G. Meetings of the commission shall be at the call of the co-chairs or pursuant to the request of a majority of the members of the commission.

H. Terms for public members of the commission appointed by the governor of New Mexico shall be for two years with reappointment to additional terms at the discretion of the governor.

I. A vacancy in a term of a commission member representing New Mexico shall be filled by appointment by the governor of New Mexico for the remainder of the term of the position vacated.

J. The public members of the commission appointed by the governor of New Mexico shall not receive per diem and mileage [~~pursuant to the Per Diem and Mileage Act~~] or other compensation for performance of official duties required by the

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commission [~~and shall receive no other compensation, perquisite or allowance~~]."

SECTION 36. Section 13-4-10.1 NMSA 1978 (being Laws 2009, Chapter 206, Section 2) is amended to read:

"13-4-10.1. DEFINITIONS.--As used in the Public Works Minimum Wage Act:

A. "director" means the director of the division;

B. "division" means the labor relations division of the [~~workforce solutions~~] commerce department;

C. "fringe benefit" means payments made by a contractor, subcontractor, employer or person acting as a contractor, if the payment has been authorized through a negotiated process or by a collective bargaining agreement, for:

(1) holidays;

(2) time off for sickness or injury;

(3) time off for personal reasons or vacation;

(4) bonuses;

(5) authorized expenses incurred during the course of employment;

(6) health, life and accident or disability insurance;

(7) profit-sharing plans;

(8) contributions made on behalf of an employee to a retirement or other pension plan; and

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(9) any other compensation paid to an employee other than wages;

D. "labor organization" means an organization of any kind, or an agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; and

E. "wage" means the basic hourly rate of pay."

SECTION 37. Section 13-4D-2 NMSA 1978 (being Laws 1992, Chapter 74, Section 2) is amended to read:

"13-4D-2. PURPOSE.--The purpose of the Public Works Apprentice and Training Act is to ensure funding, through contributions made by employers, to establish an apprenticeship program that will develop skilled building trades craftsmen in occupations recognized by the bureau of apprenticeship and training of the United States department of labor or the [~~New Mexico~~] apprenticeship [~~council~~] bureau of the commerce department. The funding will ensure adequate training during economic downturns, increase the number of New Mexicans possessing skills that will enhance their opportunities for employment and maintain the high standards of craftsmanship in [~~our~~] the state."

SECTION 38. Section 13-4D-3 NMSA 1978 (being Laws 1992, Chapter 74, Section 3, as amended) is amended to read:

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"13-4D-3. DEFINITIONS.--As used in the Public Works Apprentice and Training Act:

A. "approved apprentice and training programs" means building trades apprenticeship and training programs in New Mexico that are recognized by the bureau of apprenticeship and training of the United States department of labor or the [~~New Mexico~~] apprenticeship [~~council~~] bureau of the commerce department;

B. "compliance statement" means a monthly record of an employer's contributions paid into an approved apprentice and training program in New Mexico or into the public works apprentice and training fund;

C. "director" or "division" means the labor relations division of the [~~workforce solutions~~] commerce department; and

D. "employer" means a contractor, subcontractor or any person acting as a contractor on a public works project, as that term is defined in the provisions of the Construction Industries Licensing Act."

SECTION 39. Section 13-4D-4 NMSA 1978 (being Laws 1992, Chapter 74, Section 4) is amended to read:

"13-4D-4. ADMINISTRATION.--

A. The Public Works Apprentice and Training Act shall be administered by the [~~public works bureau of the labor and industrial division of the labor department~~] division. The

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[~~bureau~~] division shall collect employers' contributions in accordance with [~~this~~] that act, review employers' compliance statements, review certified payroll reports to verify training contributions, investigate allegations of and impose penalties for employer noncompliance and disburse funds as provided in Section [~~5 of the Public Works Apprentice and Training Act~~] 13-4D-5 NMSA 1978.

B. Public works construction projects, except for street, highway, bridge, road, utility or maintenance contracts with employers who elect not to participate in training, shall not be constructed unless an employer agrees to make contributions to approved apprentice and training programs in New Mexico in which the employer is a participant or to the public works apprentice and training fund administered by the [~~public works bureau of the labor and industrial division of the labor department~~] division. Contributions shall be made in the same manner and in the same amount as apprentice and training contributions required pursuant to wage rate determinations made by the [~~director~~] division.

C. The [~~director~~] division shall adopt rules [~~and regulations~~] necessary to implement the provisions of the Public Works Apprentice and Training Act."

SECTION 40. Section 13-4D-5 NMSA 1978 (being Laws 1992, Chapter 74, Section 5, as amended) is amended to read:

"13-4D-5. FUND CREATED--DISBURSEMENT OF FUNDS.--[~~There is~~

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~~created~~] The "public works apprentice and training fund" [~~in~~] is created in the state treasury. The fund shall be administered by the [~~labor and industrial~~] division [~~of the labor department~~]. Contributions into the fund shall be as provided under the provisions of Section 13-4D-4 NMSA 1978. Funds contributed under the provisions of the Public Works Apprentice and Training Act shall be distributed in the following manner:

A. no more than fifteen percent of the funds may be used by the [~~public works bureau of the labor and industrial~~] division [~~of the labor department~~] to hire staff to administer the funds collected by the division; and

B. the remainder of the funds shall be used for approved apprentice and training programs in New Mexico. The [~~labor and industrial~~] division [~~of the labor department~~] shall develop an annual budget and, subject to appropriation by the legislature in the general appropriation act, shall disburse funds to approved apprentice and training programs in New Mexico, taking into account participant contact hours of classroom instruction and on-the-job training for the preceding year, to be not less than ninety percent of one hundred forty-four contact hours of classroom instruction per participant per school year and not less than one thousand hours of on-the-job training per twelve-month period. Notwithstanding any language in the general appropriation act

that otherwise limits budget adjustments, if the fund balance available for disbursement to approved programs exceeds the amount appropriated, pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, the [~~labor~~] commerce department may request budget increases up to the excess fund balance for distribution to the programs."

SECTION 41. Section 13-4D-6 NMSA 1978 (being Laws 1992, Chapter 74, Section 6) is amended to read:

"13-4D-6. NOTICE TO EMPLOYERS--PUBLICATION OF PROGRAMS.--

A. An employer's contribution requirement under the provisions of the Public Works Apprentice and Training Act shall be included with all minimum wage determinations issued by the [~~labor and industrial~~] division [~~of the labor department~~] on all public works construction projects. The [~~director~~] division shall also provide the contribution rate for approved apprentice and training programs, and that information shall be part of the public works construction projects.

B. The [~~labor and industrial~~] division [~~of the labor department~~] shall publish a list of approved apprentice and training programs in New Mexico."

SECTION 42. Section 13-4D-7 NMSA 1978 (being Laws 1992, Chapter 74, Section 7) is amended to read:

"13-4D-7. NONCOMPLIANCE--PENALTIES.--An employer who

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willfully and knowingly fails to comply with the requirements of the Public Works Apprentice and Training Act shall be subject to the following penalties:

A. a noncomplying employer shall pay a civil penalty of ten dollars ($10.00) for every calendar day of noncompliance, and the penalty shall be imposed and collected for deposit into the public works apprentice and training fund by the [~~public works bureau of the labor and industrial~~] division [~~of the labor department~~];

B. a noncomplying employer shall have the unpaid contributions, as required under the provisions of the Public Works Apprentice and Training Act, withheld as provided in Subsections A and B of Section 13-4-14 NMSA 1978; and

C. a noncomplying employer shall not be permitted to bid on any public works contracts as provided in Subsections A and B of Section 13-4-14 NMSA 1978."

SECTION 43. Section 13-4D-8 NMSA 1978 (being Laws 1992, Chapter 74, Section 8) is amended to read:

"13-4D-8. APPEALS.--An alleged noncomplying employer may appeal any of the penalties imposed upon [~~him~~] the employer under the provisions of Section [~~7 of the Public Works Apprentice and Training Act~~] 13-4D-7 NMSA 1978 by seeking an appeal as provided under the provisions of Section 13-4-15 NMSA 1978."

SECTION 44. Section 16-6-5 NMSA 1978 (being Laws 1977,

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Chapter 245, Section 18, as amended) is amended to read:

"16-6-5. STATE FAIR COMMISSION ADMINISTRATIVELY ATTACHED TO [~~TOURISM~~] COMMERCE DEPARTMENT.--The state fair commission is administratively attached [~~as defined in the Executive Reorganization Act~~] to the [~~tourism~~] commerce department."

SECTION 45. Section 21-2-6 NMSA 1978 (being Laws 1978, Chapter 54, Section 1, as amended) is amended to read:

"21-2-6. STATEWIDE PLANNING--PARTICIPATING AGENCIES AND PERSONS.--

A. The [~~state commission~~] higher education department in carrying out its planning activities for post-secondary education shall consult with and invite the active participation of:

(1) representatives of post-secondary educational institutions of the several types enumerated in Paragraph (2) of Subsection A of Section 21-2-2 NMSA 1978;

(2) the public education commission;

(3) the public education department;

(4) representatives of public and private elementary and secondary schools;

(5) the secretary of [~~labor;~~

~~(6) the tourism department~~] commerce;

[~~(7)~~] (6) the apprenticeship council;

[~~(8) the economic development department;~~

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~~(9)~~] (7) the state advisory council on vocational education;

[~~(10)~~] (8) the secretary of finance and administration or the secretary's designee;

[~~(11)~~] (9) persons familiar with the education needs of persons with a disability and persons disadvantaged by economic, racial or ethnic status;

[~~(12)~~] (10) representatives of business, industry, organized labor and agriculture;

[~~(13)~~] (11) the general public; and

[~~(14)~~] (12) private in-state post-secondary institutions.

B. Whenever the planning activities carried out under the provisions of Section 21-2-5 NMSA 1978 are concerned with the types of post-secondary education enumerated in Subparagraphs (a) through (e) of Paragraph (1) of Subsection A of Section 21-2-2 NMSA 1978, the [~~state commission~~] commerce department shall directly involve the public education commission and the public education department in all planning activities."

SECTION 46. Section 21-19-10 NMSA 1978 (being Laws 1983, Chapter 299, Section 4, as amended) is amended to read:

"21-19-10. COMMUNITY DEVELOPMENT ASSISTANCE.--The [~~economic development~~] commerce department shall provide assistance to political subdivisions of the state so that

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they can construct or implement projects necessary to provide services that will encourage the location of industry in the political subdivisions. The department shall, for this purpose, make low-interest loans to political subdivisions of the state with the approval of the economic development and tourism commission and after coordination with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act."

SECTION 47. Section 21-19A-1 NMSA 1978 (being Laws 1992, Chapter 93, Section 1) is amended to read:

"21-19A-1. SHORT TITLE.--[~~This act~~] Chapter 21, Article 19A NMSA 1978 may be cited as the "Apprenticeship Assistance Act"."

SECTION 48. Section 21-19A-2 NMSA 1978 (being Laws 1992, Chapter 93, Section 2) is amended to read:

"21-19A-2. PURPOSE.--The purpose of the Apprenticeship Assistance Act is to assist apprenticeship programs that will develop skilled craftsmen in occupations recognized by the [~~bureau and the council~~] federal and state bureaus to accommodate the social and economic needs of the adult citizens of New Mexico and to enhance the economic development of the state."

SECTION 49. Section 21-19A-3 NMSA 1978 (being Laws 1992, Chapter 93, Section 3) is amended to read:

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"21-19A-3. DEFINITIONS.--As used in the Apprenticeship Assistance Act:

[~~A. "advisory committee" means the apprenticeship and training advisory committee to the division;~~

~~B.~~] A. "apprentice" means a person at least sixteen years old who is approved by the [~~council~~] apprenticeship committee and is covered by a written apprenticeship agreement with an employer or with an association of employers or employees acting as agent for an employer, which [~~apprentice~~] written agreement provides for reasonably continuous employment of not less than two thousand hours [~~required for any~~] in the given trade [~~for that~~] in which the person [~~for his participation in~~] is apprenticed. Apprenticeship employment shall include an approved schedule of work experience through employment and [~~for~~] at least one hundred forty-four hours per year of related [~~supplemental~~] instruction;

[~~C.~~] B. "apprenticeship committee" means the sponsoring committee of each apprenticeable craft that is responsible for that particular apprenticeship program;

[~~D.~~] C. "apprenticeship related instruction" means skills taught off the job that are required by the particular apprenticeable craft and that the apprentice needs to complete [~~his~~] the apprenticeship as required by the [~~council and~~] the federal or state bureau;

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[~~E. "bureau" means the bureau of apprenticeship and training of the United States department of labor;~~

~~F. "council" means the state apprenticeship council;~~

~~G.~~] D. "division" means the instructional support and vocational education division of the [~~state department of~~] public education department;

E. "federal bureau" means the bureau of apprenticeship and training of the United States department of labor;

[~~H.~~] F. "related instruction" means organized, off-the-job instruction in theoretical or technical subjects required for the completion of an apprenticeship for a particular apprenticeable trade; and

G. "state bureau" means the apprenticeship bureau of the labor relations division of the commerce department; and

[~~I.~~] H. "supplementary" means new or upgrading skill training for those already employed as journeymen craftsmen."

SECTION 50. Section 21-19A-5 NMSA 1978 (being Laws 1992, Chapter 93, Section 5) is amended to read:

"21-19A-5. CRITERIA FOR APPRENTICESHIP PROGRAMS.--

A. An apprenticeship program shall be registered by [~~the council or~~] the federal or state bureau.

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B. An apprenticeship program shall be under the direction of an apprenticeship committee and structured according to [~~CFR 29.29~~] federal labor standards for the registration of apprenticeship programs. Committee members are appointed by one or more employers of apprentices, one or more employee representatives of an apprenticeable trade or a combination of the above. If an apprenticeship committee is composed of representatives of one or more employers and one or more employee representatives, the number of committee members designated by the employers shall be equal to the number of committee members designated by the employee representatives.

C. Each apprentice participating in a program shall have signed a written apprenticeship agreement with the apprenticeship committee stating the standards and conditions of [~~his~~] employment and training, which standards shall conform substantially with the standards of apprenticeship as [~~registered~~] required by the [~~council or~~] federal bureau."

SECTION 51. Section 21-19A-6 NMSA 1978 (being Laws 1992, Chapter 93, Section 6) is amended to read:

"21-19A-6. RULES [~~AND REGULATIONS~~].--The division shall make such rules [~~and regulations~~] as are necessary to carry out the provisions of the Apprenticeship Assistance Act.

SECTION 52. Section 21-19A-8 NMSA 1978 (being Laws 1992, Chapter 93, Section 8) is amended to read:

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"21-19A-8. DUTIES OF [~~ADVISORY COMMITTEE~~] STATE BUREAU.--The [~~advisory committee~~] state bureau shall [~~provide input into the development of~~] develop a statewide plan for a comprehensive program of apprenticeship training, which shall include but not be limited to the following:

A. formulas and administrative procedures to be used in requesting appropriations of state funds for apprenticeship training;

B. forms, formulas and administrative procedures to be used in distributing available funds to apprenticeship training programs, with the formulas based on data contained in the update to the apprenticeship related instruction cost study required by Section [~~10 of the Apprenticeship Assistance Act~~] 21-19A-10 NMSA 1978, and the formulas shall be uniform in application to all program sponsors; and

C. the content and method of the public notice required by the Apprenticeship Assistance Act."

SECTION 53. Section 21-19A-9 NMSA 1978 (being Laws 1992, Chapter 93, Section 9) is amended to read:

"21-19A-9. NOTICE OF AVAILABLE FUNDS.--In order to ensure that all citizens of New Mexico have an equal opportunity to benefit from apprenticeship training programs, the division shall provide for statewide publication, in a manner recommended by the [~~advisory committee~~] state bureau and intended to give actual notice to all potential program

sponsors, of the amount of funds that will be available to support apprenticeship training programs during the current and following fiscal years, the qualifications required of program sponsors and apprenticeship committees and the procedures to be followed in applying for state funds. The notice may also include other information recommended by the [~~advisory committee~~] state bureau and approved by the division; provided that the division shall publish any information concerning available funds given to a particular program sponsor in a manner recommended by the [~~advisory committee~~] state bureau and intended to give actual notice to all potential program sponsors statewide."

SECTION 54. Section 21-19A-10 NMSA 1978 (being Laws 1992, Chapter 93, Section 10) is amended to read:

"21-19A-10. DISTRIBUTION OF FUNDS.--

A. Upon recommendation of the [~~advisory committee~~] state bureau, the division shall adopt formulas and administrative procedures to be used in requesting appropriations of state funds as a budgetary line item for the apprenticeship system of adult vocational education.

B. The [~~advisory committee~~] state bureau shall prepare an update to the apprenticeship related instruction cost study adopted by the division prior to each session of the legislature.

C. Upon recommendation of the [~~advisory~~

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~~committee~~] state bureau, the division shall adopt forms, formulas and administrative procedures for the distribution of available funds to apprenticeship training programs. Distribution formulas shall be uniform in application to all local program sponsors.

D. Upon recommendation of the [~~advisory committee~~] state bureau, the division shall reserve until March 1 of each year a percentage of the funds appropriated under the line item described in this section to be used solely for apprenticeship related instruction programs. This percentage shall be established by the formulas required by this section. Reserved funds that are not obligated on March 1 may be used for preparatory and supplementary instruction programs as well as related instruction programs.

E. No funds shall be distributed to an apprenticeship committee until the apprenticeship committee has filed all reports required by the Apprenticeship Assistance Act and by the division. Funds shall not be distributed to programs not in compliance with their approved standards. Programs determined to be in noncompliance with their standards will be required to refund all funds to the division for the current fiscal year."

SECTION 55. Section 21-19A-11 NMSA 1978 (being Laws 1992, Chapter 93, Section 11) is amended to read:

"21-19A-11. AUDIT PROCEDURES.--

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A. All projects funded shall maintain a clear audit trail of all money appropriated for the apprenticeship system of adult vocational education. For each course that is funded, the audit trail in the division shall include the following records:

(1) the name of the sponsoring apprenticeship committee;

(2) the name of the instructor;

(3) the number of students enrolled;

(4) the place and schedule of class meetings;

(5) fiscal accountability as per division requests; and

(6) certification by the [~~apprenticeship council or the~~] federal or state bureau for preparatory and related instruction courses that the students enrolled are registered apprentices.

B. Funds appropriated for the apprenticeship system of adult vocational education shall not be commingled with funds appropriated for other purposes.

C. All records, receipts, working papers and other components of the audit trail shall be public records."

SECTION 56. Section 21-19A-12 NMSA 1978 (being Laws 1992, Chapter 93, Section 12) is amended to read:

"21-19A-12. BUDGET--DISBURSEMENT AND APPROPRIATION.--

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A. For the first two years after the effective date of the Apprenticeship Assistance Act, the division shall disburse funds for each apprenticeship committee, taking into account the number of total monthly contact hours and based on one dollar fifty cents ($1.50) per participant contact hour of related instruction, not to exceed two hundred twenty hours per participant per year. Thereafter, funds shall be distributed in accordance with Section [~~10 of the Apprenticeship Assistance Act~~] 21-19A-10 NMSA 1978.

B. The division shall require from the apprenticeship committees such reports as it deems necessary for the purpose of determining the number of total monthly contact hours.

C. Funds appropriated under the Apprenticeship Assistance Act shall be disbursed by the division, and the division shall have sole control over the disbursement of those funds; provided, however, the division shall not fund any apprenticeship committee not certified by the [~~council or the~~] federal or state bureau."

SECTION 57. Section 21-19A-13 NMSA 1978 (being Laws 1992, Chapter 93, Section 13) is amended to read:

"21-19A-13. STATUS OF RECOMMENDATIONS.--

A. Recommendations of the [~~advisory committee~~] state bureau submitted to the division shall be acted on and either accepted or rejected.

B. A recommendation that is rejected shall be returned immediately to the [~~advisory committee~~] state bureau, accompanied by written notice of the reasons for rejecting the recommendation. Upon such notice, the division and the [~~advisory committee~~] state bureau shall meet within fifteen days to resolve the issue, but if no resolution of the recommendation is made, then the [~~superintendent of public instruction~~] secretary of public education shall decide the matter. [~~His~~] The secretary's decision shall be final."

SECTION 58. Section 9-26-14 NMSA 1978 (being Laws 2007, Chapter 200, Section 14) is recompiled in Chapter 21, Article 21A NMSA 1978 and is amended to read:

"DISCLOSURE OF INFORMATION.--To the extent permitted by federal law, upon the written request of a corporation organized pursuant to the Educational Assistance Act, the commerce department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use such information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose."

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SECTION 59. Section 28-1-2 NMSA 1978 (being Laws 1969, Chapter 196, Section 2, as amended) is amended to read:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

A. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions;

B. "employer" means any person employing four or more persons and any person acting for an employer;

C. "commission" means the human rights commission;

D. "director" or "bureau" means the human rights bureau of the labor relations division of the [~~workforce solutions~~] commerce department;

E. "employee" means any person in the employ of an employer or an applicant for employment;

F. "labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;

G. "employment agency" means any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit or refer employees;

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H. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private;

I. "housing accommodation" means any building or portion of a building that is constructed or to be constructed [~~which~~] and that is used or intended for use as the residence or sleeping place of [~~any individual~~] a person;

J. "real property" means lands, leaseholds or commercial or industrial buildings, whether constructed or to be constructed, offered for sale or rent, and any land rented or leased for the use, parking or storage of house trailers;

K. "secretary" means the secretary of [~~workforce solutions~~] commerce;

L. "unlawful discriminatory practices" means those unlawful practices and acts specified in Section 28-1-7 NMSA 1978;

M. "physical or mental handicap" means a physical or mental impairment that substantially limits one or more of a person's major life activities. A person is also considered to be physically or mentally handicapped if the person has a record of a physical or mental handicap or is regarded as having a physical or mental handicap;

N. "major life activities" means functions such

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as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

O. "applicant for employment" means a person applying for a position as an employee;

P. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived; and

Q. "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth."

SECTION 60. Section 37-1-5 NMSA 1978 (being Laws 1947, Chapter 44, Section 1, as amended) is amended to read:

"37-1-5. ACTIONS FOR WAGE AND HOUR VIOLATIONS.--A civil action to enforce any provision of Chapter 50, Article 4 NMSA 1978 shall be commenced within three years after a violation last occurs. The three-year period shall be tolled during a labor relations division of the [~~workforce solutions~~] commerce department investigation of an employer, but such an investigation shall not be deemed a prerequisite to a person bringing a civil action, nor shall it operate to bar a civil action brought pursuant to Chapter 50, Article 4 NMSA 1978."

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SECTION 61. Section 50-1-2 NMSA 1978 (being Laws 1931, Chapter 9, Section 8, as amended) is amended to read:

"50-1-2. HEARINGS--LOCATION--NOTICE--CONDUCT--WITNESS FEES--SUBPOENAS--PENALTY.--The [~~director of the~~] labor [~~and industrial~~] relations division of the commerce department shall have the power to hold hearings upon and therein examine witnesses, administer oaths and take testimony in all matters specified in any complaint [~~with him~~] filed with the division and relating to [~~his~~] the division's duties and the requirements of Chapter 50, Article 1 NMSA 1978, which hearings shall be held in some suitable place in the vicinity in which the testimony to be taken is applicable, and may issue [~~subpoena~~] subpoenas for and compel the attendance of witnesses at such hearings; provided, however, that the [~~director of the~~] labor [~~and industrial~~] relations division shall serve upon the employer and such employees as [~~he~~] the division deems necessary a written notice of the time, place, purpose and scope of the hearing at least ten days prior to the date thereof. At the hearing, the employer and any employees to be affected by any of the matters and things mentioned in the notice shall have the right to appear in person or by counsel, to cross-examine witnesses and to introduce such testimony as is competent, relevant and material to the subject, purpose and scope of the hearing as stated in the notice; provided, however, that [~~no~~] witness

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fees shall not be paid to [~~any~~] a witness unless [~~he~~] the witness is required to testify at a place more than five miles from [~~his~~] the witness's place of residence, in which event the witness shall be paid the same fees as a witness before a district court. Any person duly subpoenaed under the provisions of this section who willfully refuses or neglects to testify at the time and place named in the subpoena shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars ($50.00) [~~nor~~] or more than five hundred dollars ($500) or by imprisonment in the county jail for a definite term not less than ten days [~~nor~~] or more than thirty days or by both such fine and imprisonment."

SECTION 62. Section 50-1-3 NMSA 1978 (being Laws 1931, Chapter 9, Section 9) is amended to read:

"50-1-3. POWERS AND DUTIES OF DIVISION.--[~~Said commissioner shall inform himself~~]

A. The director of the labor relations division of the commerce department shall become informed of all laws of the state [~~for the protection of~~] that:

(1) protect life and limb in any of the industries of the state [~~all laws regulating~~];

(2) regulate the hours of labor, the employment of minors and the payment of wages [~~and all other laws~~];

(3) are enacted for the protection, health and benefit of employees [~~and thereunder~~];

(4) foster, promote and develop the welfare of wage earners;

(5) advance opportunities for profitable employment;

(6) require, acquire and disseminate useful information on all [~~subject~~] subjects connected with labor; and

(7) assist in the enforcement of the [~~workman's~~] workers' compensation laws and the employers' liability acts of the state. [~~He shall have the power and authority, when in his judgment he deems it necessary, to~~]

B. The division may take assignment of wage claims and prosecute actions for collection of wages or other claims or demands of employees or ex-employees, who are financially unable to employ counsel, in cases in which, in the judgment of the [~~commissioner~~] division, such claims and demands are valid and enforceable in the courts. [~~It shall be the duty of said labor commissioner to~~]

C. The division shall enforce all labor laws in [~~the State of~~] New Mexico, the enforcement of which is not specifically and exclusively vested in any other officer, board or commission, state or federal [~~and~~]. Whenever, after due inquiry, [~~he shall be~~] the division is satisfied that any

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such law has been violated or that any employee or ex-employee, financially unable to employ counsel, has a just, valid and enforceable claim for wages or other claims or demands, [~~he~~] the division shall present the facts to the district attorney of the county in which [~~such~~] the violation occurred or wage claim accrued, and it shall be the duty of [~~such~~] the district attorney to prosecute the same. [~~Said labor commissioner~~] The division shall also prosecute claims arising as between employment agencies and those seeking employment when, in [~~his~~] the division's judgment, they are valid and enforceable in the courts."

SECTION 63. Section 50-1-4 NMSA 1978 (being Laws 1931, Chapter 9, Section 10) is amended to read:

"50-1-4. ANNUAL REPORT.--The [~~commissioner~~] labor relations division of the commerce department shall collect, systematize and present in annual reports to the governor statistical details relating to [~~his office~~] the division and especially as bearing upon the commercial, social and sanitary conditions of the employees and the means of escape from dangers incident to their employment; the protection of life and health in factory or other places of employment; the labor of women and children and the hours of labor exacted from them; and, in general, all matters [~~which~~] that tend to affect the prosperity of the mechanical, manufacturing and productive industries of this state and of the persons

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employed [~~therein~~] in those industries."

SECTION 64. Section 50-1-5 NMSA 1978 (being Laws 1931, Chapter 9, Section 11) is amended to read:

"50-1-5. INSPECTIONS--OBSTRUCTING--NOTICE--OFFENSES--PENALTIES.--[~~Said labor commissioner shall have the power to~~]

A. Inspectors of the labor relations division of the commerce department may enter any store, factory, foundry, mill, office, workshop, mine or public or private works at any time during working hours and remain as long as necessary [~~for the purpose of gathering~~] to gather facts and statistics contemplated by [~~this Act and~~] Chapter 50, Article 1 NMSA 1978, to examine safeguards and methods of protection from danger to employees and the sanitary conditions of the buildings and surroundings and to make a record thereof [~~and~~]. Any owner, corporation, occupant or officer who [~~shall refuse such~~] refuses entry to [~~said labor commissioner his officers or agents shall be~~] an inspector is guilty of a misdemeanor and upon conviction [~~thereof~~] shall be punished by a fine of not less than fifty dollars [~~nor~~] ($50.00) or more than five hundred dollars ($500) or by imprisonment in the county jail for a definite term not less than ten days [~~nor~~] or more than thirty days or by both such fine and imprisonment. [~~Provided, that said labor commissioner or his agent or agents~~]

B. An inspector shall, upon entering any store,

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factory, foundry, mill, office, workshop, mine or any other public or private works, notify the owner, manager, superintendent or anyone in charge of such place of labor of [~~his~~] the inspector's intention to make [~~such~~] a visit of inspection, and [~~such~~] the owner, manager, superintendent or party in charge shall have the right, either [~~by himself~~] in person or by an agent, to accompany [~~such commissioner or his agent or agents~~] the inspector during the entire time [~~he~~] the inspector spends upon [~~such~~] the premises. [~~And, provided, further, that~~]

C. It [~~shall be~~] is unlawful for any [~~such labor commissioner, his agent or agents, during the term of office to which such commissioner shall have been appointed~~] employee of the labor relations division, to either directly or indirectly, verbally or by written or printed matter, advocate the organization or changes in organization or the attempt at disorganization of a labor organization or a labor [~~unions~~] union or to officially do any act either for or against any political party in [~~the State of~~] New Mexico. [~~Any commissioner, or his agent or agents~~]

D. An inspector or other employee of the division who [~~fail~~] fails to give [~~such~~] notice of [~~such~~] a visit or refuses [~~such~~] the owner, manager, superintendent or party in charge, or [~~his~~] an agent, the right to accompany [~~him~~] the inspector at all times on visits of inspection provided for

[herein] in this section or who participates in the organization, changing or disorganization of the labor union or labor association, contrary to the provisions [hereof] of this section, or who officially does any act for or against any political party in [the State of] New Mexico [during his term of office, shall be deemed] is guilty of a misdemeanor and upon conviction [thereof] shall be fined [any sum] in an amount not less than fifty dollars [nor] ($50.00) or more than five hundred dollars ($500) or by imprisonment in the county jail [of] for a definite term not less than ten days [nor] or more than thirty days or by both such fine and imprisonment."

SECTION 65. Section 50-1-6 NMSA 1978 (being Laws 1931, Chapter 9, Section 12) is amended to read:

"50-1-6. FREE EMPLOYMENT AGENCY.--The [labor commissioner] commerce department may, if deemed necessary, maintain and operate a free employment agency for the purpose of supplying labor to all branches of industry."

SECTION 66. Section 50-1-7 NMSA 1978 (being Laws 1931, Chapter 9, Section 13, as amended) is amended to read:

"50-1-7. REPORTING VIOLATIONS OF LABOR AND INDUSTRIAL LAWS.--[It is the duty of] The director of the labor [and industrial] relations division of the [labor] commerce department [to] shall report to the district attorney of the district in which such violations occur any violation of

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labor and industrial laws of New Mexico [and]. It is the duty of the district attorneys of the several districts, upon the complaint of the director, to prosecute all violations of law [which may be] that are reported to the district attorney by the director."

SECTION 67. Section 50-4-8 NMSA 1978 (being Laws 1937, Chapter 109, Section 8, as amended) is amended to read:

"50-4-8. DUTIES OF THE [LABOR COMMISSIONER] DIRECTOR.--

A. [It is the duty of the labor commissioner to] The director of the labor relations division of the commerce department shall investigate any violations of Sections 50-4-1 through 50-4-12 NMSA 1978 and [to] institute or cause to be instituted actions for [the] their enforcement [of the same]. The [labor commissioner] director may hold hearings to [satisfy himself as to] determine the justice of any claim, and [he] the director shall cooperate with any employee in the enforcement of any claim against [his] the employee's employer whenever, in the opinion of the [labor commissioner] director, the claim is just and valid.

B. It is the duty of all district attorneys to prosecute all cases, both civilly and criminally, [which] that are referred to them by the [labor commissioner] director.

C. It shall not be a defense to any action brought pursuant to this section that the plaintiff or complainant is

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an undocumented worker. It is not intended by this section to create any right to collect unemployment compensation nor to mandate any wage rate."

SECTION 68. Section 50-4-9 NMSA 1978 (being Laws 1937, Chapter 109, Section 9) is amended to read:

"50-4-9. RECORDS, SUBPOENAS, ETC.--

[~~(a)~~] A. Every employer shall keep a true and accurate record of hours worked and wages paid to each employee. The employer shall keep such records on file for at least one year after the entry of the record.

[~~(b)~~] B. The labor [~~commissioner and his authorized representatives~~] relations division of the commerce department shall have the right at all reasonable times to inspect such records for the purpose of ascertaining whether the provisions of [~~this act~~] Sections 50-4-1 through 50-4-12 NMSA 1978 are complied with.

[~~(c)~~] C. Any interference with the [~~labor commissioner or his authorized representatives~~] division in the performance of [~~their~~] its duties shall be deemed a violation of [~~this act~~] Sections 50-4-1 through 50-4-12 NMSA 1978 and punished as such.

[~~(d)~~] D. The [~~labor commissioner and his authorized representatives~~] division shall have the power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of

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payroll records and take depositions and affidavits in any proceedings before [~~said labor commissioner~~] the director.

[~~(e)~~] E. In case of failure of [~~any~~] a person to comply with [~~any~~] a subpoena lawfully issued or upon the refusal of [~~any~~] a witness [~~or witnesses~~] to testify [~~upon~~] on any matter on which [~~he or they~~] the witness may be lawfully interrogated, the [~~labor commissioner~~] director may apply to the district court in the proper county or to the judge thereof for a writ of attachment to compel [~~said~~] the witness to respond to [~~said~~] the subpoena or to testify, as the case may be."

SECTION 69. Section 50-4-11 NMSA 1978 (being Laws 1937, Chapter 109, Section 12, as amended) is amended to read:

"50-4-11. WAGE CLAIMS--LIENS--ASSIGNMENT.--

A. The labor [~~commissioner shall have power and authority to~~] relations division of the commerce department may:

(1) take assignments of wage claims of employees against employers [~~and shall also have power to~~];

(2) take assignments of liens upon real or personal property securing the claims of employees and laborers [~~and shall have power and authority to~~]; and

(3) prosecute actions for the collection of such claims and for the foreclosure of liens of such persons securing such claims of persons who, in the judgment of the

[~~labor commissioner~~] division, are entitled to the services of the [~~labor commissioner~~] division and who, in [~~his~~] the division's judgment, have claims or liens or both [~~which~~] that are valid and [~~enforcible~~] enforceable in the courts.

B. In cases where the [~~commissioner~~] division has taken assignments of labor claims [~~which~~] that are lienable under the lien laws of [~~the state of~~] New Mexico, [~~he shall have power to~~] the division may join any number of claimants in one statement of claim or lien and, in case of suit, [~~to~~] may join any number of claimants in one cause of action."

SECTION 70. Section 50-4-12 NMSA 1978 (being Laws 1937, Chapter 109, Section 13, as amended) is amended to read:

"50-4-12. WAGE CLAIM ACTIONS--COSTS--JURISDICTION--REPRESENTATION BY DISTRICT ATTORNEY--APPEALS.--

A. In all actions brought by the [~~director of the~~] labor [~~and industrial~~] relations division of the [~~labor~~] commerce department as assignee under the provisions of Section 50-4-11 NMSA 1978, the [~~director~~] division shall be entitled to free process and shall not be obligated or required to give any bond or other security for costs.

B. Any sheriff, constable or other officer requested by the [~~director~~] division to serve any summons, writ, complaint or order shall do so without requiring the [~~director~~] division to pay any fees or furnish any security or bond.

C. Where all claims joined together do not exceed in the aggregate the jurisdictional limit of the magistrate or metropolitan court, the [~~director~~] division may institute an action against the employer in any magistrate or metropolitan court having jurisdiction without referring the claim to the district attorney. In the event that during the course of the proceedings representation by an attorney at law becomes necessary or, in the [~~director's~~] division's judgment, advisable, the [~~director~~] division shall so notify the district attorney, and it shall then be the duty of the district attorney or the district attorney's assistant to appear for the [~~director~~] division in the cause.

D. In the event the cause is appealed by the [~~director~~] division, no bond or other security shall be required or fees charged the [~~director~~] division for court costs or sheriff's fees in serving process."

SECTION 71. Section 50-4-16 NMSA 1978 (being Laws 1933, Chapter 149, Section 6) is amended to read:

"50-4-16. TIME RECORDS--INSPECTION.--

A. Every employer to whom [~~this act applys~~] Sections 50-4-13 through 50-4-18 NMSA 1978 applies shall be required to keep a time record showing the number of hours each [~~male~~] employee worked each day.

B. Such record shall be open at all reasonable hours to the inspection of the [~~State labor commissioner, his~~

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~~agents or agent~~] labor relations division of the commerce department, record of which is required to be kept [~~as herein provided for~~]."

SECTION 72. Section 50-4-21 NMSA 1978 (being Laws 1955, Chapter 200, Section 2, as amended) is amended to read:

"50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

A. "employ" includes suffer or permit to work;

B. "employer" includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States, the state or any political subdivision of the state; provided, however, that for the purposes of Subsection A of Section 50-4-22 NMSA 1978, "employer" includes the state or any political subdivision of the state; and

C. "employee" includes an individual employed by an employer, but shall not include:

(1) an individual employed in domestic service in or about a private home;

(2) an individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;

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(3) an individual employed by the United States, the state or any political subdivision of the state; provided, however, that for the purposes of Subsection A of Section 50-4-22 NMSA 1978, "employee" includes an individual employed by the state or any political subdivision of the state;

(4) an individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis. The employer-employee relationship shall not be deemed to exist with respect to an individual being served for purposes of rehabilitation by a charitable or nonprofit organization, notwithstanding the payment to the individual of a stipend based upon the value of the work performed by the individual;

(5) salespersons or employees compensated upon piecework, flat rate schedules or commission basis;

(6) students regularly enrolled in primary or secondary schools working after school hours or on vacation;

(7) registered apprentices and learners otherwise provided by law;

(8) persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;

(9) persons eighteen years of age or under who are not graduates of a secondary school;

(10) G.I. bill trainees while under training;

(11) seasonal employees of an employer obtaining and holding a valid certificate issued annually by the [~~director of the~~] labor relations division of the [~~workforce solutions~~] commerce department. The certificate shall state the job designations and total number of employees to be exempted. In approving or disapproving an application for a certificate of exemption, the [~~director~~] division shall consider the following:

(a) whether such employment shall be at an educational, charitable or religious youth camp or retreat;

(b) that such employment will be of a temporary nature;

(c) that the individual will be furnished room and board in connection with such employment, or if the camp or retreat is a day camp or retreat, the individual will be furnished board in connection with such employment;

(d) the purposes for which the camp or retreat is operated;

(e) the job classifications for the positions to be exempted; and

(f) any other factors that the [~~director~~] division deems necessary to consider;

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(12) any employee employed in agriculture:

(a) if the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor;

(b) if the employee is the parent, spouse, child or other member of the employer's immediate family; for the purpose of this subsection, the employer shall include the principal stockholder of a family corporation;

(c) if the employee: 1) is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation that has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment; 2) commutes daily from the employee's permanent residence to the farm on which the employee is so employed; and 3) has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(d) if the employee, other than an employee described in Subparagraph (c) of this paragraph: 1) is sixteen years of age or under and is employed as a hand-harvest laborer, is paid on a piece-rate basis in an operation that has been, and is generally recognized as having been, paid on a piece-rate basis in the region of employment; 2) is employed on the same farm as the employee's parent or person standing in the place of the parent; and 3)

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is paid at the same piece-rate as employees over age sixteen are paid on the same farm; or

(e) if the employee is principally engaged in the range production of livestock or in milk production;

(13) an employee engaged in the handling, drying, packing, packaging, processing, freezing or canning of any agricultural or horticultural commodity in its unmanufactured state; or

(14) employees of charitable, religious or nonprofit organizations who reside on the premises of group homes operated by such charitable, religious or nonprofit organizations for persons who have a mental, emotional or developmental disability."

SECTION 73. Section 50-4-26 NMSA 1978 (being Laws 1955, Chapter 200, Section 5, as amended) is amended to read:

"50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES.--

A. An employer who violates any of the provisions of the Minimum Wage Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. The [~~director of the~~] labor relations division of the [~~workforce solutions~~] commerce department shall enforce and prosecute violations of the Minimum Wage Act. The [~~director~~] division may institute in the name of the

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state an action in the district court of the county wherein the employer who has failed to comply with the Minimum Wage Act resides or has a principal office or place of business, for the purpose of prosecuting violations. The district attorney for the district wherein [~~any~~] a violation [~~hereof~~] occurs shall aid and assist the [~~director~~] division in the prosecution.

C. In addition to penalties provided pursuant to this section, an employer who violates any provision of Section 50-4-22 NMSA 1978 shall be liable to the employees affected in the amount of their unpaid or underpaid minimum wages plus interest, and in an additional amount equal to twice the unpaid or underpaid wages.

D. An action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of the employee or employees and for other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action on behalf of all employees similarly situated.

E. The court in any action brought under Subsection D of this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this

section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

F. In addition to any remedy or punishment provided pursuant to the Minimum Wage Act, a court may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer."

SECTION 74. Section 50-4-27 NMSA 1978 (being Laws 1967, Chapter 188, Section 5) is amended to read:

"50-4-27. AUTHORITY OF [~~LABOR COMMISSIONER~~] DIVISION TO PROMULGATE RULES--HEARING ON RULES--NOTICE--PUBLICATION.--The [~~state labor commissioner shall have the authority to~~] labor relations division of the commerce department may promulgate [~~and issue~~] rules [~~and regulations~~] necessary to administer and accomplish the purposes of the Minimum Wage Act. Such rules [~~and regulations~~] shall be adopted after notice and public hearing. [~~A copy of the notice of hearing together with a copy of the proposed regulations shall be filed with the librarian of the supreme court library at least twenty days prior to the hearing. In addition, a copy of the notice of hearing shall be sent to all known interested persons. Any interested person shall have the right to appear and present evidence.~~]"

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SECTION 75. Section 50-4A-7 NMSA 1978 (being Laws 2009, Chapter 14, Section 7) is amended to read:

"50-4A-7. ENFORCEMENT.--

A. The [~~workforce solutions~~] commerce department [~~is authorized to~~] shall enforce the Promoting Financial Independence for Victims of Domestic Abuse Act and [~~to~~] investigate complaints made by persons who claim to be aggrieved pursuant to the provisions of that act.

B. The [~~workforce solutions~~] commerce department and the employee have the right to bring an action in violation of the Promoting Financial Independence for Victims of Domestic Abuse Act in a court of competent jurisdiction to enjoin further violations, recover actual damages sustained or both, together with costs and reasonable attorney fees."

SECTION 76. Section 50-6-14 NMSA 1978 (being Laws 1925, Chapter 79, Section 15, as amended) is amended to read:

"50-6-14. STATE CHILD LABOR INSPECTOR--APPOINTMENT--DIRECTION--QUALIFICATIONS.--There shall be a "state child labor inspector", appointed by and subject to the director of the labor [~~and industrial~~] relations division of the [~~labor~~] commerce department. The inspector must be qualified by special training and experience for this work and must pass a satisfactory examination given by the [~~director of the labor and industrial division of the labor department~~] state personnel office."

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SECTION 77. Section 50-7-4.1 NMSA 1978 (being Laws 1979, Chapter 204, Section 12, as amended) is amended to read:

"50-7-4.1. ADMINISTRATION.--

A. The [~~commissioner of labor shall appoint a director of~~] apprenticeship [~~to be responsible for effectuating~~] bureau of the labor relations division of the commerce department shall effectuate the policies set forth in Section 50-7-1 NMSA 1978, [~~to~~] carry out the policies approved by the apprenticeship council and otherwise [~~to~~] execute the provisions of Chapter 50, Article 7 NMSA 1978. [~~Such appointment shall be subject to confirmation by a majority vote of the council. The commissioner of labor shall appoint the director and such additional personnel as may be necessary, subject to such laws and practices as are applicable to appointment, service and compensation of employees of the state.~~

~~Under the general direction of the commissioner of labor, the director in furtherance of the duties specified~~]

B. The bureau shall:

[~~A.~~] (1) encourage the voluntary participation of employers and employees in the furtherance of the objectives of Chapter 50, Article 7 NMSA 1978;

[~~B.~~] (2) devise necessary procedures and records;

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[~~C.~~] (3) prepare statistical reports regarding apprenticeship;

[~~D.~~] (4) issue information related to apprenticeship; and

[~~E.~~] (5) perform such other duties as are necessary to carry out the intent of Chapter 50, Article 7 NMSA 1978."

SECTION 78. Section 50-14-2 NMSA 1978 (being Laws 1999, Chapter 260, Section 2, as amended) is amended to read:

"50-14-2. DEFINITIONS.--As used in the Workforce Development Act:

A. "board" means the state workforce development board;

B. "chief elected official" means the chief elected executive officer of a unit of general local government in a local area, and in a case in which a local area includes more than one unit of general local government, "chief elected official" means the person designated under the agreement described in Section 117 (c)(1)(B) of the federal Workforce Investment Act of 1998;

C. "employment training program" means a program or a part of a program, regardless of which state or local agency administers it, that has as its primary purpose assisting persons in obtaining or enhancing employment;

D. "local board" means a local workforce

development board; and

E. "office" or "division" means the work force transition services division of the [~~workforce solutions~~] commerce department."

SECTION 79. Section 50-14-4 NMSA 1978 (being Laws 1999, Chapter 260, Section 4, as amended) is amended to read:

"50-14-4. DUTIES OF THE BOARD.--

A. The board shall assist the governor in:

(1) developing a five-year state plan that shall be updated annually and revised in accordance with the requirements of the federal Workforce Investment Act of 1998;

(2) developing and improving the statewide activities funded pursuant to the workforce investment system and the one-stop delivery system, including development of linkages to ensure coordination and nonduplication among the programs and activities described in the federal Workforce Investment Act of 1998;

(3) reviewing local plans;

(4) commenting annually on the measures taken pursuant to Section 113(b)(14) of the federal Carl D. Perkins Vocational and Applied Technology Education Act;

(5) developing allocation formulas for adult and youth employment training program funds to local areas in accordance with the federal Workforce Investment Act of 1998;

(6) developing comprehensive state performance

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measures to assess the effectiveness of work force investment activities pursuant to the federal Workforce Investment Act of 1998;

(7) designating local work force development areas;

(8) developing the statewide employment statistics system; and

(9) preparing reports and applications required for submission to the federal government.

B. The board shall also:

(1) review, evaluate and report annually on the performance of all work force development activities administered by state agencies involved with work force development;

(2) develop linkages with the public education department and the [~~commission on~~] higher education department to ensure coordination and nonduplication of vocational education, apprenticeship, adult education, employment training programs and vocational rehabilitation programs with other work force development and training programs; and

(3) provide policy advice regarding the application of federal or state law that pertains to work force development.

C. To assist the board in fulfilling its duties, it

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is authorized to establish committees, one of which shall be a "coordination oversight committee". Except as provided for the coordination oversight committee in Subsections D and E of this section, the board shall appoint committee members and assign duties to committees as the board deems appropriate. The chair of the board shall appoint committee chairs from among members of the board.

D. The coordination oversight committee shall consist of the secretaries of [~~economic development~~] commerce, human services, [~~labor and~~] public education and higher education; a representative from community colleges; [~~a representative from the commission on higher education~~] a representative of labor; two legislators from different political parties, one from the senate and one from the house of representatives; the director of the [~~office~~] division; and the committee chair.

E. The duties of the coordination oversight committee include the following:

(1) the secretaries of [~~economic development, labor~~] commerce and human services shall propose five-, ten- and fifteen-year regional and statewide strategic plans for employment growth and training in New Mexico for the committee's consideration and possible recommendation for approval to the board as part of the state plan;

(2) the [~~secretary~~] secretaries of public

education and [~~the representative from the commission on~~] higher education shall propose appropriate education plans for secondary education that address the strategic plans proposed by the secretaries of [~~economic development~~] commerce and human services [~~and labor~~] for the committee's consideration and possible recommendation for approval to the board as part of the state plan;

(3) the committee's proposals to the board shall facilitate a career pathways culture and, at a minimum, include reference to foundation skills as developed by the United States secretary of labor's commission on achieving necessary skills, a job analysis that the [~~economic development~~] commerce department shall produce after consultation with incumbent workers and employers, an available skills assessment and training targets;

(4) the [~~board~~] committee member from the community colleges shall solicit input from the community college constituency and work with regional and statewide businesses and other partners and the [~~economic development~~] commerce department to create career pathways and align curriculum and facilitate plans with the [~~economic development~~] commerce department and human services department [~~and labor department~~] strategic plans;

(5) the committee shall, after consultation with the [~~state chief information officer~~] department of

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information technology, develop and propose strategies for coordination of information technology for the purposes of providing participants access to all appropriate state services; collecting and managing data to allow reporting and analysis of uniform performance data related to all appropriate employment training programs; and sharing and integrating appropriate work force data across agencies and appropriate nongovernmental partners for identifying needs, setting policy and coordinating strategies;

(6) the committee shall recommend for the board's approval the coordination of program designs to avoid duplication or unproductive segmentation of services; and

(7) the committee shall recommend for the board's approval the coordination of state agency efforts to progress toward comprehensive, customer-driven one-stop centers through co-location of mandatory and recommended partner service delivery points for work force development.

F. All state agencies involved in work force development activities shall annually submit to the board for its review and potential inclusion in the five-year plan their goals, objectives and policies. The plan shall include recommendations to the legislature on the modification, consolidation, initiation or elimination of work force training and education programs in the state."

SECTION 80. Section 50-14-9 NMSA 1978 (being Laws 2005,

Chapter 111, Section 10, as amended) is amended to read:

"50-14-9. WORK FORCE TRANSITION SERVICES DIVISION.--

A. The "work force transition services division" is created in the [~~workforce solutions~~] commerce department.

B. The division shall be the recipient of all grants from the United States pursuant to the federal Workforce Investment Act of 1998 and shall disburse those grants consistent with that act and the Workforce Development Act.

C. The division shall administer the provisions of the Workforce Development Act and is the governor's designee for the state with authority to administer New Mexico's program pursuant to the federal Workforce Investment Act of 1998. In performance of that duty and the duties set forth in Section 50-14-10 NMSA 1978, the division has the general power to:

(1) sue and, subject to the provisions of the Tort Claims Act, be sued;

(2) enter into contracts, joint powers agreements and other contracts for work force development services and administer related programs with other state agencies; local governments; state institutions of higher learning; Indian nations, tribes or pueblos; regional provider networks; and corporations authorized to do business in the state;

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(3) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of law for which the division is responsible and to enforce those orders and instructions by appropriate administrative actions or actions in courts;

(4) promulgate, following the procedure in Subsection E of Section 9-1-5 NMSA 1978, reasonable rules necessary to carry out the duties of the division; and

(5) take all other actions necessary to meet the purposes of the Workforce Development Act."

SECTION 81. Section 50-15-2 NMSA 1978 (being Laws 2005, Chapter 257, Section 2, as amended) is amended to read:

"50-15-2. DEFINITIONS.--As used in the Day Laborer Act:

A. "check cashing service" means a business that for a fee offers to cash checks or other payment instruments or that advertises that it cashes checks or other payment instruments;

B. "day labor" means employment that is under a contract between a day labor service agency and a third-party employer, that is occasional or irregular and that is for a limited time period;

C. "day labor service agency" means an entity, including a labor broker or labor pool, that provides day laborers to third-party employers and that charges the third-

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party employer for the service of providing day laborers for employment offered by the employer;

D. "day laborer" means a person who contracts for day labor employment with a day labor service agency;

E. "department" means the [~~workforce solutions~~] commerce department;

F. "office worker" means a person employed to perform clerical, secretarial or other semiskilled or skilled work that is predominantly performed in an office setting;

G. "payment instrument" means a paycheck, payment voucher or other negotiable instrument from an employer provided to an employee to pay for hours worked; and

H. "third-party employer" means a person that contracts with a day labor service agency for the employment of day laborers."

SECTION 82. Section 51-1-2 NMSA 1978 (being Laws 1979, Chapter 280, Section 11, as amended) is amended to read:

"51-1-2. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "department" means the [~~workforce solutions~~] commerce department;

B. "division" means the work force transition services division of the department, the director of the division or an employee of the division exercising authority lawfully delegated to the employee by the director; and

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C. "secretary" means the secretary of [~~workforce solutions~~] commerce or an employee of the department exercising authority lawfully delegated to the employee by the secretary."

SECTION 83. Section 53-7B-3 NMSA 1978 (being Laws 2009, Chapter 66, Section 3) is amended to read:

"53-7B-3. DEFINITIONS.--As used in the New Mexico Research Applications Act:

A. "board" means the board of directors of the research applications center;

B. "department" means the [~~economic development~~] commerce department;

C. "research applications center" means the nonprofit corporation created pursuant to the Nonprofit Corporation Act and the New Mexico Research Applications Act;

D. "technological innovations" includes research, development, prototype assembly, manufacturing, patenting, licensing, marketing and sale of inventions, ideas, practices, applications, processes, machines and technology and related property rights of all kinds; and

E. "university" means:

(1) a New Mexico educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a community college organized pursuant to the Community College Act or pursuant to Chapter 21, Article

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14 NMSA 1978; or

(3) a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act."

SECTION 84. Section 57-3C-2 NMSA 1978 (being Laws 2001, Chapter 346, Section 2) is amended to read:

"57-3C-2. DEFINITIONS.--As used in the Patent and Copyright Act:

A. "department" means the [~~economic development~~] commerce department;

B. "patent" means the grant of certain property rights in an invention, as defined in federal patent laws, to an inventor that includes the right to exclude others from making, using, offering for sale, selling or importing the invention; and

C. "copyright" means the property rights, as defined in federal copyright laws, in original works of authorship."

SECTION 85. Section 58-31-1 NMSA 1978 (being Laws 2005, Chapter 128, Section 1) is amended to read:

"58-31-1. SHORT TITLE.--[~~This act~~] Chapter 58, Article 31 NMSA 1978 may be cited as the "Spaceport Development Act"."

SECTION 86. Section 58-31-4 NMSA 1978 (being Laws 2005, Chapter 128, Section 4) is amended to read:

"58-31-4. SPACEPORT AUTHORITY CREATED--MEMBERSHIP.--

A. The "spaceport authority" is created. The authority is a state agency and is administratively attached to the [~~economic development~~] commerce department.

B. The authority shall consist of seven voting and [~~two~~] one nonvoting members, six of whom shall be appointed by the governor with the consent of the senate; provided that one of the appointed members shall be a resident of Sierra county. No more than three appointed members shall belong to the same political party. The seventh member shall be the secretary of [~~economic development~~] commerce or the secretary's designee. The lieutenant governor shall serve as a nonvoting ex-officio member. [~~The executive director of the authority shall serve as a nonvoting member.~~] The chair may appoint a nonvoting advisory committee to provide advice and recommendations on authority matters.

C. The members appointed by the governor shall be residents of the state and shall serve for terms of four years, except for the initial appointees who shall be appointed so that the terms are staggered after initial appointment. Initial appointees shall serve terms as follows: two members for two years, two members for three years and two members for four years.

D. Appointed voting members of the authority [~~shall~~] are entitled to be reimbursed for per diem and

mileage in accordance with the provisions of the Per Diem and Mileage Act that apply to [~~nonsalaried public officers, unless a different provision of that act applies to a specific member, in which case that member shall be paid under the applicable provision~~] state employees. Members and advisors shall receive no other compensation, perquisite or allowance for serving as a member of or advisor to the authority.

E. The secretary of [~~economic development~~] commerce or the secretary's designee shall serve as the chair of the authority. Authority members shall elect any other officers from the membership that the authority determines appropriate.

F. The chair, four other authority voting members appointed by the chair and the executive director of the authority shall constitute the spaceport authority executive committee. The committee shall have powers and duties as delegated to it by the authority.

G. If a vacancy occurs among the appointed voting members of the authority, the governor shall appoint a replacement to serve out the term of the former member. If an appointed member's term expires, the member shall continue to serve until the member is reappointed or another person is appointed and [~~confirmed by the senate to replace the member~~] qualified.

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H. The authority shall meet at the call of the chair and shall meet in regular session at least once every three months.

I. The authority shall maintain written minutes of all meetings of the authority and maintain other appropriate records, including financial transaction records in compliance with law and adequate to provide an accurate record for audit purposes pursuant to the Audit Act."

SECTION 87. Section 67-16-3 NMSA 1978 (being Laws 1985, Chapter 23, Section 3, as amended) is amended to read:

"67-16-3. DEFINITIONS.--As used in the Litter Control and Beautification Act:

A. "keep America beautiful system" means a comprehensive program to improve waste handling practices and the control of litter;

B. "keep New Mexico beautiful, incorporated" is the statewide organization that is the official clearinghouse for beautification projects in the state;

C. "council" means the litter control council;

D. "department" means the [~~tourism~~] commerce department;

E. "litter" means weeds, graffiti and all waste material, including disposable packages or containers, but not including the waste of the primary processes of mining, logging, sawmilling or farming;

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F. "person" means an individual, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary or representative or group of individuals or entities of any kind;

G. "public place" means an area that is used or held out for use by the public, whether owned or operated by public or private interests; and

H. "recycling" means the collection, separation or processing and return to the economic mainstream of raw materials or products that would otherwise become solid waste."

SECTION 88. TEMPORARY PROVISION--TRANSFERS OF FUNCTIONS, APPROPRIATIONS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES.--

A. On the effective date of this act, all functions, appropriations, money, records, furniture, equipment and other property of the economic development department, the tourism department, the workforce solutions department and the border authority are transferred to the commerce department.

B. On the effective date of this act, all contractual obligations of the economic development department, the tourism department and the workforce solutions department or any division or other subordinate unit of those departments and the border authority are

binding on the commerce department.

C. On the effective date of this act, references in the law to the economic development department, the tourism department or the workforce solutions department or any divisions or other subordinate units of those departments or the border authority shall be deemed to be references to the commerce department unless otherwise specified by law.

D. The rules of the economic development department, tourism department, workforce solutions department or border authority shall be deemed to be rules of the commerce department until amended or repealed by the commerce department.

E. On the effective date of this act, all functions, appropriations, money, records, furniture, equipment and other property of the New Mexico film museum are transferred to the cultural affairs department. All contractual obligations of the New Mexico film museum are binding on the cultural affairs department. All references in law to the museum or the board of trustees shall be deemed to be references to the cultural affairs department.

SECTION 89. RECOMPILATION.--Section 9-15-56 NMSA 1978 (being Laws 2010, Chapter 87, Section 1) is recompiled into the Commerce Department Act.

SECTION 90. REPEAL.--

A. Sections 9-15-1 through 9-15-55 NMSA 1978 (being

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Laws 1983, Chapter 297, Sections 1 through 4, Laws 2003, Chapter 97, Section 1, Laws 1983, Chapter 297, Sections 5 through 7, Laws 1983, Chapter 296, Section 21, Laws 1983, Chapter 297, Section 10, Laws 1988, Chapter 81, Section 5, Laws 1983, Chapter 297, Sections 12, 14 and 15, Laws 1991, Chapter 21, Sections 21 through 24, Laws 1994, Chapter 113, Section 2, Laws 1988, Chapter 80, Sections 3 and 4, Laws 2005, Chapter 57, Section 1, Laws 1988, Chapter 80, Section 5, Laws 1989, Chapter 205, Sections 1 through 3, Laws 2005, Chapter 67, Section 1, Laws 1991, Chapter 27, Sections 1 and 2, Laws 1993, Chapter 211, Sections 1 through 5 and also Laws 1993, Chapter 216, Sections 1 through 5, Laws 2003, Chapter 166, Sections 1 through 4 and also Laws 2003, Chapter 170, Sections 1 through 4 and Laws 2007, Chapter 180, Sections 1 through 4, as amended) are repealed.

B. Sections 9-15A-1 through 9-15A-11 NMSA 1978 (being Laws 1991, Chapter 21, Sections 1 through 4, Laws 2003, Chapter 299, Section 1, Laws 1991, Chapter 21, Sections 5 through 7, Laws 1996, Chapter 25, Section 1, Laws 1993, Chapter 101, Sections 10 and 11, Laws 2007, Chapter 286, Sections 2 and 3 and Laws 2007, Chapter 287, Sections 2 and 3, as amended) are repealed.

C. Sections 9-15C-1 through 9-15C-5 NMSA 1978 (being Laws 2005, Chapter 219, Sections 1 through 5, as amended) are repealed.

D. Sections 9-26-1 through 9-26-15 NMSA 1978 (being Laws 2007, Chapter 200, Sections 1 through 14 and 23) are repealed.

E. Sections 14-4A-1 through 14-4A-6 NMSA 1978 (being Laws 2005, Chapter 244, Sections 1 through 6) are repealed.

F. Sections 18-14-1 through 18-14-6 NMSA 1978 (being Laws 2003, Chapter 250, Sections 1 through 6, as amended) are repealed.

G. Section 21-19A-7 NMSA 1978 (being Laws 1992, Chapter 93, Section 7) is repealed.

H. Sections 58-27-1 through 58-27-26 NMSA 1978 (being Laws 1991, Chapter 131, Sections 1 through 10 and 12 through 16, Laws 1993, Chapter 335, Section 4, Laws 1995, Chapter 192, Section 10, Laws 1991, Chapter 131, Sections 17 through 25 and Laws 1995, Chapter 192, Section 21, as amended) are repealed.

I. Sections 60-2D-1 through 60-2D-18 NMSA 1978 (being Laws 1991, Chapter 233, Sections 1 through 18) are repealed.

SECTION 91. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2012.

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11/18/10

BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; MERGING THE DEPARTMENT OF GAME AND FISH WITH THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; TRANSFERRING THE DUTIES OF THE STATE GAME COMMISSION TO THE GAME AND FISH DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; ELIMINATING THE STATE GAME COMMISSION; COMBINING THE MINING COMMISSION AND THE COAL SURFACE MINING COMMISSION; TRANSFERRING ADMINISTRATION OF THE WATER QUALITY ACT FROM THE DEPARTMENT OF ENVIRONMENT TO THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT; TRANSFERRING OVERSIGHT OF THE MEDICAL RADIATION THERAPY HEALTH AND SAFETY ACT FROM THE DEPARTMENT OF ENVIRONMENT TO THE DEPARTMENT OF HEALTH; PROVIDING FOR TRANSFERS OF FUNCTIONS, PERSONNEL, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1997, LAWS 2000 AND LAWS 2005.

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

SECTION 1. Section 9-5A-3 NMSA 1978 (being Laws 1987, Chapter 234, Section 3, as amended by Laws 1997, Chapter 137, Section 1 and also by Laws 1997, Chapter 149, Section 2) is amended to read:

"9-5A-3. DEPARTMENT ESTABLISHED.--[~~A.~~] There is created in the executive branch the "energy, minerals and natural resources department". The department shall be a cabinet department and shall include but not be limited to the following organizational units:

(1) the administrative services division;

(2) the state parks division;

(3) the forestry division;

(4) the energy conservation and management division;

(5) the mining and minerals division; [~~and~~]

(6) the oil conservation division; and

(7) the game and fish division.

[~~B. The state game commission is administratively attached to the department.~~]"

SECTION 2. Section 9-5A-5 NMSA 1978 (being Laws 1987, Chapter 234, Section 5) is amended to read:

"9-5A-5. SECRETARY OF ENERGY, MINERALS AND NATURAL

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RESOURCES--APPOINTMENT--POWERS AND DUTIES.--

A. The administrative head of the energy, minerals and natural resources department is the "secretary of energy, minerals and natural resources", who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet.

B. An appointed secretary of energy, minerals and natural resources shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting [~~his~~] the secretary's appointment.

C. The secretary of energy, minerals and natural resources has every power expressly enumerated in the laws to perform the secretary's duties, whether granted to the secretary, the energy, minerals and natural resources department or any division of the department, except where authority conferred upon any division is explicitly exempt from the secretary's authority by statute."

SECTION 3. Section 9-7A-13 NMSA 1978 (being Laws 1977, Chapter 253, Section 77, as amended) is recompiled into Chapter 9, Article 5A NMSA 1978 and is amended to read:

"WATER QUALITY CONTROL COMMISSION--EXEMPTIONS FROM AUTHORITY OF SECRETARY OF [~~ENVIRONMENT~~] ENERGY, MINERALS AND NATURAL RESOURCES.--The water quality control commission shall receive staff support from the energy, minerals and natural

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resources department [~~of environment~~]. All powers, duties and responsibilities of the water quality control commission under Sections 47-6-11,, 74-6-3 through 74-6-8, 74-6-10 and 74-6-12 NMSA 1978 are hereby explicitly exempted from the authority of the secretary of energy, minerals and natural resources under provisions of Subsection [~~B~~] C of Section [~~6 of the Department of Environment Act~~] 9-5A-5 NMSA 1978."

SECTION 4. Section 11-16-11 NMSA 1978 (being Laws 2001, Chapter 101, Section 11) is amended to read:

"11-16-11. LICENSING AUTHORITY--ADMINISTRATOR--EXPENSES.--

A. The [~~department of~~] game and fish division of the energy, minerals and natural resources department is designated as the licensing authority in New Mexico for the purposes of the Wildlife Violator Compact.

B. The director of the [~~department of~~] game and fish division shall furnish to the appropriate authorities of the participating states any information or documents reasonably necessary to facilitate the administration of the Wildlife Violator Compact.

C. The compact administrator shall not be entitled to any additional compensation for [~~his~~] service as the compact administrator, but shall be entitled to expenses incurred in connection with [~~his~~] the duties and responsibilities as compact administrator in the same manner as for expenses

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incurred in connection with other duties or responsibilities of [~~his~~] the compact administrator's office or employment."

SECTION 5. Section 16-2-2 NMSA 1978 (being Laws 1977, Chapter 254, Section 113, as amended) is amended to read:

"16-2-2. STATE PARKS ADVISORY BOARD CREATED--MEMBERSHIP--COMPENSATION--DUTIES.--

A. The "advisory board" to the state parks division of the energy, minerals and natural resources department is created. It shall be composed of seven to eleven members appointed by the governor.

B. The advisory board shall provide advice and make recommendations relating to the administration of the state parks division. It shall advise on all matters of policy, [~~regulations~~] rules, the formulation of a comprehensive statewide recreation plan and such other matters as may be requested by the director of that division.

C. The advisory board shall meet quarterly or at the call of the [~~chairman~~] chair.

D. Each member of the advisory board shall annually elect a [~~chairman~~] chair and vice [~~chairman~~] chair from its membership. The director of the state parks division shall serve as the executive secretary of the board.

E. Members of the advisory board shall not be paid and shall not receive per diem."

SECTION 6. Section 16-2-32 NMSA 1978 (being Laws 1935,

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Chapter 57, Section 19, as amended) is amended to read:

"16-2-32. CRIMINAL OFFENSES--PENALTY.--A person who commits any of the following acts is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978:

A. cut, break, injure, destroy, take or remove a tree, shrub, timber, plant or natural object in any state park and recreation area, except in areas designated by the secretary of energy, minerals and natural resources and permitted by [~~regulations~~] rules adopted by the secretary [~~such~~]. [~~Regulations~~] Rules shall only permit the removal of a tree, shrub, timber, plant or natural object for scientific study or for noncommercial use by an individual as a souvenir. The quantity of material authorized for removal from any area shall be strictly regulated by park personnel in order to minimize resource damage;

B. kill, cause to be killed or pursue with intent to kill a bird or animal in a state park and recreation area, except in areas designated by the secretary and except in conformity with the provisions of general law and the [~~regulations~~] rules of the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department;

C. take a fish from the waters of a state park and recreation area, except in conformity with the provisions of

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general law and the [~~regulations~~] rules of the [~~state game commission~~] game and fish division;

D. willfully mutilate, injure, deface or destroy any guidepost, notice, tablet, fence, enclosure or work that is for the protection or ornamentation of a state park and recreation area;

E. light a fire in a state park and recreation area, except in those places authorized for fires by the secretary, or willfully or carelessly permit any fire [~~which~~] that is authorized and that [~~he~~] the person has lighted or caused to be lighted or under [~~his~~] the person's charge to spread or extend to or burn the shrubbery, trees, timber, ornaments or improvements in a state park and recreation area or leave a campfire that [~~he~~] the person has lighted or that has been left in [~~his~~] the person's charge unattended by a competent person without extinguishing it;

F. place in a state park and recreation area or affix to an object in a state park and recreation area a word, character or device designed to advertise a business, profession, article, thing, exhibition, matter or event without a written license from the secretary permitting [~~him~~] the person to do it; or

G. violate a rule [~~or regulation~~] adopted by the secretary pursuant to the provisions of Chapter 16, Article 2 NMSA 1978."

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SECTION 7. Section 17-1-5 NMSA 1978 (being Laws 1931, Chapter 117, Section 5, as amended) is amended to read:

"17-1-5. [~~EMPLOYMENT AND DISCHARGE OF~~] DIRECTOR [~~AND OTHER EMPLOYEES--DEPARTMENT OF GAME AND FISH CREATED~~] OF THE GAME AND FISH DIVISION.--[~~A.~~] The [~~state game commission~~] energy, minerals and natural resources department shall employ a director of the game and fish division of the department, who shall [~~under such authorization that the game commission shall approve~~] employ such conservation officers, clerks and other employees as [~~he shall deem~~] the director deems proper and necessary to enforce and administer the laws and [~~regulations~~] rules relating to game and fish, and who shall prescribe their duties respectively. [~~and who with the advice and consent of the state game commission shall fix the compensation of all the employees of the "department of game and fish", which is hereby created.~~

~~B. The state game commission may at any time discharge the director for reasons that the state game commission shall deem sufficient. The director may dismiss employees in accordance with the provisions of the Personnel Act.~~]"

SECTION 8. Section 17-1-5.1 NMSA 1978 (being Laws 1994, Chapter 129, Section 1) is amended to read:

"17-1-5.1. CONSERVATION SERVICES [~~DIVISION~~] BUREAU--DUTIES.--

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A. The "conservation services [~~division~~] bureau" is created within the [~~department of~~] game and fish division of the energy, minerals and natural resources department.

B. The conservation services [~~division~~] bureau is responsible for:

(1) management, enhancement, research and conservation of public wildlife habitat;

(2) the lease, purchase, enhancement and management of state wildlife habitat;

(3) assisting landowners in improving wildlife habitats;

(4) development of educational programs related to conservation of wildlife and the environment, including the expanded dissemination of wildlife publications; and

(5) communication and consultation with federal and other state agencies, local governments and communities, private organizations and affected interests responsible for habitat, wilderness, recreation, water quality and environmental protection to ensure comprehensive conservation services for hunters, anglers and nonconsumptive wildlife users."

SECTION 9. Section 17-1-7 NMSA 1978 (being Laws 1955, Chapter 181, Section 1) is amended to read:

"17-1-7. RESERVE CONSERVATION OFFICER.--There is hereby created within the [~~department of~~] game and fish division of

the energy, minerals and natural resources department the position of reserve conservation officer, which shall be a nonsalaried position."

SECTION 10. Section 17-1-8 NMSA 1978 (being Laws 1955, Chapter 181, Section 2) is amended to read:

"17-1-8. QUALIFICATIONS.--

A. Reserve conservation officer commissions shall be issued only to [~~the following: (a)~~] persons who have successfully completed a school of at least twenty-five hours conducted by the [~~department of~~] game and fish division of the energy, minerals and natural resources department covering procedures and techniques of wildlife management, law enforcement, public relations and such other subjects as may be deemed desirable by the [~~department of game and fish~~] division.

[~~(b)~~] B. The director of the game and fish division may substitute a minimum of six [~~months~~] months' experience as an employee of a state or federal conservation agency or a state livestock law enforcement board in lieu of the [~~aforementioned~~] schooling required under Subsection A of this section. Any substitution made under the provisions of this [~~paragraph~~] subsection shall be limited to the personnel currently employed by one of the [~~aforementioned~~] conservation agencies set forth in this subsection. Any appointments the director may make under the provisions of this [~~paragraph will~~] subsection shall terminate automatically with the termination

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of employment by [~~said~~] the agency of the individual so appointed or the individual's transfer from the state."

SECTION 11. Section 17-1-9 NMSA 1978 (being Laws 1955, Chapter 181, Section 3, as amended) is amended to read:

"17-1-9. POWERS AND DUTIES OF RESERVE CONSERVATION OFFICERS.--

A. Under the supervision of the [~~department of~~] game and fish [~~and subject to such restrictions as may be provided by the state game commission~~] division of the energy, minerals and natural resources department, reserve conservation officers shall have authority to enforce laws and valid [~~regulations~~] rules of the [~~state game commission~~] division relating to game and fish and perform such duties with respect to wildlife management and conservation education as may be assigned to them from time to time by the [~~department of game and fish~~] division. When on duty, reserve conservation officers shall be covered by the [~~Workmen's~~] Workers' Compensation Act. Reserve conservation officers shall have only the rights of private citizens in the enforcement of laws other than those relating to game and fish.

B. For the purpose of calculating the amount of reserve conservation officer's disability or death benefits pursuant to the [~~Workmen's~~] Workers' Compensation Act, the officer's average weekly wages shall be deemed to be the base wage of a wildlife management officer II as classified by the

personnel board."

SECTION 12. Section 17-1-11 NMSA 1978 (being Laws 1977, Chapter 290, Section 5) is amended to read:

"17-1-11. CONSERVATION OFFICERS--OFFICIAL DUTIES--INSURANCE.--Conservation officers shall, in emergency situations, be considered on duty and within the scope of their employment for purposes of employee benefits and risk insurance when they follow specific instructions from a duly qualified full-time peace officer and in aid of [~~such~~] the peace officer in the carrying out of [~~his~~] the peace officer's duties. [~~The state game commission shall expand current insurance coverage to provide protection in such situations.~~]"

SECTION 13. Section 17-1-13 NMSA 1978 (being Laws 1912, Chapter 85, Section 46, as amended) is amended to read:

"17-1-13. [~~GAME WARDEN~~] DIRECTOR--SEAL OF OFFICE [~~SHALL KEEP~~].--[~~Sec. 46.~~] The [~~State Warden~~] director of the game and fish division of the energy, minerals and natural resources department shall keep a seal of office [~~which~~] that shall be used to authenticate all papers and documents issued and executed by [~~him~~] the director as such officer."

SECTION 14. Section 17-1-14 NMSA 1978 (being Laws 1921, Chapter 35, Section 7, as amended by Laws 2005, Chapter 38, Section 1 and by Laws 2005, Chapter 177, Section 1) is amended to read:

"17-1-14. GENERAL POWERS AND DUTIES OF [~~STATE GAME~~

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~~COMMISSION~~] GAME AND FISH DIVISION--GAME PROTECTION FUND--LIABILITY SUSPENSE ACCOUNT.--

A. The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department shall have general control over the collection and disbursement of all money collected or received under the state laws for the protection and propagation of game and fish, which money shall be paid over to the state treasurer to the credit of the game protection fund, unless otherwise provided by law, and the fund, including all earned income, shall not be transferred to another fund. Prior to depositing money into the game protection fund, the [~~department of~~] game and fish division shall ensure that an amount adequate to cover the cost of refunds allowed by the provisions of Chapter 17 NMSA 1978 is held in a liability suspense account. All refunds shall be made from the liability suspense account. Money not needed to cover the cost of refunds shall be deposited in the game protection fund at the end of each month. Chapter 17 NMSA 1978 shall be guaranty to the person who pays for hunting and fishing licenses and permits that the money in that fund shall not be used for any purpose other than as provided in Chapter 17 NMSA 1978.

B. The [~~state game commission~~] game and fish division shall have authority to:

(1) establish and [~~through the director of the~~

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~~department of game and fish, to~~] operate fish hatcheries for the purpose of stocking public waters of the state and to furnish fish fry and fingerlings to stock private waters, receipts from such sources to go into the game protection fund;

(2) declare closed seasons in any specified locality and on any species of game or fish threatened with undue depletion from any cause;

(3) establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish adjacent hunting ranges, it being the purpose of this provision to establish small refuges rather than large preserves or to close large areas to hunting;

(4) purchase lands for game refuges where suitable public lands do not exist, to purchase lands for fish hatcheries and to purchase lands to be maintained perpetually as public hunting grounds, particularly lands suitable for waterfowl hunting, all such lands to be paid for from the game protection fund;

(5) receive by gift or bequest, in the name and on behalf of the state, lands suitable for game refuges, hunting grounds, fish hatcheries or for any other purpose necessary to carry out the provisions of Chapter 17 NMSA 1978;

(6) apply for and accept any state, federal or private funds, grants or donations from any source for game and fish programs and projects;

(7) designate certain areas as rest grounds for migratory birds, in which hunting shall be forbidden at all times or at such times as the [~~state game commission~~] division shall provide, it being the purpose of this provision not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest and feed without molestation;

(8) close any public stream or lake or portion thereof to fishing when such action is necessary to protect a recently stocked water, to protect spawning waters or to prevent undue depletion of the fish;

(9) propagate, capture, purchase, transport or sell any species of game or fish needed for restocking any lands or streams of the state;

(10) after reasonable notice and hearing, suspend or revoke any license or permit issued pursuant to the provisions of Chapter 17 NMSA 1978 and withhold license privileges for a definite period not to exceed three years from any person procuring a license through misrepresentation, violating any provisions of Chapter 17 NMSA 1978 or hunting without a proper license;

(11) adopt rules establishing procedures that provide reasonable notice and a hearing before the [~~state game commission~~] director of the game and fish division for the suspension, revocation or withholding of license privileges of a person charged with violating the provisions of Chapter 17

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NMSA 1978, subject to such judicial review as may be provided by law;

(12) conduct studies of programs for the management of endangered and nongame species of wildlife;

(13) establish licenses, permits and certificates not otherwise provided for in Section 17-3-13 NMSA 1978 and charge and collect just and reasonable fees for them; provided the fees shall not exceed the costs of administration associated with the licenses, permits or certificates;

(14) permit, regulate or prohibit the commercial taking or capturing of native, free-ranging amphibians or reptiles not specifically protected by law, except for rattlesnake roundups, collection of fish bait and lizard races;

(15) adopt rules to control, eradicate or prevent the spread of a contagious disease, pest or parasite, including chronic wasting disease, to or among game animals. The rules shall include provisions for:

(a) notification to the [~~department of~~] game and fish division of the diagnosis or suspected presence of a contagious disease;

(b) examination by the state veterinarian or the state veterinarian's designee of suspected infected game animals;

(c) quarantine, treatment or destruction of an infected game animal;

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(d) disinfection and isolation of a licensed private park where an infected game animal has been; and

(e) indemnification and destruction of a protected game animal;

(16) as necessary, designate areas of the state in which bear-proof garbage containers are required on public and private lands to reduce potential human-bear interactions; and

(17) pursuant to appropriation by the legislature, expend money from the game protection fund and the habitat management fund for the improvement, maintenance, development and operation of property for fish and wildlife habitat management.

C. The director of the [~~department of~~] game and fish division shall exercise all the powers and duties conferred upon the state game and fish warden and the chair of the state game commission by all previous statutes now in force not in conflict with Chapter 17 NMSA 1978.

D. The [~~state game commission~~] game and fish division shall have authority to prohibit all hunting in periods of extreme forest fire danger, at such times and places as may be necessary to reduce the danger of destructive forest fires.

E. The hunting, pursuing, capturing, killing or wounding of any game animals, birds or fish in or upon any game refuge, rest ground or closed water or closed area or during

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any closed season established or proclaimed by the [~~state game commission~~] game and fish division in accordance with the authority conferred in Chapter 17 NMSA 1978 constitutes a misdemeanor and shall be punishable as prescribed in Chapter 17 NMSA 1978."

SECTION 15. Section 17-1-18 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 18, Section 3, as amended) is amended to read:

"17-1-18. BONDING AUTHORITY.--Whenever the [~~state game commission, by vote of a majority of its full membership entered in its minutes~~] secretary of energy, minerals and natural resources determines [~~by resolution~~], upon recommendation of the director of the game and fish division of the energy, minerals and natural resources department, that it is necessary to raise funds to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvement projects or other similar capital outlay projects, the [~~commission~~] secretary may issue and sell bonds of the state [~~of New Mexico~~] as provided in the Game and Fish Bond Act, provided that the total amount of [~~such~~] bonds issued under the authority of [~~this~~] the Game and Fish Bond Act shall not exceed two million dollars ($2,000,000). The purposes stated by the [~~commission~~] secretary and the amount of each bond issue shall be approved by the state board of finance before issuance of the bonds. The [~~commission~~] secretary shall

report annually to the legislature any bonds issued pursuant to [~~this~~] the Game and Fish Bond Act and the purpose for which issued."

SECTION 16. Section 17-1-19 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 18, Section 4, as amended) is amended to read:

"17-1-19. BONDS--FORM--TERMS.--Bonds issued under the Game and Fish Bond Act shall be payable in consecutive order over a period of not more than twenty years from the date of issue. They shall be issued in denominations determined by the [~~state game commission~~] secretary of energy, minerals and natural resources and shall be sold at a net effective interest rate not exceeding the maximum net effective interest rate permitted by the Public Securities Act, as hereafter amended and supplemented. The form of the bonds shall be determined by the [~~state game commission~~] secretary and, except with respect to bonds issued in book entry or similar form without the delivery of physical securities, signatures of the governor, the state treasurer and the [~~chairman of the state game commission~~] secretary shall be affixed in compliance with the Uniform Facsimile Signature of Public Officials Act. The form and terms of the bonds shall be approved by the state board of finance before issuance of the bonds."

SECTION 17. Section 17-1-20 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 18, Section 5, as amended) is amended to

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read:

"17-1-20. SALE OF BONDS.--Bonds issued under the Game and Fish Bond Act shall be sold at public or private sale as determined by the [~~state game commission~~] secretary of energy, minerals and natural resources. If sold at public sale, the [~~chairman of the commission~~] secretary shall give notice of the time, place and terms of the sale by publication in a newspaper of general circulation published in Santa Fe, New Mexico, not less than twenty days nor more than sixty days prior to the sale date."

SECTION 18. Section 17-1-22 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 18, Section 7, as amended) is amended to read:

"17-1-22. SECURITY--RETIREMENT OF BONDS.--

A. There is created in the state treasury the "game and fish bond retirement fund". The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department shall place into the game and fish bond retirement fund the sum of one dollar ($1.00) from each license enumerated in this subsection that is sold after April 1, 1976:

(1) resident, fishing;

(2) resident, small game;

(3) resident, deer;

(4) resident, general hunting;

(5) resident, general hunting and fishing;

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(6) resident, trapper;

(7) nonresident, fishing;

(8) nonresident, small game;

(9) temporary fishing, five days; and

(10) nonresident, deer.

Such payments to the game and fish bond retirement fund shall be effective for all bonds issued under the Game and Fish Bond Act up to the maximum limitation on the amount of bonds provided in that act.

B. Money in the game and fish bond retirement fund is first pledged for the payment of principal and interest on all state game commission bonds [~~which~~] that have been issued and are outstanding [~~at the time of the effective date of this 1983 amendment~~] prior to June 17, 1983. Money in the game and fish bond retirement fund is further pledged for the payment of principal and interest on all state game commission bonds issued [~~after the effective date of this 1983 amendment~~] as of June 17, 1983. The issuance and sale of bonds under the Game and Fish Bond Act [~~constitutes~~] constitute an irrevocable contract between the [~~state game commission~~] energy, minerals and natural resources department and the owner of any bond, and so long as any bond remains outstanding, the fees pledged for payment shall not be reduced.

C. Bonds issued under the Game and Fish Bond Act are payable solely from the game and fish bond retirement fund, and

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they are not general obligations of the state.

D. The [~~state game commission~~] game and fish division shall continue to place in the game and fish bond retirement fund the sum of one dollar ($1.00) from each of the licenses enumerated in Subsection A of this section, even after the fund is sufficient to pay the principal and interest of the outstanding bonds and after all bonds issued have been retired."

SECTION 19. Section 17-1-22.1 NMSA 1978 (being Laws 1983, Chapter 143, Section 2) is amended to read:

"17-1-22.1. GAME AND FISH CAPITAL OUTLAY FUND--CREATED--TRANSFER OF MONEY--STATE BOARD OF FINANCE APPROVAL.--

A. There is created in the state treasury the "game and fish capital outlay fund".

B. Upon request of the [~~state game commission~~] director of the game and fish division of the energy, minerals and natural resources department, approved by the state board of finance, the state treasurer shall transfer to the game and fish capital outlay fund all money in the game and fish bond retirement fund except the amount necessary to meet all principal and interest payments on state game commission or game and fish division bonds due in the ensuing twelve months.

C. Money in the game and fish capital outlay fund may be expended by the [~~department of~~] game and fish division to provide for fish hatcheries and rearing facilities, game and

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fish habitat acquisition, development and improvements and other similar capital projects.

D. Projects to be funded pursuant to Subsection C of this section shall be approved by the [~~state game commission~~] secretary of energy, minerals and natural resources and the state board of finance prior to any money being encumbered for the project.

E. At any time that the game and fish bond retirement fund is insufficient to pay the principal and interest on all bonds [~~which~~] that have been issued and are outstanding, the unencumbered balance in the game and fish capital outlay fund shall be transferred to the game and fish bond retirement fund."

SECTION 20. Section 17-1-23 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 18, Section 8) is amended to read:

"17-1-23. CONSTRUCTION.--The Game and Fish Bond Act is full authority for authorization and issuance by the [~~state game commission~~] energy, minerals and natural resources department of bonds authorized by the state board of finance, and the [~~commission~~] department may do anything necessary to carry out the powers granted by the Game and Fish Bond Act."

SECTION 21. Section 17-1-25 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 18, Section 10) is amended to read:

"17-1-25. REFUNDING.--Any bonds issued under the Game and Fish Bond Act may be refunded under the terms of resolutions

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adopted by the [~~state game commission~~] secretary of energy, minerals and natural resources, subject to any contractual limitations involved with any outstanding bonds, claims or other obligations. The proceeds of refunding bonds shall be applied to retirement of the bonds to be retired or refunded, or placed in escrow to be applied to payment of the bonds upon presentation for payment by the holders. Refunding bonds shall be issued under all applicable conditions prescribed in the Game and Fish Bond Act for issuance of the original bonds."

SECTION 22. Section 17-1-26 NMSA 1978 (being Laws 1931, Chapter 117, Section 2, as amended) is amended to read:

"17-1-26. RULEMAKING POWER--PREDATOR ERADICATION.--

A. The [~~state game commission is hereby authorized and directed to make such~~] game and fish division of the energy, minerals and natural resources department shall promulgate rules [~~and regulations~~] and establish [~~such service~~] services as it may deem necessary to carry out all the provisions and purposes of [~~this Act~~] Chapter 17 NMSA 1978 and all other acts relating to game and fish [~~and~~]. In making such rules [~~and regulations~~] and in providing when, to what extent, if at all, and by what means game animals, birds and fish may be hunted, taken, captured, killed, possessed, sold, purchased and shipped, the [~~state game and fish commission~~] division shall give due regard to the zones of temperatures and to the distribution, abundance, economic value and breeding habits of

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[~~such~~] the game animals, birds and fish.

B. The [~~state game commission is hereby authorized to~~] game and fish division may spend such reasonable amounts as in its judgment is [~~desirable and~~] necessary annually, from [~~their~~] the division's funds not otherwise needed, for the eradication of predatory animals."

SECTION 23. Section 17-1-27 NMSA 1978 (being Laws 1921, Chapter 35, Section 10) is amended to read:

"17-1-27. RULES--NOTICE AND HEARING.--Whenever three percent of the duly qualified electors of any county affected by a rule [~~or regulation~~] promulgated by the [~~commission~~] game and fish division of the energy, minerals and natural resources department, concerning hunting or fishing within [~~said~~] that county, [~~shall~~] petition the [~~commission~~] division in writing requesting a hearing, the [~~commission~~] division shall grant a public hearing, the time, place and purpose of which shall be set forth by advertising in one or more newspapers of general circulation within the state not less than ten [~~(10)~~] days before the date of [~~such~~] the hearing, and shall, on the date of hearing, give full opportunity for all persons to be heard on the point in controversy; but nothing in this section shall be construed as suspending or invalidating any such rule [~~or regulation~~], unless it is suspended or revoked by the [~~commission~~] division."

SECTION 24. Section 17-1-29 NMSA 1978 (being Laws 1939,

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Chapter 19, Section 2) is amended to read:

"17-1-29. DISTRIBUTION OF FEDERAL FUNDS.--The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department is authorized to receive any [~~moneys~~] money to which the state [~~of New Mexico~~] may become entitled under the [~~aforesaid act of congress~~] federal Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (16 USC Section 669). Such [~~moneys~~] money, when received, [~~to~~] shall be deposited with the state treasurer [~~of the state of New Mexico~~] to the credit of the [~~state~~] game protection fund, expended for the purpose designated and withdrawn [~~and~~] as other [~~moneys are~~] money is withdrawn from the [~~state~~] game protection fund."

SECTION 25. Section 17-2-1 NMSA 1978 (being Laws 1931, Chapter 117, Section 3, as amended) is amended to read:

"17-2-1. [~~COMMISSION~~] DIVISION POWERS.--The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department, in addition to the powers now vested in it and not as a limitation of those powers, is expressly authorized and empowered by [~~regulation~~] rule adopted and promulgated in the manner provided in Chapter 17 NMSA 1978 to:

A. define game birds, game animals and game fish;

B. establish open and closed seasons for the killing or taking of all kinds of game animals, game birds and game

fish and to change such open seasons from year to year and to fix different seasons for different parts of the state;

C. establish bag limits covering all kinds of game animals, game birds and game fish and the numbers thereof [~~which~~] that may be killed or taken by any one person during any one day or during any one open season;

D. authorize or prohibit the killing or taking of any game animals, game birds or game fish of any kind or sex;

E. prescribe the manner, methods and devices [~~which~~] that may be used in hunting, taking or killing game animals, game birds and game fish;

F. prescribe rules [~~and regulations~~] to prohibit any vehicle or vehicles used in transporting persons engaged in hunting, taking or killing game animals, game birds and game fish from leaving established roadways; and

G. appoint one or more advisory committees to furnish advice, evaluations and recommendations for wildlife management projects utilizing revenue derived from the sale of public land management stamps. The advisory committees shall be created pursuant to the procedures of Section 9-1-9 NMSA 1978, provided that the restrictions on the life of advisory committees contained in Subsection F of that section shall not be applicable."

SECTION 26. Section 17-2-2 NMSA 1978 (being Laws 1937, Chapter 23, Section 1) is amended to read:

"17-2-2. GAME TO BE PROTECTED.--The game animals and quadrupeds, game birds and fowl and game fish as [~~herein~~] defined in Chapter 17 NMSA 1978 shall be protected, and hunting, taking, capturing, killing or possession of or attempt to hunt, take, capture or kill [~~of~~] any or all species named [~~herein~~] in that chapter shall be regulated by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department under the authority of Chapter [~~117 of the 1931 Session Laws of the State of New Mexico~~] 17 NMSA 1978."

SECTION 27. Section 17-2-4.2 NMSA 1978 (being Laws 2001, Chapter 66, Section 2) is amended to read:

"17-2-4.2. AMPHIBIANS AND REPTILES--PROTECTED--PERMITS--UNLAWFUL TAKING--MISDEMEANOR--PENALTIES.--

A. All species, except for those collected in rattlesnake roundups, for fish bait or for lizard races, of native, free-ranging amphibians and reptiles are hereby classified as protected nongame animals for commercial taking purposes. The commercial taking or capturing of native, free-ranging amphibians and reptiles is prohibited except by a permit issued by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department.

B. The [~~state game commission~~] game and fish division shall adopt rules necessary to administer Paragraph (14) of

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Subsection A of Section 17-1-14 NMSA 1978 and this section to assure that viable populations of native, free-ranging amphibians and reptiles are maintained in the state.

C. If the [~~state game commission~~] game and fish division determines that it will offer permits to take or capture native, free-ranging amphibians or reptiles, the [~~commission~~] division shall adopt a rule listing protected native, free-ranging amphibians and reptiles that may be taken or captured after taking into consideration any criteria that can be shown to have an effect from commercial takings on the viability of the species population in the state.

D. Unlawful taking of a native, free-ranging amphibian or reptile consists of intentionally taking or capturing, for commercial purposes, a regulated native, free-ranging amphibian or reptile without a valid permit from the [~~state game commission~~] game and fish division.

E. Amphibians and reptiles may be removed, captured or destroyed without a permit, by any person, in emergency situations involving an immediate threat to human life or private property.

F. Whoever commits unlawful taking of a native, free-ranging amphibian or reptile is guilty of a misdemeanor and shall be fined not less than fifty dollars ($50.00) per occurrence and not more than one thousand dollars ($1,000) per occurrence or be imprisoned for not more than one year or both.

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G. As referred to in this section, "taking" means the act of seizing amphibians or reptiles for a commercial purpose."

SECTION 28. Section 17-2-7.1 NMSA 1978 (being Laws 1993, Chapter 94, Section 1) is amended to read:

"17-2-7.1. INTERFERENCE PROHIBITED--CRIMINAL PENALTIES--CIVIL PENALTIES--REVOCATION OF LICENSE, CERTIFICATE OR PERMIT.--

A. It is unlawful for a person to commit interference with another person who is lawfully hunting, trapping or fishing in an area where hunting, trapping or fishing is permitted by a custodian of public property or an owner or lessee of private property.

B. A person who commits a:

(1) first offense of interference is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

(2) second or subsequent offense of interference is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. When a person who commits interference possesses a license, certificate or permit issued to [~~him~~] the person by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department, the license, certificate or permit shall be subject to revocation by the

[~~commission~~] division pursuant to the provisions of Sections 17-1-14 and 17-3-34 NMSA 1978.

D. As used in this section, "interference" means:

(1) intentionally placing oneself in a location where a human presence may affect the behavior of a game animal, bird or fish or the feasibility of killing or taking a game animal, bird or fish with the intent of interfering with or harassing another person who is lawfully hunting, trapping or fishing;

(2) intentionally creating a visual, aural, olfactory or physical stimulus for the purpose of affecting the behavior of a game animal, bird or fish with the intent of interfering with or harassing another person who is lawfully hunting, trapping or fishing; or

(3) intentionally affecting the condition or altering the placement of personal property used for the purpose of killing or taking a game animal, bird or fish.

E. Nothing in this section shall be construed to include a farmer or rancher in pursuit of [~~his~~] normal farm or ranch operation or a law enforcement officer in pursuit of [~~his~~] official duties."

SECTION 29. Section 17-2-7.2 NMSA 1978 (being Laws 1997, Chapter 224, Section 3) is amended to read:

"17-2-7.2. LANDOWNER TAKING--CONDITIONS--[~~DEPARTMENT~~] DIVISION RESPONSIBILITIES.--

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A. A landowner or lessee, or an employee of either, may take or kill an animal on private land, in which [~~they have~~] the landowner or lessee has an ownership or leasehold interest, including game animals and other quadrupeds, game birds and fowl, that presents an immediate threat to human life or an immediate threat of damage to property, including crops; provided, however, that the taking or killing is reported to the [~~department of game and fish~~] division within twenty-four hours and before the removal of the carcass of the animal killed, in accordance with [~~regulations~~] rules adopted by the [~~commission~~] division.

B. A landowner or lessee, or an employee of either, may take or kill animals on private land, in which [~~they have~~] the landowner or lessee has an ownership or leasehold interest, including game animals and other quadrupeds, game birds and fowl, that present a threat to human life or damage to property, including crops, according to [~~regulations~~] rules adopted by the [~~commission~~] division. The [~~regulations~~] rules shall:

(1) provide a method for filing a complaint to the [~~department~~] division by the landowner or lessee, or an employee of either of them, of the existence of a depredation problem;

(2) provide for various [~~departmental~~] interventions by the division, depending upon the type of

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animal and depredation;

(3) require the [~~department~~] division to offer at least three different interventions, if practical;

(4) require the [~~department~~] division to respond to the initial and any subsequent complaints within ten days with an intervention response to the complaint and to carry out the intervention, if agreed upon between the [~~department~~] division and the landowner, within five days of that agreement;

(5) permit the landowner or lessee to reject for good cause the interventions offered by the [~~department~~] division;

(6) require a landowner or lessee to demonstrate that the property depredation is greater in value than the value of any wildlife-related income or fee collected by the landowner or lessee for permission to take or kill an animal of the same species on the private property or portion of the private property identified in the complaint as the location where the depredation occurred; and

(7) permit the landowner, lessee or employee, when interventions by the [~~department~~] division have not been successful and after one year from the date of the filing of the initial complaint, to kill or take an animal believed responsible for property depredation.

C. For purposes of this section:

[~~(1) "commission" means the state game~~

~~commission;~~

~~(2) "department"~~] (1) "division" means the [~~department of~~] game and fish division of the energy, minerals and natural resources department; and

[~~(3)~~] (2) "intervention" means a solution proposed by the [~~department~~] division to eliminate the depredation."

SECTION 30. Section 17-2-7 NMSA 1978 (being Laws 1931, Chapter 117, Section 8, as amended) is amended to read:

"17-2-7. UNLAWFUL HUNTING OR FISHING.--

A. Except as permitted by [~~regulations~~] rules adopted by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department or as otherwise allowed by law, it is unlawful to:

(1) hunt, take, capture, kill or attempt to take, capture or kill, at any time or in any manner, any game animal, game bird or game fish in the state; or

(2) possess, offer for sale, sell, offer to purchase or purchase in the state all or any part of any game animal, game bird or game fish.

B. Notwithstanding any other law, the owner of domestic livestock in this state or [~~his~~] the owner's regular employee may hunt, take, capture or kill any cougar or bear [~~which~~] that has killed domestic livestock. The owner of livestock or [~~his~~] the owner's regular employee who takes

action under this provision [~~will~~] shall report this action to the [~~department of~~] game and fish [~~who will~~] division, which shall verify the necessity of the action taken.

C. Violation of this section is a misdemeanor and shall be punished as provided in Section 17-2-10 NMSA 1978.

D. The provisions of this section shall not be deemed to prohibit the possession of game animals, birds or fish taken legally in any other jurisdiction."

SECTION 31. Section 17-2-8 NMSA 1978 (being Laws 1977, Chapter 70, Section 1) is amended to read:

"17-2-8. WASTE OF GAME.--It is unlawful for any person:

A. who hunts or fishes and takes any game mammal designated in [~~Paragraphs~~] Paragraph (2), (3) or (4) of Subsection A of Section [~~53-2-3 NMSA 1953~~] 17-2-3 NMSA 1978, any game bird or any game fish to fail to transport the edible portions of the meat obtained to [~~his~~] the person's home for human consumption or to provide for the human consumption thereof under any [~~commission regulations~~] rules of the game and fish division of the energy, minerals and natural resources department pertaining to exportation, transportation and donation of game; or

B. who wounds or may have wounded any game mammal designated in [~~Paragraphs~~] Paragraph (2), (3) or (4) of Subsection A of Section [~~53-2-3 NMSA 1953~~] 17-2-3 NMSA 1978 to fail to go to the place where the mammal sustained or may have

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sustained the wound and make a reasonable attempt to track the mammal and reduce it to possession."

SECTION 32. Section 17-2-9 NMSA 1978 (being Laws 1931, Chapter 117, Section 9, as amended) is amended to read:

"17-2-9. JURISDICTION OF MAGISTRATE COURT.--The magistrate court has jurisdiction in all cases arising under Chapter [~~53 NMSA 1953~~] 17 NMSA 1978 and [~~regulations~~] rules promulgated by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department. In addition to other jurisdiction, a magistrate has jurisdiction over such cases arising in any magistrate district adjoining at any point that in which [~~he~~] the magistrate serves, with the consent of the accused."

SECTION 33. Section 17-2-10 NMSA 1978 (being Laws 1931, Chapter 117, Section 7, as amended) is amended to read:

"17-2-10. VIOLATION OF GAME AND FISH LAWS OR [~~REGULATIONS~~] RULES--PENALTIES.--

A. [~~Any~~] A person violating any of the provisions of Chapter 17 NMSA 1978 or any [~~regulations~~] rules adopted by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail

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for a term not to exceed six months. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of four hundred dollars ($400);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand dollars ($1,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one hundred dollars ($100);

(4) for exceeding the bag limit of any big game species, a fine of four hundred dollars ($400);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of two hundred dollars ($200);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of four hundred dollars ($400);

(7) for using a hunting or fishing license

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issued to another person, a fine of one hundred dollars ($100);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of three hundred dollars ($300);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand dollars ($1,000);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of two thousand dollars ($2,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of five hundred dollars ($500).

B. A person convicted a second time for violating any of the provisions of Chapter 17 NMSA 1978 or any [~~regulations~~] rules adopted by the [~~state game commission~~] game and fish division that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term of not more than three hundred sixty-four days. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take,

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killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of six hundred dollars ($600);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand five hundred dollars ($1,500);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of four hundred dollars ($400);

(4) for exceeding the bag limit of any big game species, a fine of six hundred dollars ($600);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of six hundred dollars ($600);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of six hundred dollars ($600);

(7) for using a hunting or fishing license issued to another person, a fine of two hundred fifty dollars ($250);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of five hundred dollars ($500);

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(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand five hundred dollars ($1,500);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of four thousand dollars ($4,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of one thousand dollars ($1,000).

C. Notwithstanding the provisions of Section 31-18-13 NMSA 1978, a person convicted a third or subsequent time for violating any of the provisions of Chapter 17 NMSA 1978 or any [~~regulations~~] rules adopted by the [~~state game commission~~] game and fish division that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term of not less than ninety days, which shall not be suspended or deferred, and not more than three hundred sixty-four days. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope,

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javelina, bear or cougar during a closed season, a fine of one thousand two hundred dollars ($1,200);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of three thousand dollars ($3,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one thousand dollars ($1,000);

(4) for exceeding the bag limit of any big game species, a fine of one thousand two hundred dollars ($1,200);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of one thousand dollars ($1,000);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of one thousand two hundred dollars ($1,200);

(7) for using a hunting or fishing license issued to another person, a fine of one thousand dollars ($1,000);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of one thousand dollars ($1,000);

(9) for selling, offering for sale, offering to

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purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of three thousand dollars ($3,000);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of six thousand dollars ($6,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of two thousand dollars ($2,000).

D. [~~Any~~] A person who is convicted of a violation of any [~~regulations~~] rules adopted by the [~~state game commission~~] game and fish division that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped or of a violation of any of the provisions of Chapter 17 NMSA 1978, for which a punishment is not set forth under this section, shall be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500) or imprisoned not more than six months or both.

E. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

F. The provisions of this section shall not apply to a landowner or lessee, or an employee of either of them, who

kills an animal on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the [~~department of~~] game and fish division within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to [~~regulations~~] rules of the [~~department~~] division."

SECTION 34. Section 17-2-10.1 NMSA 1978 (being Laws 1995, Chapter 177, Section 1) is amended to read:

"17-2-10.1. GAME AND FISH PENALTY ASSESSMENT MISDEMEANORS--DEFINITION--SCHEDULE OF ASSESSMENTS.--

A. As used in Chapter 17 NMSA 1978, "penalty assessment misdemeanor" means a violation of any of the following listed sections of the NMSA 1978 for which the listed penalty assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Fishing without a license	17-3-17	$ 75.00
Hunting small game without a license	17-3-1	$100.00.

B. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, no fine imposed upon later conviction shall exceed the penalty assessment established for

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the particular penalty assessment misdemeanor.

C. With the penalty assessment collected for each penalty assessment misdemeanor pursuant to this section, there shall be assessed and collected the cost of the appropriate license that the violator failed to produce. Upon presentation of proof of payment of the penalty assessment, the director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department shall issue the appropriate license."

SECTION 35. Section 17-2-10.2 NMSA 1978 (being Laws 1995, Chapter 177, Section 2) is amended to read:

"17-2-10.2. GAME AND FISH PENALTY ASSESSMENT--PAYMENT.--

A. Unless a warning notice is given to an alleged violator, at the time the alleged violator is charged with a penalty assessment misdemeanor, the conservation officer shall offer the alleged violator the option of accepting a penalty assessment. The signature of the alleged violator on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice. The acknowledgment shall be included in accrual of points toward revocation of licenses as provided for in Section 17-3-34 NMSA 1978 or in [~~regulations~~] rules adopted to implement that section.

B. Payment of [~~any~~] a penalty assessment, including cost of the appropriate license, shall be mailed to the [~~state game commission~~] game and fish division of the energy, minerals

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and natural resources department within thirty days from the date of charge. Payment of penalty assessments are timely if postmarked within thirty days from the date of the charge. The [~~commission~~] division may issue a receipt when a penalty assessment is paid by currency, but checks tendered by the violator upon which payment is received are sufficient receipt.

C. No record of [~~any~~] a penalty assessment payment is admissible as evidence in court in [~~any~~] a civil action."

SECTION 36. Section 17-2-10.3 NMSA 1978 (being Laws 1995, Chapter 177, Section 3) is amended to read:

"17-2-10.3. GAME AND FISH PENALTY ASSESSMENT--LICENSE REVOCATION.--

A. The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department is authorized to revoke the hunting or fishing license, or both, of a person who fails to pay a penalty assessment or who fails to appear, after proper notice, for hearings as required by law or [~~regulation~~] rule.

B. The [~~state game commission~~] game and fish division may revoke the hunting or fishing license, or both, of any person, resident or nonresident, who is convicted in another state of any single offense that, if committed in New Mexico, would be grounds for revocation of license."

SECTION 37. Section 17-2-11 NMSA 1978 (being Laws 1912, Chapter 85, Section 40, as amended) is amended to read:

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"17-2-11. [~~GAME--FISH~~] PROSECUTIONS--[~~ACCOMPLICES MAY TESTIFY--EVIDENCE~~] ACCOMPLICE TESTIMONY--IMMUNITY.--[~~SEC. 40.~~] In any prosecution under [~~this~~] Chapter 17 NMSA 1978, any participant in a violation thereof, when so requested by the district attorney, [~~State Warden~~] director of the game and fish division of the energy, minerals and natural resources department or other officer instituting the prosecution, may testify as a witness against any other person charged with violating the same, and [~~his~~] the accomplice's evidence so given shall not be used against [~~him~~] the accomplice in any prosecution for [~~such~~] that violation."

SECTION 38. Section 17-2-12 NMSA 1978 (being Laws 1937, Chapter 23, Section 3, as amended) is amended to read:

"17-2-12. REFUGES--FIREARMS [~~ON~~] PROHIBITED--EXCEPTIONS.--It is unlawful for any person to carry, transport or have in [~~his~~] the person's possession bows, arrows, crossbows or firearms of any kind or description within or upon any game refuge or to discharge any firearm or arrow into or within any state game refuge in New Mexico; provided that this section shall not apply to any county, state or federal officer in the discharge of [~~his~~] official duties [~~nor~~] or to persons crossing refuges over public roads and trails with firearms unloaded or taken down; and provided further that permits may be issued by the director of the game and fish division of the energy, minerals and natural resources department to stockmen,

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trappers, ranchers and property owners, or their employees, to carry firearms while engaged in the discharge of their legitimate affairs on or within game refuges."

SECTION 39. Section 17-2-13 NMSA 1978 (being Laws 1912, Chapter 85, Section 55, as amended) is amended to read:

"17-2-13. SONGBIRDS--TRAPPING, KILLING OR INJURING PROHIBITED.--It [~~shall be~~] is unlawful for any person to shoot, ensnare or trap for the purpose of killing or in any other manner to injure or destroy any songbird or birds whose principal food consists of insects, comprising all the species and varieties of birds represented by the several families of bluebirds, including the western and mountain bluebirds; also bobolinks, catbirds, chickadees, cuckoos, which includes the chaparral bird or roadrunner (Geococcyx novo mexicanus), flickers, flycatchers, grosbeaks, hummingbirds, kinglets, martins, meadowlarks, nighthawks or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, [~~whipporwills~~] whippoorwills, woodpeckers, wrens and all other perching birds [~~which~~] that feed entirely or chiefly on insects. This section does not prohibit the killing of such birds for scientific purposes under permits from the [~~department of~~] game and fish division of the energy, minerals and natural resources department."

SECTION 40. Section 17-2-14 NMSA 1978 (being Laws 1973,

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Chapter 104, Section 1, as amended) is amended to read:

"17-2-14. HAWKS, VULTURES AND OWLS--TAKING, POSSESSING, TRAPPING, DESTROYING, MAIMING OR SELLING PROHIBITED--EXCEPTION BY PERMIT--PENALTY.--

A. It is unlawful for any person to take, attempt to take, possess, trap or ensnare or in any manner to injure, maim or destroy birds of the order Falconiformes, comprising all of the species and varieties of birds represented by the several families of vultures and hawks, and all of the order Stringiformes, comprising all of the species and varieties of owls. It is also unlawful to purchase, sell or trade, or to possess for the purpose of selling or trading, any parts of these birds.

B. The director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department may issue permits to allow any person to take, possess, trap, ensnare or destroy any bird protected by this section or to possess, give, purchase, sell or trade, or to possess for the purpose of selling or trading, any parts of any birds protected by this section. Permits shall be granted for the following purposes:

(1) Indian religious purposes;

(2) scientific purposes in accordance with law and the [~~regulations~~] rules of the [~~department of~~] game and fish division; or

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(3) falconry purposes in accordance with law and the [~~regulations~~] rules of the [~~department~~] division.

C. Notwithstanding any other law, any person engaged in the commercial raising of poultry or game birds may take, capture or kill any hawk, owl or vulture that has killed such poultry or game birds. The owner of [~~such~~] a game or poultry farm who takes action under this provision shall report this action to the [~~department of~~] game and fish division, which shall verify the necessity of the action taken.

D. Any person violating the provisions of this section is guilty of a petty misdemeanor."

SECTION 41. Section 17-2-17 NMSA 1978 (being Laws 1912, Chapter 85, Section 26, as amended) is amended to read:

"17-2-17. GAME AND FISH--[~~HELD IN~~] STORAGE [~~WHEN LAWFUL~~].--[~~SEC. 26.~~] No game or fish shall be received or held in storage except as follows [~~namely~~]:

[~~(1)~~] A. during the open season [~~therefor~~] for such game and fish and for five days thereafter when the [~~same~~] game or fish is stored for the person lawfully in possession of [~~the same~~] it;

[~~(2)~~] B. at any time of the year when there is attached [~~thereto~~] to the game or fish a proper and valid officer's invoice as provided in [~~this~~] Chapter 17 NMSA 1978 relating to the seizure of game and fish, for not more than thirty days after the date of [~~such~~] that invoice; or

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[~~(3)~~] C. when there is attached [~~thereto~~] to the game or fish a proper and valid certificate or permit signed by the [~~State Warden or deputy~~] director of the game and fish division of the energy, minerals and natural resources department or conservation officer and on its face authorizing storage of the [~~article named therein~~] game or fish listed in the certificate or permit and during the period [~~therein stated~~] listed on the certificate or permit."

SECTION 42. Section 17-2-19 NMSA 1978 (being Laws 1912, Chapter 85, Section 57, as amended) is amended to read:

"17-2-19. ENFORCEMENT OF GAME LAWS--POWERS OF CONSERVATION OFFICERS.--

A. The director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department, each conservation officer, each sheriff in [~~his~~] the sheriff's respective county and each member of the New Mexico state police shall enforce Chapter 17 NMSA 1978 and shall:

(1) seize any game or fish held in violation of that chapter;

(2) with or without warrant, arrest any person whom [~~he~~] the director, conservation officer, sheriff or state police officer knows to be guilty of a violation of that chapter; and

(3) open, enter and examine all camps, wagons,

cars, tents, packs, boxes, barrels and packages where [~~he has~~] there is reason to believe any game or fish taken or held in violation of that chapter is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall issue upon a written showing of probable cause, supported by oath or affirmation, describing the places to be searched or the persons or things to be seized.

C. Conservation officers may, under the direction of the [~~state game commission and the~~] director of the [~~department of~~] game and fish division:

(1) establish from time to time, as needed for the proper functioning of the [~~game and fish research and management~~] conservation services bureau of the division checking stations at points along established roads, or roadblocks, for the purpose of detecting and apprehending persons violating the game and fish laws and the [~~regulations~~] rules referred to in Section 17-2-10 NMSA 1978;

(2) under emergency circumstances and while on official duty only enforce the provisions of the Criminal Code and the Motor Vehicle Code; and

(3) while on official duty only, enforce the provisions of:

(a) Sections 30-14-1 and 30-14-1.1

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NMSA 1978 pertaining to criminal trespass;

(b) Section 30-7-4 NMSA 1978 pertaining to negligent use of a deadly weapon;

(c) Section 30-15-1 NMSA 1978 pertaining to criminal damage to property;

(d) Section 30-22-1 NMSA 1978 pertaining to resisting, evading or obstructing an officer; and

(e) Section 72-1-8 NMSA 1978 pertaining to camping next to a manmade water hole."

SECTION 43. Section 17-2-20 NMSA 1978 (being Laws 1912, Chapter 85, Section 31, as amended) is amended to read:

"17-2-20. [~~PUBLIC NUISANCE--NETS, TRAPS, EXPLOSIVES--WHEN DEEMED TO BE--PROVISO~~] UNLAWFUL DEVICES--SEIZURE AND DESTRUCTION.--[~~SEC. 31.~~] Every net, trap, explosive, poisonous or stupefying substance or device used or intended for use in taking or killing game or fish in violation of [~~this~~] Chapter 17 NMSA 1978 and set, kept or found in or upon any of the streams or waters in this state or upon the shores thereof, and every trap, device, blind or deadfall found baited in violation of [~~this~~] that chapter, is declared to be a public nuisance and may be abated and summarily destroyed by any person [~~and~~]. It [~~shall be~~] is the duty of every officer authorized to enforce [~~this~~] that chapter to seize and summarily destroy the same, and no prosecution or suit shall be maintained for such destruction; provided that nothing in [~~this~~] that chapter shall

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be construed as affecting the right of the [~~State Warden~~] director of the game and fish division of the energy, minerals and natural resources department to use such means as may be proper for the promotion of game and fish propagation and culture [~~nor~~] or as authorizing the seizure or destruction of firearms."

SECTION 44. Section 17-2-20.3 NMSA 1978 (being Laws 1979, Chapter 321, Section 3) is amended to read:

"17-2-20.3. PENALTIES.--The following violations [~~shall~~] constitute a misdemeanor:

A. illegal possession or transportation of big game during closed season;

B. taking or attempting to take big game during closed season;

C. taking or attempting to take big game by the use of spotlight or artificial light;

D. selling or attempting to sell big game or parts thereof, except as permitted by [~~regulation~~] rules of the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department; and

E. exceeding the bag limit on any big game species during open season."

SECTION 45. Section 17-2-21 NMSA 1978 (being Laws 1912, Chapter 85, Section 23, as amended) is amended to read:

"17-2-21. GAME AND FISH--SEIZED BY OFFICERS--DISPOSAL

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[~~OF~~]--PROCEEDS.--[~~SEC. 23.~~] All game and fish seized under the game laws shall without unnecessary delay be sold by the officer making [~~such~~] the seizure or by the [~~State Warden~~] director of the game and fish division of the energy, minerals and natural resources department, except when such sale is impracticable or likely to incur expenses exceeding the proceeds, in which case the [~~same~~] game or fish shall be donated to some charitable institution or needy person not concerned in the unlawful killing or possession thereof. The officer making [~~such~~] the seizure shall sign and give to each purchaser or donee an invoice stating the time and place of disposition, the kind and weight as near as may be of the game or fish disposed of and the name of the purchaser or donee. [~~Such~~] The invoice [~~shall authorize~~] authorizes possession, transportation and use within the state and storage for thirty days from date. The proceeds from [~~such~~] the sale, after deducting the cost of seizure and sale, shall, if made by the [~~State Warden~~] director of the division or any [~~deputy~~] conservation officer under salary, be paid into the game protection fund, but if made by a [~~deputy warden~~] conservation officer not under salary, or any other officer, the proceeds shall be paid one-half to the officer making [~~such~~] the seizure."

SECTION 46. Section 17-2-26 NMSA 1978 (being Laws 1912, Chapter 85, Section 45, as amended) is amended to read:

"17-2-26. CIVIL LIABILITY.--

A. The director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department, or any other officer charged with enforcement of the laws relating to game and fish if so directed by the director, may bring a civil action in the name of the state against any person unlawfully wounding or killing, or unlawfully in possession of, any game quadruped, bird or fish, or part thereof, and recover judgment for the following minimum sums as damages for the taking, killing or injuring:

for each elk	$ 500.00
for each deer	250.00
for each antelope	250.00
for each mountain sheep	1,000.00
for each Barbary sheep	250.00
for each black bear	500.00
for each cougar	500.00
for each bison	600.00
for each ibex	1,000.00
for each oryx	1,000.00
for each javelina	100.00
for each beaver	65.00
for each bird	20.00
for each fish	5.00
for each endangered species	500.00

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for each raptor	200.00
for each turkey	150.00
for each jaguar	2,000.00.

B. Notwithstanding the provisions of Subsection A of this section, the [~~state game commission~~] game and fish division shall establish damages recoverable by civil judgment on a game animal, bird or fish designated to be a trophy animal by [~~commission~~] division rule.

C. Damages recovered pursuant to this section are intended to compensate the state for the loss of unique public resources and shall not be limited or reduced by the extent of fines assessed pursuant to any criminal statute. The [~~department of~~] game and fish division shall not award or issue a license, permit or certificate to a debtor owing damages pursuant to this section until the judgment has been paid in full to the [~~department~~] division.

D. No verdict or judgment recovered by the state in an action shall be for less than the sum fixed in this section. The action for damages may be joined with an action for possession, and recovery may be had for the possession as well as the damages.

E. The pendency or determination of an action for damages or payment of a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor

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does either affect the right of seizure under any other provision of the laws relating to game and fish.

F. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

G. The provisions of this section shall not apply to a landowner or lessee, or employee of either, who kills an animal, on private land in which the person has an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the [~~department of~~] game and fish division within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to rules of the [~~department~~] division."

SECTION 47. Section 17-2-33 NMSA 1978 (being Laws 1971, Chapter 61, Section 2) is amended to read:

"17-2-33. USE OF FIREARMS BY MINORS.--

A. It is unlawful after April 1, 1972 for any person born after January 1, 1958 to hunt with or shoot a firearm, unless the person:

(1) [~~he~~] is supervised by a parent, legal guardian or a responsible adult designated by the parent or guardian; [~~or~~]

(2) [~~he~~] carries a certificate indicating that [~~he~~] the person has successfully completed the New Mexico hunter training course or the hunter training course of another state [~~which~~] that is approved by the [~~New Mexico department of~~] game and fish division of the energy, minerals and natural resources department; or

(3) [~~he~~] is eighteen years of age or older.

B. It is unlawful after April 1, 1976 for any person under the age of eighteen years to hunt with or shoot a firearm unless [~~he~~] the person is carrying a certificate indicating that [~~he~~] the person has successfully completed the New Mexico hunter training course or a hunter training course of another state [~~which~~] that is approved by the [~~New Mexico department of~~] game and fish division.

C. Any person violating the [~~provisions~~] provisions of this section is guilty of a petty misdemeanor."

SECTION 48. Section 17-2-34 NMSA 1978 (being Laws 1971, Chapter 61, Section 3) is amended to read:

"17-2-34. HUNTER TRAINING PROGRAM--INSTRUCTOR CERTIFICATION--CERTIFICATE OF COMPETENCY.--

A. The [~~department of~~] game and fish division of the energy, minerals and natural resources department shall provide a course of instruction in the safe handling of firearms for individuals interested in obtaining a certificate of competency in the safe handling of firearms. The [~~department~~] division

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may cooperate with the [~~superintendent~~] secretary of public [~~instruction~~] education or any reputable association or organization as determined by the [~~department~~] division and having as one of its objectives the promotion of safety in firearm handling.

B. The [~~department of~~] game and fish division shall prescribe the type of instruction and the qualifications of instructors and shall designate annually those persons qualified to give instruction in the safe handling of firearms. Persons designated by the [~~department of game and fish~~] division to be instructors are authorized to give the course of instruction in the safe handling of firearms to all interested persons. Upon the completion of the course and certification to the [~~department~~] division by the instructor, the [~~department~~] division shall cause to be issued, to the person instructed, a certificate of competency in the safe handling of firearms, which shall be valid unless revoked by the [~~department of game and fish~~] division for such cause as determined by [~~regulation~~] rule of the [~~department~~] division to be unsafe handling of a firearm.

C. The [~~department of~~] game and fish division shall promulgate rules [~~and regulations~~] to implement the provisions of the Hunter Training Act."

SECTION 49. Section 17-2-38 NMSA 1978 (being Laws 1974, Chapter 83, Section 2, as amended) is amended to read:

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"17-2-38. DEFINITIONS.--As used in the Wildlife Conservation Act:

[~~A. "commission" means the state game commission;~~

~~B.~~] A. "director" means the director of the [~~department of game and fish~~] division;

B. "division" means the game and fish division of the energy, minerals and natural resources department;

C. "ecosystem" means a system of living organisms and their environment;

D. "endangered species" means any species of fish or wildlife whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:

(1) the present or threatened destruction, modification or curtailment of its habitat;

(2) overutilization for scientific, commercial or sporting purposes;

(3) the effect of disease or predation;

(4) other natural or man-made factors affecting its prospects of survival or recruitment within the state; or

(5) any combination of the foregoing factors.

The term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the federal Endangered Species Act of 1973 as endangered species, provided that the [~~commission~~] division adopts those lists in

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whole or in part. The term shall not include any species covered by the provisions of 16 U.S.C. 1331 through 1340 (1971) and shall not include any species of the class insecta determined by the director to constitute a pest whose protection under the Wildlife Conservation Act would present an overwhelming and overriding risk to man;

E. "investigation" means a process pursuant to Subsections B through L of Section 17-2-40 NMSA 1978 undertaken whenever the [~~director~~] suspects that a species may be threatened or endangered and [~~which~~] that consists of a formal review of existing data and studies and may include additional field research to determine whether a species is threatened or endangered;

F. "land or aquatic habitat interests" means interests in real property or water rights consisting of fee simple title, easements in perpetuity, time certain easements, long-term leases and short-term leases;

G. "management" means the collection and application of biological information for the purposes of establishing and maintaining a congruous relationship between individuals within species and populations of wildlife and the carrying capacity of their habitat. The term includes the entire range of activities that constitutes a full scientific resource program [~~of~~], including [~~but not limited to~~] research, census, law enforcement, propagation, acquisition or maintenance of land or

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aquatic habitat interests appropriate for recovery of the species; improvement and maintenance, education and related activities; [~~or~~] and protection and regulated taking;

H. "recovery plan" means a designated program or methodology reasonably expected to lead to restoration and maintenance of a species and its habitat;

I. "peer review panel" means an advisory panel of scientists, each of whom possesses expertise relevant to the proposed investigation and at least one of whom is a wildlife biologist, convened to review the scientific methodology for collection and analysis of data by a researcher based on commonly accepted scientific peer review;

J. "secretary" means the secretary of energy, minerals and natural resources;

[~~J.~~] K. "species" means any species or subspecies;

[~~K.~~] L. "substantial public interest" means a nonfrivolous claim indicated by a broad-based expression of public concern;

[~~L.~~] M. "take" or "taking" means to harass, hunt, capture or kill any wildlife or attempt to do so;

[~~M.~~] N. "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range in New Mexico; the term may also include any species of fish or wildlife appearing on the United States list of

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endangered native and foreign fish and wildlife as set forth in Section 4 of the federal Endangered Species Act of 1973 as threatened species, provided that the [~~commission~~] division adopts the list in whole or in part; and

[~~N.~~] O. "wildlife" means any nondomestic mammal, bird, reptile, amphibian, fish, mollusk or crustacean or any part, egg or offspring or the dead body or parts thereof."

SECTION 50. Section 17-2-40 NMSA 1978 (being Laws 1974, Chapter 83, Section 4, as amended) is amended to read:

"17-2-40. BIENNIAL REVIEW--INVESTIGATIONS--RECOMMENDATIONS OF THE [~~DIRECTOR~~] SECRETARY--PROCEDURES.--

A. The secretary, in consultation with the director, shall conduct a biennial review of all species of wildlife named on the list required by Section 17-2-41 NMSA 1978. The [~~director~~] secretary may conduct investigations at any time of those other species of wildlife indigenous to the state that are suspected of being threatened or endangered in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine [~~his~~] recommendations for listing or not listing a species and management measures and requirements necessary for [~~their~~] its survival. The [~~director~~] secretary shall also conduct, within a reasonable time, an investigation to support listing or delisting [~~of~~] a species based upon new evidence or, with the advice and consent

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of the [~~commission~~] peer review panel, based upon substantial public interest. Upon completion of an investigation [~~or investigations, he~~], the secretary shall [~~make written recommendations to the commission~~] determine whether to list or not list any unlisted species or to delist any listed species investigated. In conducting any investigation for new listing or delisting required or undertaken pursuant to this subsection, the [~~director~~] secretary shall comply with the procedures established in Subsections B through L of this section. Species listed as threatened or endangered on the state list through adoption of the United States list pursuant to Subsections D and M of Section 17-2-38 NMSA 1978 shall not be subject at the time of adoption to the listing procedures established in Subsections B through K of this section.

B. The secretary, in consultation with the director, shall select a researcher to conduct an investigation pursuant to Subsection A of this section and request the appointment of a peer review panel composed of one qualified individual from each of the four-year state universities to be appointed by the presidents of the respective universities. The peer review panel shall be requested to submit comments according to a schedule determined by the [~~director~~] secretary. The researcher shall submit [~~his~~] the research design to the peer review panel.

C. When additional field research is undertaken as

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part of an investigation, the peer review panel shall examine the proposed research design for methodology for collection and analysis of data. Upon receipt of the peer review panel's submitted comments, the researcher shall initiate the field research regarding the designated species.

D. To the extent practicable, as part of [~~his~~] the researcher's investigation, the researcher shall meet and consult with private landowners, lessees and land and resource managers who are or may be affected by or have information pertinent to the investigation.

E. When the researcher initiates [~~his~~] the investigation, the [~~director~~] secretary shall:

(1) create a public repository file in which copies of all documents filed with the [~~director~~] secretary pertaining to the investigation or a potential recovery plan, to be developed pursuant to Section 17-2-40.1 NMSA 1978, including all peer review comments, shall be maintained;

(2) mail a notice of the initiation of the investigation to federal and state agencies, local and tribal governments that are or may be affected by the results of the investigation and individuals and organizations that have requested notification of [~~department~~] division actions regarding threatened or endangered species;

(3) notify the general public of the initiation of the investigation by information releases to the media in

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the area of the state affected;

(4) indicate, in all notices and information releases, where and until what date information may be submitted for inclusion in the public repository file;

(5) accept data, views or information about the biological or ecological status of the species for use in both the investigation and the development of the potential recovery plan; and

(6) accept data, views and information on the potential economic or social impacts or opportunities of a change in the legal status of the species for inclusion in the recovery plan.

F. The [~~director~~] secretary shall file all written comments, data, views and information furnished pursuant to Subsection [~~D~~] E of this section in the public repository file and shall preserve that file for use in connection with the listing process and development of any recovery plan developed pursuant to the provisions of Section 17-2-40.1 NMSA 1978. The [~~director~~] secretary shall file in the public repository file all records indicating contact by the director, the researcher, employees or contractors with landowners or public or private resource managers affected by the potential action.

G. Information from the public repository file relating to social and economic impacts shall not be considered by the [~~director~~] secretary in making [~~his recommendation or~~

~~the commission in making its~~] a decision to list, delist, not list, continue to list, upgrade or downgrade a species, but shall be considered only in the development of any recovery plan for the species.

H. The [~~commission~~] division shall [~~adopt, notwithstanding the provisions of Section 14-2-1 NMSA 1978, regulations by January 1, 1996~~] promulgate rules governing the confidentiality of data from an investigation.

I. The researcher shall prepare and submit draft reports to the peer review panel and to the public repository file. The peer review panel will be requested to examine and comment on the draft report in a timely manner.

J. After consideration of the peer review panel's submitted comments on the draft reports, the researcher shall prepare final reports and file them and all peer review panel comments with the [~~director~~] secretary and in the public repository file. The peer review panel shall not be compelled to attend any hearing before the [~~commission~~] division.

K. Upon receipt of the researcher's final reports, the [~~director~~] secretary shall [~~make recommendations to the commission to list, not list or delist the species based upon criteria listed in Subsection L of this section. The commission shall~~] establish dates and locations for public hearings on the recommended actions and give notice of the public hearings in the same manner and to the same persons as

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notice was given of the initiation of the investigation and, in addition, publish legal notice in a newspaper of general circulation in the area affected at least ninety days before the date set for the hearing. Public hearings shall be held at a place within any quadrant of the state affected by the recommended actions when the [~~director~~] secretary determines that there is substantial public interest indicated in holding a hearing in that quadrant. All hearings on the recommended actions shall be held within six months of the date the [~~director makes his recommendations~~] researcher files the final report with the secretary. The notice shall:

(1) include the date, time and location of all hearings on the matter;

(2) include a statement of the recommended action;

(3) include an indication of the location and availability of the public repository file;

(4) indicate where and by what date written comments and testimony to be included in the hearing record may be filed;

(5) indicate that views, data and comments pertaining to the final report may be presented orally at or in writing to the hearing;

(6) specify that notice of intent to present technical and scientific testimony and a written copy of the

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testimony to be presented shall be submitted to the [~~commission~~] secretary not less than thirty days prior to the initial hearing; and

(7) specify that the public record shall remain open for comments for thirty days after the date of the final hearing.

L. The [~~commission~~] secretary shall make [~~its decisions~~] a decision and take action based upon relevant and reliable evidence to list, not list or delist a species [~~at its next regularly scheduled meeting within~~] no more than thirty days after the close of the hearing record. The [~~commission~~] secretary shall:

(1) list or maintain a species as endangered and shall not delist a species if [~~it~~] the secretary finds that the species' prospects for survival or recruitment within the state are in jeopardy based upon the biological and ecological evidence in the public repository file and based upon biological and ecological evidence received in the public hearings; and

(2) list or maintain a species as threatened and shall not delist a species if [~~it~~] the secretary finds that the species' prospects for survival or recruitment within the state are likely within the foreseeable future to be in jeopardy based upon the biological and ecological evidence in the public repository file and biological and ecological evidence received

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in public hearings.

M. Whenever the [~~director~~] secretary finds that there is an emergency posing a significant risk to the well-being of any species and that risk is likely to jeopardize the continued survival or recruitment of the species within the state, the [~~director~~] secretary shall [~~recommend to the commission that the species should be listed as endangered. The commission shall act upon the director's recommendation~~] immediately [~~and shall~~] either list or not list the species by [~~regulation~~] rule based upon the evidence supporting the recommendation if [~~it~~] the secretary finds that the continued survival of the species is in jeopardy. If the [~~commission~~] secretary lists the species as endangered, [~~it shall waive~~] the requirements of Subsections A through L of this section shall be waived. Whenever the [~~commission~~] secretary adopts a [~~regulation~~] rule listing a species as endangered pursuant to this subsection, it shall give notice of the listing in the same manner and to the same persons as notice is given in the initiation of investigations and in addition shall publish legal notice in a newspaper of general circulation in the area affected. The emergency listing shall cease to have force and effect at the close of a three-year period following the date of the finding unless, during the three-year period, the procedures for listing pursuant to Subsections B through L of this section or continuing to list pursuant to [~~commission regulations~~] rules

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for the biennial review are completed."

SECTION 51. Section 17-2-40.1 NMSA 1978 (being Laws 1995, Chapter 145, Section 5) is amended to read:

"17-2-40.1. RECOVERY PLANS--PROCEDURES.--

A. To the extent practicable, a recovery plan shall be developed pursuant to Subsections B through G of this section for any species listed as threatened or endangered. If indicated, the director shall conduct a social and economic analysis and, if adverse impacts are found, develop a social or economic mitigation plan.

B. To the extent practicable, the director shall develop recovery plans that include several threatened or endangered species that utilize similar habitats or share a common threat or both. A multiple-species recovery plan shall be designed to accomplish recovery of the shared habitat or reduce a common threat or both.

C. As the initial action in the development of a recovery plan, the director shall, within one year of listing, schedule a public information meeting in each of the quadrants of the state determined by the director to be affected by the development of a recovery plan. These meetings shall be held in a manner calculated to provide a reasonable opportunity for individuals and private and public entities to participate and express their views about the development of a recovery plan for one or more species and the attendant adverse social or

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economic impacts, if any, that may result from implementation of a recovery plan. At these meetings, the director shall present background information about the basis of the listing, an explanation of the process to develop a recovery plan and the probable content in general terms, if known, of the recovery plan and if needed, the process to develop a social and economic mitigation plan.

D. Upon completion of the public information [~~meeting or~~] meetings on a recovery plan, the director shall consult and cooperate with other states or countries when appropriate and shall solicit interest from representatives of affected local governments, tribal governments, landowners, state and federal agencies and other interested individuals and organizations to serve on an advisory committee. [~~He~~] The director shall appoint to the advisory committee all of those who are willing to participate in the development of the recovery plan. When necessary, [~~he~~] the director may appoint from the membership of the advisory committee a working group reflecting the diversity of the advisory committee.

E. With the assistance of the advisory committee, the director shall develop a draft recovery plan to achieve the following objectives:

(1) restoration and maintenance of a viable population of the threatened or endangered species and its habitat reasonably expected to lead to the delisting of the

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species;

(2) avoidance or mitigation of adverse social or economic impacts;

(3) identification of social or economic benefits and opportunities; and

(4) use of volunteer resources and existing economic recovery and assistance programs and funding available from public and private sources to implement the plan.

F. The director shall mail the draft recovery plan to federal and state agencies, local and tribal governments that are or may be affected by the recovery plan and individuals and organizations that have requested notification of [~~department~~] division actions regarding threatened or endangered species.

G. [~~The final recovery plan shall be presented to the commission for its consideration not later than two years from the date the species was listed.~~] If, after receiving comment from the entities listed in Subsection F of this section, the [~~commission~~] director determines that the proposed plan has achieved the objectives set forth in Subsection E of this section, [~~it~~] the director shall approve the recovery plan or approve with conditions. After approval of the plan, the director shall seek cooperation with other states and countries, when appropriate, and landowners, state and federal agencies and local and tribal governments for implementation of the recovery plan and when appropriate submit the recovery plan

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to the secretary of the interior for approval pursuant to the federal Endangered Species Act of 1973."

SECTION 52. Section 17-2-41 NMSA 1978 (being Laws 1974, Chapter 83, Section 5, as amended) is amended to read:

"17-2-41. ENDANGERED SPECIES.--

A. On the basis of investigations concerning wildlife, other available scientific and commercial data and after consultation with wildlife agencies in other states, appropriate federal agencies, local and tribal governments and other interested persons and organizations, the [~~commission~~] division shall by [~~regulation~~] rule develop a list of those species of wildlife indigenous to the state that are determined to be threatened or endangered within the state, giving their common and scientific names by species and subspecies.

B. The director shall conduct a review of the state list of threatened or endangered species [~~and shall present~~] biennially to [~~the commission his recommendations for appropriate~~] determine what action [~~The commission shall act on the director's biennial recommendations at its next regularly scheduled meeting. The commission shall adopt, no later than January 1, 1996, regulations providing procedures for commission actions on the director's recommendations to continue to list or to upgrade or downgrade a species~~] to take relating to the upgrade or downgrade of a species.

C. Except as otherwise provided in the Wildlife

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Conservation Act, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species of wildlife appearing on any of the following lists:

(1) the list of wildlife indigenous to the state determined to be endangered within the state as set forth by [~~regulations~~] rules of the [~~commission~~] division; and

(2) the United States lists of endangered native and foreign fish and wildlife as set forth in Section 4 of the federal Endangered Species Act of 1973 as endangered or threatened species, but only to the extent that those lists are adopted for this purpose by [~~regulations~~] rules of the [~~commission~~] division; provided that any species of wildlife appearing on any of the lists set forth in this subsection, transported into the state from another state or from a point outside the territorial limits of the United States and [~~which~~] that is destined for a point beyond the state, may be transported across the state without restriction in accordance with the terms of any federal permit or permit issued under the laws or [~~regulations~~] rules of another state or otherwise in accordance with the laws of another state.

D. The provisions of Subsection C of this section shall not apply to a taking of wildlife by a Native American for religious purposes, unless it materially and negatively affects an endangered species or threatened species."

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SECTION 53. Section 17-2-42 NMSA 1978 (being Laws 1974, Chapter 83, Section 6) is amended to read:

"17-2-42. MANAGEMENT PROGRAMS.--

A. The director shall establish such programs, including programs for research and the acquisition of land or aquatic habitat, as authorized and deemed necessary [~~by the commission~~] for the management of endangered species.

B. In carrying out programs authorized by the Wildlife Conservation Act, the director may enter into agreements with federal agencies, political subdivisions of the state or with private persons for administration and management of any program established under this section or utilized for management of endangered species.

C. The director may authorize by permit the taking, possession, transportation, exportation or shipment of species or subspecies [~~which~~] that have been deemed [~~by the commission~~] to be in need of management as provided in the Wildlife Conservation Act, so long as such use is for scientific, zoological or educational purposes, for propagation in captivity of such wildlife or to protect private property.

D. Endangered species may be removed, captured or destroyed where necessary to alleviate or prevent damage to property or to protect human health. Such removal, capture or destruction may be carried out only by prior authorization by permit from the director, unless otherwise provided by law;

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provided that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human life or private property. [~~Regulations~~] Rules governing the removal, capture or destruction of endangered species shall be [~~adopted~~] promulgated by the [~~commission within one year after the effective date of the Wildlife Conservation Act~~] division."

SECTION 54. Section 17-2-43 NMSA 1978 (being Laws 1974, Chapter 83, Section 7) is amended to read:

"17-2-43. [~~COMMISSION~~] DIVISION--POWER TO REGULATE.--The [~~commission~~] division is authorized and directed to establish such [~~regulations~~] rules as it may deem necessary to carry out all the provisions and purposes of the Wildlife Conservation Act."

SECTION 55. Section 17-2-43.1 NMSA 1978 (being Laws 1995, Chapter 145, Section 8, as amended) is amended to read:

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

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

B. Any person adversely affected by a [~~regulation~~] rule adopted by the [~~commission~~] division or secretary may appeal to the court of appeals. All appeals shall be upon the record made at the hearing or contained in the public repository file and shall be taken to the court of appeals

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within thirty days following the date of the filing of the [~~regulation~~] rule by the [~~commission~~] division pursuant to the provisions of the State Rules Act.

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

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

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

(3) otherwise not in accordance with law.

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

(1) by the [~~commission~~] division; or

(2) by the court of appeals if the [~~commission~~] division 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 56. Section 17-2A-2 NMSA 1978 (being Laws 1996, Chapter 89, Section 4) is amended to read:

"17-2A-2. STATEWIDE SYSTEM FOR HUNTING ACTIVITIES.--The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department shall develop a statewide system for hunting activities that increases

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participation by New Mexico residents and considers hunter safety, quality hunts, high demand areas, guides and outfitters, quotas and local and financial interests."

SECTION 57. Section 17-3-7 NMSA 1978 (being Laws 1912, Chapter 85, Section 48, as amended) is amended to read:

"17-3-7. BLANK FORMS--LICENSE ISSUED ONLY ON APPLICATION--FALSE STATEMENT VOIDS LICENSE--RECORDS--REPORTS--ACCOUNTING FOR FEES COLLECTED--REFUND OF FEES--TRANSFER OF HUNTING LICENSE.--

A. The director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department shall prescribe and procure the printing of all forms and blanks that may be required to carry out the intent of Chapter 17 NMSA 1978. All necessary blanks shall be furnished by the director to the license collectors. No license shall be issued except as provided in Section 17-3-5 NMSA 1978. Any false statement in any application shall render the license issued void.

B. A license collector shall keep a correct and complete record of licenses issued, which record shall remain in the license collector's office and be open to inspection by the public at all times.

C. A license collector may collect and retain a vendor fee for each license or permit issued; provided the fee shall be just and reasonable, as determined by [~~regulation~~]

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rule of the [~~state game commission~~] game and fish division, and shall not exceed one dollar ($1.00) for each license or permit issued; and provided further that no such fee shall be collected by the [~~department of game and fish~~] division from the purchaser of a special license. "Special license" includes those licenses for the following species: antelope, elk, Barbary sheep, bighorn sheep, bison, oryx, ibex, gazelle and javelina.

D. A license collector shall remit to the director of the [~~department of~~] game and fish division the statutory fee of all licenses and permits sold on or before the tenth day of the month following and shall by the same time report the number and kind of licenses issued.

E. Except as provided in Section 17-1-14 NMSA 1978, the director of the [~~department of~~] game and fish division shall turn over all money so received to the state treasurer to be credited to the game protection fund.

F. The director of the [~~department of~~] game and fish division, in the director's sole discretion, may authorize a refund of the amount of a hunting license fee from the game and fish suspense fund if:

(1) upon written application by the licensee, prior to the time of the hunt for which the license has been issued, the director finds that:

(a) the licensee has a disability, due to a

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verified injury or life-threatening illness, that prohibits the licensee from hunting during the period that the license is valid; or

(b) the licensee has been deployed by the military and the deployment prevents the licensee from traveling to the hunt during the period that the license is valid; or

(2) upon written application by a personal representative of a licensee's estate, the director finds that the licensee died prior to the time of the hunt for which the license was issued.

G. The director of the [~~department of~~] game and fish division, in the director's sole discretion, may authorize a transfer of a hunting license:

(1) to the licensee's designee if, upon written application by the licensee, prior to the time of the hunt for which the license has been issued, the director finds that:

(a) the licensee has a disability, due to a verified injury or life-threatening illness, that prohibits the licensee from hunting during the period that the license is valid; or

(b) the licensee has been deployed by the military and the deployment prevents the licensee from traveling to the hunt during the period that the license is valid;

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(2) to the designee of the licensee's estate if, upon written application by the personal representative of the licensee's estate, the director finds that the licensee died prior to the time of the hunt for which the license was issued; or

(3) upon written application by a licensee, to a nonprofit organization approved by the [~~state game commission~~] division.

H. The [~~state game commission~~] game and fish division may prescribe, by rule, the documentation necessary for a finding pursuant to Subsection F or G of this section."

SECTION 58. Section 17-3-12 NMSA 1978 (being Laws 1959, Chapter 144, Section 6) is amended to read:

"17-3-12. ACCOUNTING FOR LICENSES.--When a license vendor is unable to account for hunting and fishing licenses issued to [~~him~~] the license vendor, the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department shall determine the extent of liability of the vendor, and the decision of the [~~commission~~] division shall be final."

SECTION 59. Section 17-3-13.5 NMSA 1978 (being Laws 2003, Chapter 290, Section 1) is amended to read:

"17-3-13.5. ELK LICENSES RESERVED.--The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department shall reserve no more than two elk

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licenses a year for sale to persons under the age of twenty-one who have been determined by a licensed physician to have a life-threatening illness and who have been qualified through a nonprofit wish-granting organization approved by the [~~commission~~] division."

SECTION 60. Section 17-3-14.1 NMSA 1978 (being Laws 1989, Chapter 86, Section 1) is amended to read:

"17-3-14.1. LANDOWNER PERMITS FOR ELK.--The director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department shall issue landowner permits for the lawful taking of elk in accordance with [~~regulations~~] rules of the [~~state game commission~~] division."

SECTION 61. Section 17-3-14.2 NMSA 1978 (being Laws 1998, Chapter 12, Section 1) is amended to read:

"17-3-14.2. LANDOWNER PERMITS--MANAGEMENT OF CERTAIN BIG GAME SPECIES.--The director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department may issue landowner permits for the lawful taking of elk, antelope, oryx and deer. The permits may be issued when, in the determination of the director, they are necessary to effectively reduce conflicts between humans and wildlife and provide sport-hunting opportunities in accordance with [~~regulations~~] rules of the [~~state game commission~~] division."

SECTION 62. Section 17-3-15 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 6, as amended) is amended to

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read:

"17-3-15. ADDITIONAL DEER LICENSE.--

A. It is a misdemeanor for any person to procure or use more than one license to hunt big game in one year, except as provided in this section, or to use any tag after it has been used once.

B. For the purpose of effectuating better game management and control, the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department may by [~~regulation~~] rule authorize the sale of not more than one additional deer license each year to any person holding a license that entitled the person to hunt deer during that year. The fee for an additional deer license shall be the resident or nonresident deer license fee pursuant to Section 17-3-13 NMSA 1978.

C. It is a misdemeanor for any person to take or attempt to take a deer with an additional deer license unless the person has the additional deer license and the other license that entitled the person to hunt deer for that year in the person's possession. Possession of an additional deer license without the other license that entitled the person to hunt deer for that year is prima facie evidence of violation of this section."

SECTION 63. Section 17-3-16.1 NMSA 1978 (being Laws 1989, Chapter 384, Section 1, as amended) is amended to read:

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"17-3-16.1. BIGHORN SHEEP ENHANCEMENT PERMITS--ISSUANCE--USE.--

A. The [~~state game commission shall direct the department of~~] game and fish [~~to~~] division of the energy, minerals and natural resources department shall authorize not more than two of the permits available for issuance in the license year for the taking of two bighorn rams for the purpose of raising funds for programs and projects to benefit bighorn sheep.

B. The [~~state game commission~~] game and fish division shall prescribe by [~~regulation~~] rule the form, design and manner of issuance of the bighorn sheep enhancement permits. The issuance of one permit shall be subject to auction by the [~~department~~] division or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the [~~commission~~] division and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the [~~department~~] division, or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the [~~commission~~] division.

C. All money collected from the issuance and sale of the bighorn sheep enhancement permits shall be credited to the game protection fund to be used exclusively for bighorn sheep preservation, restoration and management."

SECTION 64. Section 17-3-16.2 NMSA 1978 (being Laws 1999, Chapter 69, Section 1) is amended to read:

"17-3-16.2. ELK ENHANCEMENT PERMIT--ISSUANCE--USE.--

A. The [~~state game commission shall direct the department of~~] game and fish [~~to~~] division of the energy, minerals and natural resources department shall authorize two elk enhancement permits each license year for the taking of two elk bulls to raise funds for programs and projects to better manage elk.

B. The [~~state game commission~~] game and fish division shall prescribe by rule the form, design and manner of issuance of the two elk enhancement permits. The issuance of one permit shall be subject to auction by the [~~department~~] division or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the [~~commission~~] division, and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the [~~department~~] division or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the [~~commission~~] division.

C. All money collected from the issuance and sale of the elk enhancement permits shall be credited to the game protection fund to be used exclusively for elk restoration and management."

SECTION 65. Section 17-3-16.3 NMSA 1978 (being Laws 2003,

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"17-3-16.3. LIEUTENANT GOVERNOR'S DEER ENHANCEMENT PERMITS--ISSUANCE--USE.--

A. The [~~state game commission shall direct the department of~~] game and fish [~~to~~] division of the energy, minerals and natural resources department shall authorize two deer enhancement permits each license year for the taking of two deer to raise funds for programs and projects to better manage deer.

B. The [~~state game commission~~] game and fish division shall prescribe by rule the form, design and manner of issuance of the two deer enhancement permits. The issuance of one permit shall be subject to auction by the [~~department~~] division or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the [~~commission~~] division, and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the [~~department~~] division or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the [~~commission~~] division.

C. All money collected from the issuance and sale of the lieutenant governor's deer enhancement permits shall be credited to the game prctection fund to be used exclusively for deer restoration and management."

SECTION 66. Section 17-3-16.4 NMSA 1978 (being Laws 2005, Chapter 149, Section 1) is amended to read:

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"17-3-16.4. GOULD'S TURKEY ENHANCEMENT PERMITS--ISSUANCE--USE.--

A. The [~~state game commission may direct the department of~~] game and fish [~~to~~] division of the energy, minerals and natural resources department may authorize Gould's turkey enhancement permits for the taking of Gould's turkeys, Meleagris gallopavo mexicana, to raise funds for programs and projects to better manage the Gould's turkey population in New Mexico.

B. The [~~state game commission~~] game and fish division shall prescribe by rule the form, design and manner of issuance of the Gould's turkey enhancement permits. The issuance of the permits shall be subject to a lottery or auction. Such allotment of the permits may be conducted by an incorporated nonprofit organization dedicated to conservation of wildlife, in cooperation with and overseen by the [~~commission and the department of game and fish~~] division.

C. The [~~state game commission~~] game and fish division shall [~~direct the department of game and fish to~~] authorize Gould's turkey enhancement permits only after the [~~department~~] division has documented that the issuance of each enhancement permit will not jeopardize the prospects for the survival and recruitment of the Gould's turkey within New Mexico.

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D. Gould's turkey enhancement permits shall be authorized only when doing so does not conflict with the Wildlife Conservation Act or any rules implementing that act.

E. Money collected from the issuance and sale of the Gould's turkey enhancement permits shall be credited to the game protection fund to be used exclusively for the restoration and management of Gould's turkeys and Gould's turkey habitats, which support a variety of other unique and rare wildlife of southwestern New Mexico."

SECTION 67. Section 17-3-16.5 NMSA 1978 (being Laws 2007, Chapter 105, Section 1) is amended to read:

"17-3-16.5. HUNTING AND FISHING AUTHORIZATIONS--GOVERNOR'S SPECIAL EVENTS.--The director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department may annually make available to the governor no more than twelve big game special authorizations and twelve game bird or trophy fish special authorizations. The authorizations shall be allocated by auction in conjunction with special events called by the governor to raise money for fish and wildlife conservation. Any auction used to allocate an authorization shall comply with rules adopted by the [~~state game commission~~] division. Each authorization shall allow the holder to purchase a license to hunt or fish for the species indicated on the authorization during dates and times at locations specified

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by the [~~state game commission~~] division. The director may designate the species allowable for each authorization, but no more than three authorizations shall be issued for any one species each year. Money collected pursuant to the special authorizations of the governor shall be deposited in the game protection fund."

SECTION 68. Section 17-3-16.6 NMSA 1978 (being Laws 2007, Chapter 243, Section 1) is amended to read:

"17-3-16.6. ENHANCEMENT AUTHORIZATION PACKAGES--HABITAT ENHANCEMENT.--The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department shall adopt rules [~~for the department of game and fish~~] to issue enhancement authorization packages each license year for the taking of one each of elk, deer, oryx, ibex and pronghorn antelope. Each enhancement authorization package shall be auctioned by the [~~department of game and fish~~] division or by an incorporated nonprofit organization dedicated to the conservation of wildlife and sold to the highest bidder. Money collected from the enhancement authorization packages shall be deposited in the game protection fund and shall be used exclusively for big game habitat enhancement, conservation and protection."

SECTION 69. Section 17-3-17 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 8, as amended) is amended to read:

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"17-3-17. FISHING WITHOUT LICENSE--EXCEPTIONS.--

A. It is a misdemeanor for any person, except children who have not reached their twelfth birthday, to take or attempt to take any game fish from any public stream or water in this state without [~~having on his person~~] carrying a proper fishing license as provided by law. The presence of any person, except children who have not reached their twelfth birthday, along any public stream or water in this state with fishing rod, hook or line, without [~~having on his person~~] carrying a proper fishing license, is prima facie evidence of the violation of this section. The director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department or any conservation officer may require any person along any public stream or water in this state with fishing rod, hook or line to exhibit [~~his~~] the person's license.

B. The director [~~with the approval of the state game commission~~] of the game and fish division may designate no more than two nonconsecutive Saturdays in each year as free fishing days. During the free fishing days, residents and nonresidents may exercise the privileges of holders of proper fishing licenses without having proper fishing licenses and without payment of any license fees, subject to all limitations, restrictions, conditions, laws and rules [~~and regulations~~] applicable to holders of proper fishing

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licenses."

SECTION 70. Section 17-3-21 NMSA 1978 (being Laws 1949, Chapter 149, Section 3) is amended to read:

"17-3-21. FISHING LAWS APPLICABLE TO SPECIAL LICENSEES.--All fishing under the privileges granted to the holders of [~~such~~] special licenses issued pursuant to Section 17-3-19 NMSA 1978 shall be in accordance with the seasons and bag limits and other [~~regulations~~] rules established by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department."

SECTION 71. Section 17-3-24 NMSA 1978 (being Laws 1951, Chapter 60, Section 2) is amended to read:

"17-3-24. FISHING SUPERVISION AT BOYS' SCHOOL.--[~~Provided however, that such~~] Fishing by [~~said wards~~] resident children as provided by Section [~~1 of this act~~] 17-3-23 NMSA 1978 shall be done under the supervision of the officials of [~~said~~] the New Mexico [~~Industrial~~] boys' school and in conformity with seasons and bag limits established by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department."

SECTION 72. Section 17-3-26 NMSA 1978 (being Laws 1939, Chapter 27, Section 1, as amended) is amended to read:

"17-3-26. TAKING MINNOWS AND NONGAME FISH TO SELL AS BAIT--LICENSE REQUIRED--EXCEPTION.--It is unlawful for any person, except children under the age of twelve years, to

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take from the streams or public waters of this state minnows and nongame fish for the purpose of sale to fishermen or others for bait without having first procured from the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department a license therefor as provided in Sections 17-3-26 through 17-3-28 NMSA 1978."

SECTION 73. Section 17-3-27 NMSA 1978 (being Laws 1939, Chapter 27, Section 2, as amended) is amended to read:

"17-3-27. BAIT LICENSE--BOND--FEE--ISSUANCE.--Any person desiring to procure a license for the purpose of engaging in the business of selling minnows and nongame fish for bait or taking minnows and nongame fish from the streams of this state for the purpose of sale to others shall apply to the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department for a license. The application shall be upon forms provided by the [~~commission~~] division and shall set forth the public streams or waters out of which the applicant intends to take the minnows and nongame fish and the place at which they are to be sold. The application shall be accompanied by a just and reasonable fee as determined by [~~regulation~~] rule of the [~~state game commission~~] division. Upon receipt of the application, it [~~shall be~~] is the duty of the [~~state game commission or, when it is not in session, the~~] director of the [~~department of game and fish~~] division to pass upon the

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application and to issue a license authorizing the taking and the manner of taking of the minnows and nongame fish by the applicant from those waters in the state as in the opinion of the [~~state game commission or~~] director will not be detrimental to the public or injurious to protected fish. The license when so issued shall specify the manner of taking and the waters from which the applicant is permitted to take minnows and nongame fish for sale for bait."

SECTION 74. Section 17-3-28 NMSA 1978 (being Laws 1939, Chapter 27, Section 3) is amended to read:

"17-3-28. EXCEPTIONS--PROHIBITIONS.--Nothing in [~~this act~~] Sections 17-3-26 through 17-3-28 NMSA 1978 shall be construed to prevent licensed fishermen from taking minnows and other nongame fish for [~~his~~] their own use for bait or to prevent any minor under fifteen [~~(15)~~] years of age from taking minnows not for resale; provided, however, that it shall be unlawful for licensed fishermen or any other person using nongame fish for bait to place any of [~~such~~] the nongame fish [~~which~~] that are not used for bait in any waters stocked or reserved for game fish by the [~~state game commission of the state of New Mexico~~] game and fish division of the energy, minerals and natural resources department."

SECTION 75. Section 17-3-29 NMSA 1978 (being Laws 1912, Chapter 85, Section 42, as amended) is amended to read:

"17-3-29. PERMIT TO TAKE GAME, BIRDS OR FISH AS

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SPECIMENS OR FOR SCIENTIFIC OR PROPAGATING PURPOSES--ELIGIBILITY--ISSUANCE--CONTENTS--NONASSIGNABLE--SALE FOR FOOD PURPOSES PROHIBITED.--The [~~state~~] director of the game and fish division of the energy, minerals and natural resources department may issue permits to any person to take, capture, kill or transport within or out of the state any game, birds or fish mentioned in [~~this~~] Chapter 17 NMSA 1978 at any time when satisfied that [~~such~~] the person desires the [~~same~~] game, birds or fish exclusively as specimens or for scientific or propagating purposes. [~~Such~~] The permit shall be in writing and shall state the kind and number to be taken and the manner of taking, the name of the person to whom issued, the name of the place to which the [~~same is~~] game, birds or fish are to be transported and the name of the persons shipping [~~such~~] the game, birds or fish, and shall be signed by [~~him. Such~~] the person. The permit shall not be transferable, nor shall it be lawful to sell or barter any of the [~~animals~~] game, birds or fish taken or exported under [~~such~~] the permit for food purposes, and the holder [~~such~~] of the permit shall be liable to the penalties provided in [~~this~~] Chapter 17 NMSA 1978 if [~~he~~] the person violates any of its provisions."

SECTION 76. Section 17-3-30 NMSA 1978 (being Laws 1912, Chapter 85, Section 43, as amended) is amended to read:

"17-3-30. GAME AND FISH [~~WARDEN MAY TRANSMIT SPECIMENS~~] FURNISHED TO OTHER STATES.--[~~SEC. 43.~~] The [~~State Warden~~] director of the game and fish division of the energy, minerals and natural resources department may, upon application from the game and fish warden or corresponding officer of any other state, procure and transmit to [~~such~~] that officer alive specimens of the game animals, birds and fish of this state to be used for scientific or propagating purposes."

SECTION 77. 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~~] a 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~~] rules referred to in Section 17-2-10 NMSA 1978, the license, certificate or permit shall be revoked by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department 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~~] game and fish division shall cause a record of the hearing to be

made and shall allow the person charged to examine witnesses testifying at the hearing. [~~Any~~] A person whose license, certificate or permit has been revoked by the [~~commission~~] division may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

SECTION 78. Section 17-3-36 NMSA 1978 (being Laws 1957, Chapter 194, Section 2, as amended) is amended to read:

"17-3-36. REGULATED SHOOTING PRESERVES--FEES.--The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department may issue licenses authorizing the establishment and operation of regulated propagated game bird shooting preserves on private lands when in the judgment of the [~~commission~~] division such areas will not conflict with any reasonable prior interest. The [~~commission~~] division shall govern and prescribe by [~~regulation~~] rule the following:

A. the minimum and maximum size of the areas, including the type of fences and signs;

B. the method of hunting;

C. the open and closed seasons, which need not conform to the regular hunting seasons;

D. the releasing, possession and use of legally propagated pen-raised game birds on the preserves; and

E. the fee for the licenses, which shall be just and reasonable."

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SECTION 79. Section 17-3-38 NMSA 1978 (being Laws 1957, Chapter 194, Section 4) is amended to read:

"17-3-38. TAGS.--All game birds taken from preserves shall be tagged, with tags to be furnished by the [~~commission~~] game and fish division of the energy, minerals and natural resources department at a reasonable fee, before being transported."

SECTION 80. Section 17-3-39 NMSA 1978 (being Laws 1957, Chapter 194, Section 5) is amended to read:

"17-3-39. SPECIAL NONRESIDENT LICENSES.--The [~~commission~~] game and fish division of the energy, minerals and natural resources department may issue special nonresident bird licenses to nonresidents to hunt on regulated shooting preserves with the owner's consent for legally propagated game birds upon the payment of a license fee of five dollars [~~and~~] twenty-five cents ($5.25). The license must be carried on the person at all times when hunting on private shooting preserves.

Five dollars ($5.00) of the special nonresident bird license fee is to be paid to the [~~state game and fish department~~] division. Twenty-five cents ($.25) of the fee is to be retained by the issuing agent."

SECTION 81. Section 17-3-42 NMSA 1978 (being Laws 1957, Chapter 194, Section 8) is amended to read:

"17-3-42. REVOCATION OF PERMITS.--Any permit issued

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under the [~~Private~~] Regulated Shooting Preserve Act may be revoked for a violation of any provision or any [~~regulation~~] rule made by the [~~commission~~] game and fish division of the energy, minerals and natural resources department relating to [~~the~~] that act."

SECTION 82. Section 17-3-49 NMSA 1978 (being Laws 2006, Chapter 86, Section 1) to read:

"17-3-49. COMPUTER-ASSISTED REMOTE HUNTING PROHIBITED--PENALTIES.--

A. A person shall not:

(1) engage in computer-assisted remote hunting;

(2) provide or operate facilities for the purpose of computer-assisted remote hunting;

(3) create, maintain, provide, advertise or sell computer software or an internet web site for the purpose of computer-assisted remote hunting; or

(4) entice, possess or confine an animal or bird for the purpose of computer-assisted remote hunting.

B. A person who violates the provisions of this section shall be sentenced in accordance with the provisions of Section 17-2-10 NMSA 1978.

C. When a person who violates the provisions of this section possesses a license, certificate or permit issued by the [~~state game commission~~] game and fish division

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of the energy, minerals and natural resources department, the license, certificate or permit shall be subject to revocation by the [~~commission~~] division pursuant to Sections 17-1-14 and 17-3-34 NMSA 1978.

D. As used in this section:

(1) "computer-assisted remote hunting" means the use of a computer or other electronic device, equipment or software to access the internet and remotely control the aiming and discharge of a bow, crossbow or firearm of any kind for the purpose of hunting, taking or capturing an animal or bird; and

(2) "facilities for computer-assisted remote hunting" means the real property and improvements on the property associated with computer-assisted remote hunting, including hunting blinds, offices and rooms equipped to facilitate computer-assisted remote hunting."

SECTION 83. Section 17-4-1 NMSA 1978 (being Laws 1939, Chapter 223, Section 1, as amended) is amended to read:

"17-4-1. POWER TO ACQUIRE LAND.--The [~~state game commission of the state of New Mexico~~] game and fish division of the energy, minerals and natural resources department is [~~hereby~~] authorized and empowered to acquire by purchase, gift, bequest or lease, and to hold, develop and improve, lands for fish hatcheries, game farms, game refuges, bird refuges, resting and nesting grounds, field stations, dams,

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lakes, ditches, flumes, waterways, pipelines, canals, rights of way, trails, roads and for all purposes incidental to the propagation, preservation, protection and management of the game, birds, fish and wildlife of the state [~~of New Mexico~~]."

SECTION 84. Section 17-4-2 NMSA 1978 (being Laws 1939, Chapter 223, Section 2, as amended) is amended to read:

"17-4-2. EMINENT DOMAIN POWER--ABANDONMENT OR RELINQUISHMENT OF PROPERTY ACQUIRED.--Any property or rights of way required for use by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department may be acquired as for a public purpose and as a matter of public necessity under the power of eminent domain, by and with the written approval of the board of county commissioners of the county in which the property or rights of way sought are located, in an action instituted and prosecuted in the name of the state, according to the procedure for condemnation provided by the Eminent Domain Code; provided, nevertheless, that any property right acquired under the provisions of this section, if and when the use for which it was acquired has been abandoned for three years or otherwise relinquished, shall revert to the grantor from whom it was derived."

SECTION 85. Section 17-4-3 NMSA 1978 (being Laws 1939, Chapter 223, Section 3, as amended) is amended to read:

"17-4-3. SALE, EXCHANGE OR LEASE OF LANDS--PROCEEDS.--

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The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department, except as [~~herein~~] limited in this section, is authorized to exchange, sell, lease, sublease or assign any interest in any lands and leases heretofore or hereafter acquired, including but not limited to the sale or lease of timber, oil, gas, minerals or any other severable product of or interest in real estate, when in the [~~judgement~~] judgment of [~~said commission such~~] the division the transaction will be in the interest of the [~~state game commission~~] division and [~~said~~] the lands, leases, products or severable parts thereof are in the opinion of [~~such commission~~] the division no longer necessary for the purposes for which [~~such~~] the lands were acquired or where [~~such~~] the lease or sublease will not materially interfere [~~with~~] or conflict with the use of [~~such~~] the lands for the purpose for which they were acquired. The proceeds of any such sale, exchange, lease or assignment shall be converted into the game protection fund and disbursed as the other [~~moneys~~] money in [~~said~~] the fund [~~are~~] is disbursed."

SECTION 86. Section 17-4-12 NMSA 1978 (being Laws 1912, Chapter 85, Section 63, as amended) is amended to read:

"17-4-12. LICENSE--APPLICATION--CONTENTS--LIMITS.--Any person having already established or desiring to establish or maintain a park or lake for the purpose of keeping or propagating and selling the game or game fish [~~therein~~] in

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the park or lake, or to be placed therein, shall apply in writing to the [~~Warden~~] director of the game and fish division of the energy, minerals and natural resources department, stating the name, location, extent and proprietorship of the [~~same~~] park or lake and the kind and, as near as may be, the number of game or game fish kept or desired to be kept therein and the term for which the license is desired and [~~inclosing~~] enclosing the fee [~~therefor, and~~] for the license. If upon examination by the [~~Warden~~] director it [~~shall appear~~] appears that the application is in good faith and in other respects proper and reasonable, [~~he~~] the director shall grant to [~~such~~] the applicant a license therefor; provided that the maximum area that may be included within any park shall not exceed three thousand two hundred acres and that every park shall be enclosed by a game-proof fence [~~which~~] that shall conform to specifications required by the [~~state game commission~~] division."

SECTION 87. Section 17-4-13 NMSA 1978 (being Laws 1912, Chapter 85, Section 64, as amended) is amended to read:

"17-4-13. LICENSE--[~~SEC. 63~~] FORM [~~OF~~].--[~~SEC. 64.~~] Such license shall be substantially in the following form:

GAME AND FISH

STATE OF NEW MEXICO

[~~DEPARTMENT OF~~] GAME AND FISH DIVISION

LICENSED PARKS AND LAKES

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No._____ Class A. Santa Fe_____ [~~19~~] 20__

This certifies that _____ proprietor of a (public or private) (park or lake) called _____ and situated on _____ Sec_____ Twp _____ Range _____ in _____ county, New Mexico, is hereby authorized to keep and propagate [~~therein~~] and dispose of as provided by law the following (game quadrupeds, birds or fish), viz: _____ together with such additions thereto (with the natural increase of all) as may be hereafter lawfully acquired. This license expires _____ years after date.

_____ [~~Warden~~] Director."

SECTION 86. Section 17-4-16 NMSA 1978 (being Laws 1912, Chapter 85, Section 67, as amended) is amended to read:

"17-4-16. GAME OR FISH FROM PARKS OR LAKES--SALE [~~OF--OWNER--DUTY~~]--INVOICE--FORM [~~WARDEN~~].--[~~SEC. 67.~~] When the proprietor of any licensed park or lake of Class A shall sell or dispose of any game or game fish as [~~herein~~] provided [~~he~~] in Sections 17-4-8 through 17-4-28 NMSA 1978, the proprietor shall at the same time deliver to the purchaser or donee or attach thereto an invoice signed by [~~such~~] the proprietor or [~~his~~] the proprietor's agent,

stating the number of the license and name of [~~such~~] the park or lake, the date of disposition, the kind and as near as practicable the number and weight of [~~such~~] the game or fish and the name and address of the purchaser, consignee or donee. [~~Such~~] The invoice shall authorize transportation within this state, possession and use for thirty days after its date and shall be substantially in the following form:

STATE OF NEW MEXICO

[~~DEPARTMENT OF~~] GAME AND FISH DIVISION

PRIVATE PARKS AND LAKES--INVOICE

Name of park or lake_____Class A No. of license _____ Date _____ [~~19~~] 20 _____ Kind and number of game and fish_____ Weight of same _____ lbs. Name of consignee_____ _____ Address of consignee_____

This authorizes transportation within this state, possession and sale for thirty days after date if attached to article.

_____ Proprietor_____

By_____Agent.

[~~Such~~] The proprietor or [~~his~~] the proprietor's agent shall at the same time mail, postpaid, a duplicate of [~~such~~] the invoice to the [~~Warden~~] director of the game and fish division of the energy, minerals and natural resources department at Santa Fe."

SECTION 89. Section 17-4-31 NMSA 1978 (being Laws 1951, Chapter 66, Section 2) is amended to read:

"17-4-31. FEDERAL FUNDS--DISBURSEMENT.--The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department is authorized to receive any [~~moneys~~] money to which the state [~~of New Mexico~~] may become entitled under the [~~aforesaid~~] act of congress set forth in Section 17-4-30 NMSA 1978, such [~~moneys~~] money when received to be deposited with the state treasurer [~~of the state of New Mexico~~] to the credit of the [~~State~~] game protection fund, expended for the purpose designated and withdrawn as other [~~moneys are~~] money is withdrawn from the [~~State~~] game protection fund."

SECTION 90. Section 17-4-32 NMSA 1978 (being Laws 1965, Chapter 73, Section 1) is amended to read:

"17-4-32. DESTRUCTION OF BOUNDARY MARKERS.--Every person who shall [~~wilfully~~] willfully, maliciously and without cause break down, injure, remove or destroy any sign, marker or poster erected for the purpose of designating the boundaries of any tract of land, refuge or sanctuary for wildlife, or for the purpose of designating the boundaries of a hunting area set forth by [~~the state~~

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~~game commission~~] or under the direction of the director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department, shall upon conviction thereof be deemed guilty of a petty misdemeanor."

SECTION 91. Section 17-4-33 NMSA 1978 (being Laws 2005, Chapter 173, Section 1) is amended to read:

"17-4-33. GAINING ACCESS INTO NATURE PROGRAM--POLICY--ADDITIONAL POWERS OF [~~STATE GAME COMMISSION~~] GAME AND FISH DIVISION.--

A. It is the policy of the state [~~of New Mexico~~] to encourage and promote wildlife-associated recreation in New Mexico and to provide for public participation in the use of available natural resources in a manner that will benefit the general public in its enjoyment of public assets and the state and its political subdivisions in increased economic development.

B. To implement the state policy, the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department shall develop and administer a "gaining access into nature program" pursuant to the provisions of this section.

C. In addition to its other powers, in order to develop and administer the gaining access into nature program, the [~~state game commission~~] game and fish division may:

(1) designate areas and properties under its

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control where activities other than hunting, fishing and trapping are available to the public;

(2) designate activities that may take place on properties under its control and designate conditions and qualifications for the activities;

(3) enter into partnership and joint powers agreements, leases and other contractual arrangements with other state agencies, private landowners and other private entities to jointly administer, promote and expand the gaining access into nature program;

(4) issue permits, special use licenses and other authorizations for access to individuals and organizations to access [~~state game commission~~] division properties for purposes of participating in gaining access into nature programs and charge fees for the access privileges; provided that the fees do not exceed the reasonable costs associated with developing and administering the gaining access into nature program;

(5) engage in public outreach programs to identify through public meetings, surveys and educational programs the interests of the public that may be best served by the gaining access into nature program;

(6) adopt such rules as it deems necessary for programs, events or other activities to properly implement the goals and the administration of the gaining access into nature

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program; and

(7) subject to appropriation by the legislature, expend money from the game protection fund necessary to develop and administer the gaining access into nature program, including:

(a) the reasonable costs of improving habitat and properties in order to make them suitable for the public uses intended;

(b) costs of personnel necessary to service the properties being used for the program and to provide informational and interpretive services on the properties;

(c) the reasonable costs of maintenance and repair of habitat and properties being used for public access under the provisions of this section; and

(d) costs associated with issuing permits, licenses and other authorizations for access.

D. All money collected from issuing and selling gaining access into nature permits, licenses and other authorizations for access shall be deposited in the game protection fund."

SECTION 92. Section 17-4-34 NMSA 1978 (being Laws 2005, Chapter 177, Section 2) is amended to read:

"17-4-34. HABITAT MANAGEMENT STAMP--FUND--EXPENDITURE FOR HABITAT MANAGEMENT--EXCEPTION.--

A. On and after April 1, 2006, each of the

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following licenses or permits shall include a habitat management stamp. The fee for a habitat management stamp shall be three dollars ($3.00). Each of the following licenses or permits shall not be considered to be a proper and valid license unless the licensee can demonstrate, by a stamp, check off or other official mark, that the fee for the habitat management stamp has been paid, provided that an individual purchaser shall be required to purchase only one stamp each license year, regardless of the number of licenses or permits purchased by that purchaser:

(1) a resident or nonresident license specified in Section 17-3-13 NMSA 1978; or

(2) a wildlife-associated recreation permit issued by the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department pursuant to Section [~~17-1-4~~] 17-1-14 NMSA 1978.

B. Revenue from the sale of habitat management stamps shall be deposited in the "habitat management fund", hereby created in the state treasury. The fund shall consist of money appropriated and transferred to the fund and revenue from the sale of habitat management stamps deposited in the fund. Earnings from investment of the fund shall be credited to the fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn

by the secretary of finance and administration pursuant to vouchers signed by the director of the [~~department of~~] game and fish division.

C. Upon appropriation by the legislature, money in the habitat management fund may be expended by the [~~state game commission~~] game and fish division only for the improvement, maintenance, development and operation of property for fish and wildlife habitat management.

D. A habitat management stamp shall not be required for persons under the age of eighteen."

SECTION 93. Section 17-4-35 NMSA 1978 (being Laws 2009, Chapter 38, Section 1, as amended) is amended to read:

"17-4-35. AQUATIC INVASIVE SPECIES CONTROL.--

A. Based on a determination of credible scientific evidence, the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, is authorized to designate:

(1) species of exotic or nonnative animals or plants as aquatic invasive species;

(2) water bodies within the state as infested waters; and

(3) specific requirements to decontaminate conveyances and equipment.

B. Prior to entering a conveyance or equipment into

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any water body in the state, the owner or person in control of a warning-tagged conveyance or warning-tagged equipment or a conveyance or equipment that has been in an infested water body in New Mexico or elsewhere shall:

(1) have the conveyance or equipment decontaminated by a person or entity approved by the director to effect decontamination, and only the person legally effecting the decontamination is authorized to remove a warning tag and provide certification that the conveyance or equipment is free from infestation; or

(2) have the conveyance or equipment inspected and certified as free from infestation by trained personnel prior to entering a water body or if certification or other documentation of decontamination is not available, otherwise demonstrate compliance with the decontamination requirements established by the director.

C. A law enforcement officer may impound a conveyance or equipment if the person transporting the conveyance or equipment refuses to submit to an inspection authorized by this section and the officer has reason to believe that an aquatic invasive species may be present, or if the conveyance or equipment has a warning tag affixed and the operator of the conveyance is attempting to enter a state water body and cannot provide evidence that the conveyance or equipment has been decontaminated. A law enforcement officer

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shall take action to prevent equipment or conveyances believed or known to contain an aquatic invasive species and warning-tagged equipment or conveyances from entering a state water body.

D. The impoundment of a conveyance or equipment may continue for a reasonable period necessary to inspect and decontaminate the conveyance or equipment.

E. Notwithstanding any provision to the contrary, no motor vehicle that is drawing a conveyance shall be impounded pursuant to this section.

F. Trained personnel may:

(1) establish, operate and maintain aquatic invasive species check stations and conduct inspections at or adjacent to the entrance to any state-controlled water body or, pursuant to a cooperative agreement, at or adjacent to any county, municipal or federally or privately controlled water body or at or adjacent to the exit point of an infested water body or at a location agreed to by the owner of the conveyance or equipment in order to inspect conveyances and equipment prior to a conveyance or equipment entering, being launched onto or being directly exposed to water bodies of the state or upon the conveyance's or equipment's departure from infested waters;

(2) affix a warning tag to equipment or a conveyance where the presence of an aquatic invasive species

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has been found;

(3) affix a warning tag to a conveyance or equipment upon the conveyance or equipment leaving an infested water; or

(4) affix a warning tag to a conveyance or equipment that the trained personnel have reason to believe is infested with an aquatic invasive species based on its point of origin or use.

G. Except for state, local, tribal or federal agencies and their respective agents, employees and contractors while performing their duties or contractual obligations specific to management or control of an aquatic invasive species, it is unlawful for a person to:

(1) knowingly possess, import, export, ship or transport an aquatic invasive species into, within or from the state;

(2) knowingly release, place, plant or cause to be released, placed or planted an aquatic invasive species into a water body or adjacent to a water body where it reasonably might be anticipated to be introduced into a water body that is not infested;

(3) remove a warning tag other than as provided pursuant to this section;

(4) introduce any tagged conveyance or equipment or any equipment or conveyance from which a warning

tag has been unlawfully removed into a water body without first having that conveyance or equipment decontaminated and certified pursuant to the provisions of this section; or

(5) knowingly introduce into any water body a conveyance or equipment that has been exposed to an infested water body or a water body in any other state known to contain aquatic invasive species without first being decontaminated and certified pursuant to the provisions of this section.

H. Knowingly or willfully violating any provision of this section as a first offense is a petty misdemeanor. A second or subsequent violation of any provision of this section is a misdemeanor. Any violation is punishable pursuant to Section 31-19-1 NMSA 1978.

I. The director or the director's designee shall coordinate the monitoring of the water bodies of the state for the presence of aquatic invasive species, including privately controlled waters if the director has authorized access to them or has received permission to monitor them from the persons controlling access to such waters.

J. Upon determination of an infested water body in New Mexico, the director shall immediately recommend to the person in control of the infested water body actions to limit access or take other actions to prevent the potential spread of an aquatic invasive species to other water bodies.

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K. The [~~commission~~] division is authorized to adopt rules pursuant to Section 17-1-26 NMSA 1978, and the secretary of energy, minerals and natural resources is authorized to adopt rules pursuant to Section 16-2-32 NMSA 1978 as necessary to implement and enforce the provisions of this section.

L. The director may enter into cooperative agreements with any federal, state, county or municipal authority or private entity that may be in control of a water body potentially affected by aquatic invasive species.

M. As used in this section:

(1) "aquatic invasive species" means quagga mussels and zebra mussels and other exotic or nonnative aquatic animals, including invertebrates but excluding those species listed as protected in Chapter 17 NMSA 1978, or any plant or animal species whose introduction into an aquatic ecosystem is determined by the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, to cause or be likely to cause harm to the economy, environment or human health or safety;

[~~(2) "commission" means the state game commission;~~

~~(3)~~] (2) "conveyance" means a motor vehicle, vessel, trailer or any associated equipment or containers,

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including, but not limited to, live wells, fish-hauling tanks, ballast tanks, motorized skis and bilge areas that may contain or carry an aquatic invasive species or any other equipment by which aquatic invasive species may be introduced into an aquatic ecosystem;

[~~(4)~~] (3) "decontaminate" means to wash, drain, dry or otherwise treat a conveyance in accordance with guidelines established by the director in order to remove or destroy an aquatic invasive species;

[~~(5)~~] (4) "director" means the director of the [~~department of game and fish~~] division;

(5) "division" means the game and fish division of the energy, minerals and natural resources department;

(6) "equipment" means an article, a tool, an implement, a device or a piece of clothing, including boots and waders, that is capable of containing or transporting water;

(7) "infested water" means a geographic region, water body or water supply system or facility within the state that the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, identifies as carrying or containing an aquatic invasive species or a water body outside the state

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that has been identified as carrying or containing an aquatic invasive species;

(8) "inspect" means to examine a conveyance or equipment to determine whether an aquatic invasive species is present;

(9) "law enforcement officer" means a state or federal certified law enforcement officer;

(10) "trained personnel" means individuals who have successfully completed the United States fish and wildlife service's aquatic invasive species watercraft inspection and decontamination training, level I or level II, or an equivalent training recognized by the director;

(11) "warning tag" means a tag that is affixed to equipment or a conveyance upon the equipment or conveyance leaving an infested water or upon an inspection determining that the equipment or conveyance contains an aquatic invasive species that requires the equipment or conveyance to be decontaminated; and

(12) "water body" means a natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank or fountain."

SECTION 94. Section 17-5-3 NMSA 1978 (being Laws 1939, Chapter 178, Section 3, as amended) is amended to read:

"17-5-3. SEASONS--SPECIAL PERMITS TO TAKE ANIMALS DOING DAMAGE.--Fur-bearing animals as defined in Section 17-5-2

NMSA 1978 shall be taken only during the seasons declared by [~~regulation~~] rule of the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department promulgated as provided in Section 17-5-4 NMSA 1978. The director of the division may, however, issue permits at any time for the taking of fur-bearing animals doing damage to game, private property, poultry or livestock."

SECTION 95. Section 17-5-4 NMSA 1978 (being Laws 1939, Chapter 178, Section 4, as amended) is amended to read:

"17-5-4. [~~STATE GAME COMMISSION~~] GAME AND FISH DIVISION TO ADMINISTER ACT--RULES [~~AND REGULATIONS~~].--The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department is authorized and directed to administer the provisions of Sections 17-5-1 through 17-5-9 NMSA 1978 and to make such rules [~~and regulations~~] and establish such [~~service~~] services as it may deem necessary to carry out all the provisions and purposes of those sections. In making [~~such~~] rules [~~and regulations~~] and providing when and by what means fur-bearing animals may be hunted, taken, captured, possessed or killed, the [~~state game commission~~] division shall give due regard to the zones of temperatures and to the distribution, abundance, economic value and breeding habits of [~~such~~] the animals. Provided, nothing in Sections 17-5-1 through 17-5-9 NMSA 1978 shall interfere with

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the authority granted to the president of New Mexico state university under Sections 77-15-1 through 77-15-5 NMSA 1978 or [~~shall~~] prevent livestock producers without a permit from the taking of bobcats that are doing damage to livestock."

SECTION 96. Section 17-5-5 NMSA 1978 (being Laws 1939, Chapter 178, Section 5, as amended) is amended to read:

"17-5-5. TRAPPER'S LICENSES.--

A. No resident who has reached [~~his twelfth birthday~~] the age of twelve shall capture, trap or possess any fur-bearing animal or attempt to do so without first procuring a resident trapper's license; or, in the case of a resident who has reached [~~his twelfth birthday~~] the age of twelve but not [~~his eighteenth birthday~~] the age of eighteen, a resident junior trapper's license.

B. No nonresident shall capture, trap or possess any fur-bearing animal or skunk or coyote or attempt to do so without first procuring a nonresident trapper's license.

C. No nonresident who resides in a state that does not permit New Mexico residents to procure nonresident trapper's licenses may purchase a New Mexico nonresident trapper's license.

D. Trappers shall release all fur-bearing animals trapped during closed seasons, and resident trappers who release all fur-bearing animals during open seasons need not procure a trapper's license.

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E. Trappers on official business, paid from state and federal funds and under supervision of the [~~department of~~] game and fish division of the energy, minerals and natural resources department, the New Mexico department of agriculture or the United States fish and wildlife service need not purchase a trapper's license.

F. Trapping of animals, both fur-bearing and nongame, by a resident in order to protect [~~his~~] livestock or domesticated animals or fowl shall not be subject to rules [~~and regulations~~] on trapping made pursuant to Section 17-5-4 NMSA 1978 or to licensing requirements provided in this section.

G. The [~~state game commission~~] game and fish division may by [~~regulation~~] rule require holders of trapper's licenses to use bobcat pelt tags and may specify the conditions for use of the tags."

SECTION 97. Section 17-5-8 NMSA 1978 (being Laws 1939, Chapter 178, Section 9) is amended to read:

"17-5-8. OFFICERS AUTHORIZED TO ENFORCE ACT.--All peace officers, [~~Port of Entry~~] employees of the motor transportation division of the department of public safety and [~~deputy game wardens~~] conservation officers are hereby authorized and required to cooperate fully with the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department in the enforcement

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of [~~this Act~~] Sections 17-5-1 through 17-5-9 NMSA 1978. It shall be the duty of all [~~such~~] those persons to make searches, seizures and arrests as in the case of other misdemeanors."

SECTION 98. Section 17-6-2 NMSA 1978 (being Laws 1973, Chapter 242, Section 2) is amended to read:

"17-6-2. DEFINITIONS.--As used in the Habitat Protection Act:

A. [~~"commission"~~] "division" means the [~~state game commission~~] game and fish division of the energy, minerals and natural resources department;

B. "cross-country" means travel over the countryside other than by road;

C. "vehicle" means any motor-powered mechanical device used for conveyance; and

D. "road" means any maintained or unmaintained right of way that has been utilized by the public, and includes roads, streets, highways and state scenic, recreation or historical trails."

SECTION 99. Section 17-6-3 NMSA 1978 (being Laws 1973, Chapter 242, Section 3, as amended) is amended to read:

"17-6-3. RESTRICTIONS ON MOTOR VEHICLE USE--RECOMMENDATIONS--RULES [~~AND REGULATIONS~~].--

A. When the [~~commission~~] division determines that the operation of vehicles within a certain area is or may be

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damaging to wildlife reproduction, wildlife management or the wildlife habitat of the area, the [~~department~~] division, with the concurrence of the private land owner or the land management agency involved, after proper notice, shall hold public meetings in the area affected on the necessity and desirability of closing such lands to the operation of any vehicles for a stated definite period. Upon finding, after public meetings, that the use of vehicles on such lands is or may be damaging to wildlife reproduction or habitat and that it is necessary and desirable to close such lands to vehicles in order to avoid such damage, the [~~commission~~] division shall make and publish an order closing such lands to vehicle operation except on established roads that are marked by appropriate signs.

B. The [~~commission~~] division may also recommend to the appropriate land management agency or the legislature that particular areas of land be set aside or made available for recreational vehicles.

C. The [~~commission~~] division may also enter into agreements with or recommend to public land management agencies that certain areas be closed to camping during particular open hunting seasons or that camping be permitted only in designated areas during such open hunting seasons.

D. The [~~commission~~] division may enter into agreements with private landowners and land management

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agencies controlling areas that the [~~commission~~] division has made recommendations on pursuant to Subsection B of this section. Any such agreement shall stipulate the restrictions, prohibitions and permitted uses of vehicles in such area and the duties of the [~~commission~~] division and such private landowner or land management agency relating to the enforcement of the terms of such agreement. Agreements with private landowners may also include provisions for sharing costs of performing any of the functions as set forth in Section [~~53-6-7 NMSA 1953~~] 17-6-7 NMSA 1978.

E. The [~~commission~~] division shall adopt and file, in accordance with the State Rules Act, rules [~~and regulations~~] necessary to carry out the provisions of the Habitat Protection Act, including [~~regulations~~] rules setting out procedures for hearings and notice."

SECTION 100. Section 17-6-4 NMSA 1978 (being Laws 1973, Chapter 242, Section 4) is amended to read:

"17-6-4. NOTICES OF RESTRICTIONS--POSTING--PUBLICATION.--

A. For all areas closed to vehicles pursuant to Section [~~53-6-3 NMSA 1953~~] 17-6-3 NMSA 1978, the [~~commission~~] division shall cause notices of the restrictions, prohibitions or permitted uses of such areas to be posted prior to their effective date on the main traveled roads entering such areas and at such other locations as the

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[~~commission~~] division deems appropriate.

B. In addition to the public meetings required by Section [~~53-6-3 NMSA 1953~~] 17-6-3 NMSA 1978 and posted notices required by Subsection A of this section, the [~~commission~~] division shall publish a notice of such restrictions, prohibitions or permitted uses, together with a description of the area, in a newspaper of general circulation in the area of the state affected for three consecutive weeks prior to the effective date of such restrictions, prohibitions or permitted uses. Copies of the notices of restrictions, prohibitions or permitted uses together with a description or appropriate map of the area affected by the notices shall be made available to the public by the [~~commission~~] division."

SECTION 101. Section 17-6-7 NMSA 1978 (being Laws 1973, Chapter 242, Section 7) is amended to read:

"17-6-7. EXPENDITURE OF FUNDS--FUNCTIONS.--The [~~commission~~] division may expend such funds as become available from the game protection fund, state or federal grants or other sources to carry out the provisions of the Habitat Protection Act, including but not limited to:

A. investigations and surveys of actual or possible wildlife habitat damage by vehicles and the study of areas to be recommended for recreational vehicle use;

B. posting notices of restrictions, prohibitions

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and permitted use of vehicles;

C. providing maps and other necessary information to the public;

D. an informational and educational program on wildlife habitat preservation and restoration; or

E. the enforcement of the provisions of the Habitat Protection Act."

SECTION 102. Section 17-6-8 NMSA 1978 (being Laws 1973, Chapter 242, Section 8) is amended to read:

"17-6-8. LIMITATION OF LIABILITY ON LANDOWNERS.--No person or corporation, or their successors in interest, [~~who~~] that has granted a right of way or easement across [~~his~~] the person's land to the [~~commission~~] division for use under the Habitat Protection Act shall be liable to any user of the land for injuries suffered on [~~said~~] the right of way or easement unless the injuries are caused by the willful or wanton misconduct of the grantor."

SECTION 103. Section 17-7-2 NMSA 1978 (being Laws 1976 (S.S.), Chapter 43, Section 2, as amended) is amended to read:

"17-7-2. FUND CREATED.--There is created in the state treasury a special fund to be known as the "shooting range fund". All money appropriated to this fund or accruing to it as a result of gift, deposit or from other sources, except interest earned on the fund [~~which~~] that shall be credited to

the general fund, shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in the Shooting Range Fund Act. Appropriated money in the fund shall not revert to the general fund. Money in the fund shall be used for construction or improvement of public shooting ranges pursuant to the Shooting Range Fund Act. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department."

SECTION 104. Section 17-7-3 NMSA 1978 (being Laws 1976 (S.S.), Chapter 43, Section 3) is amended to read:

"17-7-3. ADMINISTRATION.--

A. The [~~state game commission~~] game and fish division of the energy, minerals and natural resources department shall administer the provisions of the Shooting Range Fund Act and shall, pursuant to the State Rules Act, adopt such rules [~~and regulations~~] as deemed necessary to carry out the provisions of the Shooting Range Fund Act.

B. Rules [~~and regulations~~] shall include:

(1) a method for the determination of a county or municipality eligibility for grants from the shooting range fund;

(2) procedures for applications, approvals and

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rejections of grant proposals;

(3) a requirement that a county or municipality contribute at least twenty-five percent of the cost necessary to complete a shooting range grant proposal;

(4) a requirement that one-half of the local contribution required by Paragraph (3) of this subsection is to be money;

(5) a requirement that a shooting range project shall be undertaken in accordance with specifications determined by the [~~department of~~] game and fish division. Such specifications may provide for pistol, rifle, shotgun and archery facilities; and

(6) provisions for the operation and maintenance of shooting range facilities.

C. Grants from the shooting range fund shall be awarded by the [~~state game commission~~] game and fish division only for new public shooting range construction or for improvements to existing public shooting ranges. No funds shall be approved for maintenance of shooting ranges [~~nor~~] or for shooting range renovation prior to 1980. No grant from the money appropriated to the shooting range fund shall exceed:

(1) twenty-five percent of the cost of any one project; [~~nor~~] or

(2) more than ten percent of the amount

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appropriated to the shooting range fund by the Shooting Range Fund Act.

D. The [~~state game commission~~] game and fish division may expend not more than five percent of the appropriated money in the shooting range fund each fiscal year for administrative purposes to carry out the provisions of the Shooting Range Fund Act."

SECTION 105. Section 29-4A-3 NMSA 1978 (being Laws 1995, Chapter 59, Section 3, as amended) is amended to read:

"29-4A-3. DEFINITIONS.--As used in the Peace Officers' Survivors Supplemental Benefits Act:

A. "fund" means the peace officers' survivors fund;

B. "peace officer" means any full-time salaried and commissioned or certified law enforcement officer of a police or sheriff's department or a conservation officer of the energy, minerals and natural resources department [~~of game and fish~~] as used in Chapter 17 NMSA 1978 that is part of or administered by the state or any political subdivision of the state; and

C. "secretary" means the secretary of public safety."

SECTION 106. Section 30-8-5 NMSA 1978 (being Laws 1975, Chapter 199, Section 2) is amended to read:

"30-8-5. ENFORCEMENT.--The [~~state game commission~~] game and fish division of the energy, minerals and natural

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resources department may designate trained employees of the [~~commission~~] division vested with police powers to enforce the provisions of Section [~~40A-8-4 NMSA 1953~~] 30-8-4 NMSA 1978. In addition, members of the state police, county sheriffs and their deputies, police officers and those employees of the state [~~park and recreation commission~~] parks division of the energy, minerals and natural resources department vested with police powers shall enforce the provisions of that section."

SECTION 107. Section 30-8-7 NMSA 1978 (being Laws 1975, Chapter 199, Section 4) is amended to read:

"30-8-7. PUBLIC EDUCATION.--The [~~state game commission, the state highway~~] department of transportation, the state [~~park and recreation commission~~] parks division and the game and fish division of the energy, minerals and natural resources department and the environmental improvement [~~agency~~] division of the department of environment are encouraged to institute public education programs through the news media in order to inform the public of the litter problem in New Mexico and of individual efforts that can be made to assist in the abatement of the problem. In addition, these agencies are authorized to work with industry organizations in a joint anti-litter campaign so that additional effect may be given to the anti-litter effort in New Mexico."

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SECTION 108. Section 30-14-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 14-1, as amended) is amended to read:

"30-14-1. CRIMINAL TRESPASS.--

A. Criminal trespass consists of knowingly entering or remaining upon posted private property without possessing written permission from the owner or person in control of the land. The provisions of this subsection do not apply if:

(1) the owner or person in control of the land has entered into an agreement with the [~~department of~~] game and fish division of the energy, minerals and natural resources department granting access to the land to the general public for the purpose of taking any game animals, birds or fish by hunting or fishing; or

(2) a person is in possession of a landowner license given to [~~him~~] the person by the owner or person in control of the land that grants access to that particular private land for the purpose of taking any game animals, birds or fish by hunting or fishing.

B. Criminal trespass also consists of knowingly entering or remaining upon the unposted lands of another knowing that such consent to enter or remain is denied or withdrawn by the owner or occupant [~~thereof~~] of the lands. Notice of no consent to enter shall be deemed sufficient notice to the public and evidence to the courts, by the

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posting of the property at all vehicular access entry ways.

C. Criminal trespass also consists of knowingly entering or remaining upon lands owned, operated or controlled by the state or any of its political subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian [~~thereof~~] of the lands.

D. Any person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features, is guilty of a misdemeanor and [~~he~~] shall be liable to the owner, lessee or person in lawful possession for civil damages in an amount equal to double the value of the damage to the property injured or destroyed.

E. [~~Whoever~~] Any person who commits criminal trespass is guilty of a misdemeanor. Additionally, any person who violates the provisions of Subsection A, B or C of this section, when in connection with hunting, fishing or trapping activity, shall have [~~his~~] the person's hunting or fishing license revoked by the [~~state game commission~~] game and fish division for a period of not less than three years, pursuant to the provisions of Section 17-3-34 NMSA 1978.

F. [~~Whoever~~] Any person who knowingly removes, tampers with or destroys any "no trespass" sign is guilty of a petty misdemeanor; except when the damage to the sign

amounts to more than one thousand dollars ($1,000), [~~he or she~~] the person is guilty of a misdemeanor and shall be subject to imprisonment in the county jail for a definite term less than one year or a fine not more than one thousand dollars ($1,000) or to both such imprisonment and fine in the discretion of the judge.

G. This section, as amended, shall be published in all issues of "Big Game Hunt Proclamation" as published by the [~~department of~~] game and fish division."

SECTION 109. Section 30-32-3 NMSA 1978 (being Laws 1921, Chapter 33, Section 6, as amended) is amended to read:

"30-32-3. ARREST FOR VIOLATIONS.--All peace officers of the state, including energy, minerals and natural resources department [~~of game and fish~~] conservation officers, have the power to make arrests on warrant issued by any magistrate of the state for violation of any of the state forest fire laws, including Chapter 68, Article 2 NMSA 1978, rules implementing Chapter 68, Article 2 NMSA 1978 or fire restrictions issued pursuant to such rules, or without warrant for violations of those laws committed in their presence, and shall not be liable to civil action for trespass for acts done in the discharge of their duties."

SECTION 110. Section 35-7-6 NMSA 1978 (being Laws 1968, Chapter 62, Section 101) is amended to read:

"35-7-6. MAGISTRATE ADMINISTRATION--CURRENT STATUTES.--

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A. Each magistrate shall obtain without cost:

(1) the volume of compiled laws relating to magistrates, along with current [~~pocket~~] supplements, from the New Mexico compilation commission;

(2) all current laws relating to motor vehicles from the [~~commissioner~~] director of the motor [~~vehicles~~] vehicle division of the taxation and revenue department;

(3) all current laws relating to game animals and fish [~~along with all regulations of the state game commission~~] from the [~~department of~~] game and fish division of the energy, minerals and natural resources department; and

(4) all current laws relating to motor carriers, along with all regulations of the [~~state corporation~~] public regulation commission relating to motor carriers, from the [~~state corporation~~] public regulation commission.

B. These materials remain the property of the state and shall be delivered by each magistrate to [~~his~~] the magistrate's successor in office or to the administrative office of the courts. Each magistrate is responsible for the care of the materials and for the cost of replacement in case of loss, damage or if not disposed of as required in this section."

SECTION 111. Section 40-5A-3 NMSA 1978 (being Laws

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1995, Chapter 25, Section 3, as amended) is amended to read:

"40-5A-3. DEFINITIONS.--As used in the Parental Responsibility Act:

A. "applicant" means an obligor who is applying for issuance of a license;

B. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978;

(4) any other state agency to which the Uniform Licensing Act is applied by law;

(5) a licensing board or other authority that issues a license, certificate, registration or permit to engage in a profession or occupation regulated in New Mexico;

(6) the [~~department of~~] game and fish division of the energy, minerals and natural resources department;

(7) the motor vehicle division of the taxation

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and revenue department; or

(8) the alcohol and gaming division of the regulation and licensing department;

C. "certified list" means a verified list that includes the names, social security numbers and last known addresses of obligors not in compliance;

D. "compliance" means that:

(1) an obligor is no more than thirty days in arrears in payment of amounts required to be paid pursuant to an outstanding judgment and order for support; and

(2) an obligor has, after receiving appropriate notice, complied with subpoenas or warrants relating to paternity or child support proceedings;

E. "department" means the human services department;

F. "judgment and order for support" means the judgment entered against an obligor by the district court or a tribal court in a case enforced by the department pursuant to Title IV-D of the Social Security Act;

G. "license" means a liquor license or other license, certificate, registration or permit issued by a board that a person is required to have to engage in a profession or occupation in New Mexico; "license" includes a commercial driver's license, driver's license and recreational licenses, including hunting, fishing or trapping

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licenses;

H. "licensee" means an obligor to whom a license has been issued; and

I. "obligor" means the person who has been ordered to pay child or spousal support pursuant to a judgment and order for support."

SECTION 112. Section 60-2C-10 NMSA 1978 (being Laws 1989, Chapter 346, Section 10) is amended to read:

"60-2C-10. PENALTY--CRIMINAL.--

A. [~~Any~~] An individual, firm, partnership or corporation that violates [~~any~~] a provision of the Fireworks Licensing and Safety Act is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than one year, or both.

B. Nothing in the Fireworks Licensing and Safety Act shall apply to or prohibit [~~any~~] employees of the energy, minerals and natural resources department [~~of game and fish~~] or the United States fish and wildlife service from possessing fireworks for control of game birds and animals or to prohibit [~~any~~] a law enforcement officer from possessing fireworks in the performance of [~~his~~] the officer's duties or to prohibit [~~any~~] a municipality or civic organization [~~therein~~] from sponsoring and conducting in connection with [~~any~~] a public celebration an officially supervised and

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controlled fireworks display."

SECTION 113. Section 61-14E-4 NMSA 1978 (being Laws 1983, Chapter 317, Section 4, as amended) is amended to read:

"61-14E-4. DEFINITIONS.--As used in the Medical Imaging and Radiation Therapy Health and Safety Act:

A. "advisory council" means the medical imaging and radiation therapy advisory council;

[~~B. "board" means the environmental improvement board;~~

~~C.~~] B. "certificate of limited practice" means a certificate issued pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act to persons who perform restricted diagnostic radiography under direct supervision of a licensed practitioner limited to the following specific procedures:

(1) the viscera of the thorax;

(2) extremities;

(3) radiation to humans for diagnostic purposes in the practice of dentistry;

(4) axial/appendicular skeleton; or

(5) the foot, ankle or lower leg;

[~~D.~~] C. "certified nurse practitioner" means a person licensed pursuant to Section 61-3-23.2 NMSA 1978;

[~~E.~~] D. "credential" or "certification" means the recognition awarded to an individual who meets the

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requirements of a credentialing or certification organization;

[~~F.~~] E. "credentialing organization" or "certification organization" means a nationally recognized organization recognized by the [~~board~~] department that issues credentials or certification through testing or evaluations that determine whether an individual meets defined standards for training and competence in a medical imaging modality;

[~~G.~~] F. "department" means the department of [~~environment~~] health;

[~~H.~~] G. "diagnostic medical sonographer" means a person, including a vascular technologist or echocardiographer, other than a licensed practitioner, who provides patient care services using ultrasound;

[~~I. "division" means the environmental health division of the department of environment;~~

~~J.~~] H. "ionizing radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons and other particles capable of producing ions; "ionizing radiation" does not include non-ionizing radiation, such as sound waves, radio waves or microwaves, or visible, infrared or ultraviolet light;

[~~K.~~] I. "license" means a document issued by the department pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act to an individual who has met

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the requirements of licensure;

[~~L.~~] J. "licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic or osteopathy in this state;

[~~M.~~] K. "licensure" means a grant of authority through a license or limited license to perform specific medical imaging and radiation therapy services pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;

[~~N.~~] L. "magnetic resonance technologist" means a person other than a licensed practitioner who performs magnetic resonance procedures under the supervision of a licensed practitioner using magnetic fields and radio frequency signals;

[~~O.~~] M. "medical imaging" means the use of substances or equipment emitting ionizing or non-ionizing radiation on humans for diagnostic or interventional purposes;

[~~P.~~] N. "medical imaging modality" means:

(1) diagnostic medical sonography and all of its subspecialties;

(2) magnetic resonance imaging and all of its subspecialties;

(3) nuclear medicine technology and all of its subspecialties;

(4) radiation therapy and all of its subspecialties; and

(5) radiography and all of its subspecialties;

[~~Q.~~] Q. "medical imaging professional" means a person who is a magnetic resonance technologist, radiographer, nuclear medicine technologist or diagnostic medical sonographer and who is licensed pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;

[~~R.~~] P. "non-ionizing radiation" means the optical radiations, including ultraviolet, visible, infrared and lasers, static and time-varying electric and magnetic fields and radio frequency, including microwave radiation and ultrasound;

[~~S.~~] Q. "nuclear medicine technologist" means a person other than a licensed practitioner who applies radiopharmaceutical agents to humans for diagnostic or therapeutic purposes under the direction of a licensed practitioner;

[~~T.~~] R. "physician assistant" means a person licensed pursuant to Section 61-6-7 or 61-10A-4 NMSA 1978;

[~~U.~~] S. "radiation therapy" means the application of ionizing radiation to humans for therapeutic purposes;

[~~V.~~] T. "radiation therapy technologist" means a person other than a licensed practitioner whose application of radiation to humans is for therapeutic purposes;

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[~~W.~~] U. "radiographer" means a person other than a licensed practitioner whose application of radiation to humans is for diagnostic purposes;

[~~X.~~] V. "radiography" means the application of radiation to humans for diagnostic purposes, including adjustment or manipulation of x-ray systems and accessories, including image receptors, positioning of patients, processing of films and any other action that materially affects the radiation dose to patients;

[~~Y.~~] W. "radiologist" means a licensed practitioner certified by the American board of radiology, the British royal college of radiology, the American osteopathic board of radiology or the American chiropractic board of radiology; and

[~~Z.~~] X. "radiologist assistant" means an individual licensed as a radiographer as defined in the Medical Imaging and Radiation Therapy Health and Safety Act who holds additional certification as a registered radiologist assistant by the American registry of radiologic technologists and who works under the supervision of a radiologist; provided that a radiologist assistant shall not interpret images, render diagnoses or prescribe medications or therapies."

SECTION 114. Section 61-14E-5 NMSA 1978 (being Laws 1983, Chapter 317, Section 5, as amended) is amended to read:

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"61-14E-5. [~~BOARD~~] DEPARTMENT--POWERS--DUTIES.--The [~~board~~] department shall, pursuant to the advice and recommendations of the advisory council and following the procedures set forth in Subsection E of Section [~~74-1-9~~] 9-7-6 NMSA 1978:

A. adopt and promulgate such rules, regulations and licensure standards as may be necessary to effectuate the provisions of the Medical Imaging and Radiation Therapy Health and Safety Act and to maintain high standards of practice as verified by credentialing organizations for medical imaging and radiation therapy; and

B. adopt rules and regulations establishing continuing education requirements as a condition of licensure renewal for the purpose of protecting the health and well-being of the citizens of New Mexico and promoting current knowledge and practice as verified by credentialing organizations for medical imaging and radiation therapy."

SECTION 115. Section 61-14E-6 NMSA 1978 (being Laws 1983, Chapter 317, Section 6, as amended) is amended to read:

"61-14E-6. [~~DIVISION~~] DEPARTMENT--ADDITIONAL POWERS AND DUTIES.--The [~~division~~] department, pursuant to [~~the~~] its rules [~~and regulations promulgated by the board~~], shall:

A. maintain and enforce licensure standards for magnetic resonance, radiography, radiation therapy technology, nuclear medicine technology, diagnostic medical

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sonography and radiology and licensure standards for restricted diagnostic radiography;

B. refer to national educational accreditation standards for educational programs and, pursuant to those standards, establish criteria for education programs of magnetic resonance, radiography, radiation therapy technology, nuclear medicine technology and diagnostic medical sonography;

C. provide for surveys of educational programs preparing persons for certification under the Medical Imaging and Radiation Therapy Health and Safety Act;

D. grant, deny or withdraw approval from educational programs for failure to meet prescribed standards [~~provided that a majority of the board concurs in any decision~~];

E. establish procedures for examination, certification and renewal of certificates of applicants; and

F. establish scope of practice and ethics rules."

SECTION 116. Section 61-14E-11 NMSA 1978 (being Laws 1983, Chapter 317, Section 11, as amended) is amended to read:

"61-14E-11. SUSPENSION--REVOCATION--APPLICATION OF UNIFORM LICENSING ACT.--The [~~board~~] department, pursuant to the advice and recommendation of the advisory council, may deny, revoke or suspend any license held or applied for under

the Medical Imaging and Radiation Therapy Health and Safety Act, pursuant to the procedures established in the Uniform Licensing Act, upon grounds that the medical imaging professional, radiation therapist or the applicant:

A. is guilty of fraud or deceit in procuring or attempting to procure a license or certificate of limited practice;

B. is convicted of a felony subsequent to certification;

C. is unfit or incompetent;

D. is habitually intemperate or is addicted to the use of habit-forming drugs;

E. is mentally incompetent;

F. has aided and abetted a person who does not possess a license pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act or otherwise authorized by that act in engaging in the activities of a license holder;

G. has engaged in any practice beyond the scope of authorized activities of an individual licensed or a certificate of limited practice holder pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;

H. is guilty of unprofessional conduct or unethical conduct as defined by rules promulgated by the [~~board~~] department;

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I. has interpreted a diagnostic imaging procedure for a patient, the patient's family or the public; or

J. has willfully or repeatedly violated any provisions of the Medical Imaging and Radiation Therapy Health and Safety Act."

SECTION 117. Section 66-3-1001.1 NMSA 1978 (being Laws 2005, Chapter 325, Section 1, as amended) is amended to read:

"66-3-1001.1. DEFINITIONS.--As used in the Off-Highway Motor Vehicle Act:

A. "board" means the off-highway motor vehicle advisory board;

B. "department" means the [~~department of~~] game and fish division of the energy, minerals and natural resources department;

C. "division" means the motor vehicle division of the taxation and revenue department;

D. "fund" means the trail safety fund;

E. "off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) "all-terrain vehicle", which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering

control;

(2) "off-highway motorcycle", which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control;

(3) "snowmobile", which means a motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners or low-pressure tires;

(4) "recreational off-highway vehicle", which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:

(a) a steering wheel for steering control;

(b) non-straddle seating;

(c) maximum speed capability greater than thirty-five miles per hour;

(d) gross vehicle weight rating no greater than one thousand seven hundred fifty pounds;

(e) less than eighty inches in overall width, exclusive of accessories;

(f) engine displacement of less than one thousand cubic centimeters; and

(g) identification by means of a seventeen-character vehicle identification number; or

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(5) by rule of the department, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes;

F. "staging area" means a parking lot, trailhead or other location to or from which an off-highway motor vehicle is transported so that it may be placed into operation or removed from operation; and

G. "unpaved public roadway" means a dirt graveled street or road that is constructed, signed and maintained for regular passenger-car use by the general public."

SECTION 118. Section 66-3-1017 NMSA 1978 (being Laws 2005, Chapter 325, Section 19, as amended) is amended to read:

"66-3-1017. OFF-HIGHWAY MOTOR VEHICLE ADVISORY BOARD CREATED--MEMBERS--COMPENSATION.--

A. The "off-highway motor vehicle advisory board" is created to advise the department on matters related to administration of the Off-Highway Motor Vehicle Act. The board shall consist of the following seven members appointed by the governor:

(1) one landowner living near a national forest or bureau of land management property that is used extensively for recreational off-highway vehicle activity;

(2) one producer or one grazing permittee on

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public lands from the farming or livestock industry;

(3) one person from the off-highway motor vehicle industry;

(4) one off-highway motor vehicle user;

(5) one hunter or angler;

(6) one quiet recreationalist, such as a hiker, backpacker, birdwatcher, equestrian, mountain biker, rock climber or archaeological enthusiast; and

(7) one member with expertise in injury prevention or treatment.

B. The board shall select a chair and a vice chair.

C. The board shall meet at the call of the chair but not less than twice annually.

D. Members shall be appointed to staggered terms of two years each; provided that no more than four terms expire in any one year. The board members shall select by lot four members to serve initial terms of three years each. A vacancy shall be filled by appointment of the governor for the remainder of the unexpired term. Members of the board shall not be [~~entitled to reimbursement pursuant to the Per Diem and Mileage Act~~] paid and shall not receive per diem."

SECTION 119. Section 69-25A-3 NMSA 1978 (being Laws 1979, Chapter 291, Section 3, as amended) is amended to read:

"69-25A-3. DEFINITIONS.--As used in the Surface Mining Act:

A. "commission" means the [~~coal surface~~] mining commission;

B. "director", when used without further qualification, means the director of the mining and minerals division of the energy, minerals and natural resources department or [~~his~~] the director's designee;

C. "alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities, but does not include upland areas [~~which~~] that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits;

D. "approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls and spoil piles eliminated; water impoundments may be permitted where the director determines that they are in compliance with Paragraph (8) of Subsection B of Section 69-25A-19 NMSA 1978;

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E. "imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of the Surface Mining Act, in a surface coal mining and reclamation operation, which condition, practice or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not [~~expose himself~~] agree to be exposed to the danger during the time necessary for abatement;

F. "operator" means any person engaged in coal mining who removes or intends to remove more than two hundred fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in any one location;

G. "other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals [~~which~~] that occur naturally in liquid or gaseous form;

H. "permit" means a permit to conduct surface coal mining and reclamation operations issued by the director

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pursuant to the Surface Mining Act;

I. "permit applicant" or "applicant" means a person applying for a permit;

J. "permit area" means the area of land indicated on the approved map submitted by the operator with [~~his~~] the operator's application, which area of land is to be covered by the operator's bond as required by Section 69-25A-13 NMSA 1978 and shall be readily identifiable by appropriate markers on the site;

K. "permittee" means a person holding a permit;

L. "person" means an individual, partnership, association, society, joint stock company, firm, company, corporation or other business organization;

M. the term "prime farmland" is to be defined by [~~regulation~~] rule of the commission after considering such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, erosion characteristics, history of use for intensive agricultural purposes and regulations issued by the United States secretary of agriculture;

N. "reclamation plan" means a plan submitted by an applicant for a permit [~~which~~] that sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to Section 69-25A-12 NMSA 1978;

O. "surface coal mining and reclamation operations"

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means surface coal mining operations and all activities necessary and incident to the reclamation of those operations after the date of enactment of the Surface Mining Act;

P. "surface coal mining operations" means:

(1) activities conducted on the surface of lands in connection with a surface coal mine or activities subject to the requirements of Section 69-25A-20 NMSA 1978 relating to surface operations and surface impacts incident to an underground coal mine. The activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining. These activities also include uses of explosives and blasting and in situ distillation or retorting, leaching or other chemical or physical processing and the cleaning, concentrating or other processing or preparation, including loading of coal at or near the mine site; [~~Provided~~] however, [~~that~~] such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to Section 69-25A-16 NMSA 1978; and

(2) the areas upon which these activities occur or where the activities disturb the natural land surface. These areas also include any adjacent land, the use

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of which is incidental to any of the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of these activities and for haulage and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to these activities;

Q. "unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of [~~his~~] the permittee's permit or any requirement of the Surface Mining Act due to indifference, lack of diligence or lack of reasonable care, or the failure to abate any violation of the permit or the Surface Mining Act due to indifference, lack of diligence or lack of reasonable care; and

R. "lignite coal" means consolidated lignitic coal [~~having~~] that has less than eight thousand three hundred BTUs per pound and that is moisture- and mineral-matter-free."

SECTION 120. A new section of the Surface Mining Act is enacted to read:

"[NEW MATERIAL] DUTIES OF COAL SURFACE MINING COMMISSION

TO MINING COMMISSION.--Beginning July 1, 2011, the mining commission shall assume the duties of the coal surface mining commission. All rules of the coal surface mining commission shall remain in force unless the mining commission repeals or amends them."

SECTION 121. Section 69-36-1 NMSA 1978 (being Laws 1993, Chapter 315, Section 1) is amended to read:

"69-36-1. SHORT TITLE.--[~~This act~~] Chapter 69, Article 36 NMSA 1978 may be cited as the "New Mexico Mining Act"."

SECTION 122. Section 69-36-3 NMSA 1978 (being Laws 1993, Chapter 315, Section 3) is amended to read:

"69-36-3. DEFINITIONS.--As used in the New Mexico Mining Act:

A. "affected area" means the area outside of the permit area where the land surface, surface water, ground water and air resources are impacted by mining operations within the permit area;

B. "commission" means the mining commission [~~established in the New Mexico Mining Act~~];

C. "director" means the director of the division or [~~his~~] the director's designee;

D. "division" means the mining and minerals division of the energy, minerals and natural resources department;

E. "existing mining operation" means an extraction operation that produced marketable minerals for a total of at least two years between January 1, 1970 and [~~the effective date of the New Mexico Mining Act~~] June 18, 1993;

F. "exploration" means the act of searching for or investigating a mineral deposit, including sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations and the building of roads, access ways and other facilities related to such work; however, activities that cause no or very little surface disturbance, such as airborne surveys and photographs, use of instruments or devices that are hand carried or otherwise transported over the surface to perform magnetic, radioactive or other tests and measurements, boundary or claim surveying, location work or other work that causes no greater disturbance than is caused by ordinary lawful use of the area by persons not engaged in exploration, are excluded from the meaning of "exploration";

G. "mineral" means a nonliving commodity that is extracted from the earth for use or conversion into a [~~salcable~~] salable or usable product, but does not include clays, adobe, flagstone, potash, sand, gravel, caliche, borrow dirt, quarry rock used as aggregate for construction, coal, surface water or subsurface water, geothermal resources, oil and natural gas together with other chemicals recovered with them, commodities, byproduct materials and wastes that are

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regulated by the nuclear regulatory commission or waste regulated under Subtitle C of the federal Resource Conservation and Recovery Act of 1976;

H. "mining" means the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing. "Mining" does not mean the exploration and extraction of potash, sand, gravel, caliche, borrow dirt [~~and~~] or quarry rock used as aggregate in construction; the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes; the development or extraction of coal; the extraction of geothermal resources; smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas; or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal nuclear regulatory commission;

I. "new mining operation" means a mining operation that engages in a development or extraction operation after [~~the effective date of the New Mexico Mining Act~~] June 18, 1993 and that is not an existing mining operation;

J. "permit area" means the geographical area defined

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in the permit for a new mining operation or for an existing mining operation on which mining operations are conducted or cause disturbance; and

K. "reclamation" means the employment during and after a mining operation of measures designed to mitigate the disturbance of affected areas and permit areas and, to the extent practicable, provide for the stabilization of a permit area following closure that will minimize future impact to the environment from the mining operation and protect air and water resources."

SECTION 123. Section 69-36-6 NMSA 1978 (being Laws 1993, Chapter 315, Section 6, as amended) is amended to read:

"69-36-6. MINING COMMISSION--CREATED--MEMBERS.--

A. The "mining commission" is created. The commission shall consist of seven voting members, including:

(1) the director of the bureau of geology and mineral resources of the New Mexico institute of mining and technology or [~~his~~] the director's designee;

(2) the secretary of environment or [~~his~~] the secretary's designee;

(3) the state engineer or [~~his~~] the state engineer's designee;

(4) the commissioner of public lands or [~~his~~] the commissioner's designee;

(5) the director of the [~~department of~~] game and

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fish division of the energy, minerals and natural resources department or [~~his~~] the director's designee; and

(6) two members of the public and an alternate for each, all to be appointed by the governor with the advice and consent of the senate. The public members shall be chosen to represent and to balance environmental and mining interests while minimizing conflicts of interest. No more than one of the public members and one of the alternates appointed may belong to the same political party. When the initial appointments are made, one of the public members and [~~his~~] the public member's alternate will be designated to serve for two-year terms, after which all public members shall serve for four years. An alternate member may vote only in the absence of the public member for whom [~~he~~] the member is the alternate.

B. The [~~chairman~~] chairperson of the soil and water conservation commission and the director of the agricultural experiment station of New Mexico state university or their designees shall be nonvoting members of the commission.

C. The commission shall elect a [~~chairman~~] chairperson and other necessary officers and keep records of its proceedings.

D. The commission shall convene upon the call of the [~~chairman~~] chairperson or a majority of its members.

E. A majority of the voting members of the commission shall be a quorum for the transaction of business. However, no

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action of the commission shall be valid unless concurred upon by at least four of the members present.

F. No member of the commission, with the exception of one of the public members and [~~his~~] the public member's alternate, shall receive, or shall have received during the previous two years, more than ten percent of [~~his~~] that member's income directly or indirectly from permit holders or applicants for permits. Each member of the commission shall, upon acceptance of [~~his~~] appointment and prior to the performance of any of [~~his~~] duties, file a statement of disclosure with the secretary of state stating:

(1) the amount of money or other valuable consideration received, whether provided directly or indirectly, from persons subject to or who appear before the commission;

(2) the identity of the source of money or other valuable consideration; and

(3) whether the money or other valuable consideration was in excess of ten percent of [~~his~~] the member's gross personal income in either of the preceding two years.

G. No commissioner with any financial interest affected or potentially affected by a permit action may participate in proceedings related to that permit action.

H. No member, designee or alternate member of the

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commission shall have a direct or indirect financial interest in any underground or surface coal mining operation."

SECTION 124. Section 72-4A-4 NMSA 1978 (being Laws 2001, Chapter 164, Section 4, as amended) is amended to read:

"72-4A-4. WATER TRUST BOARD CREATED.--

A. The "water trust board" is created. The board is composed of the following sixteen members:

(1) the state engineer or the state engineer's designee;

(2) the secretary of finance and administration or the secretary's designee;

(3) the executive director of the New Mexico finance authority or the executive director's designee;

(4) the secretary of environment or the secretary's designee;

(5) the secretary of energy, minerals and natural resources or the secretary's designee;

(6) the director of the [~~department of~~] game and fish division of the energy, minerals and natural resources department or the director's designee;

(7) the director of the New Mexico department of agriculture or the director's designee;

(8) the executive director of the New Mexico municipal league or the executive director's designee;

(9) the executive director of the New Mexico

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association of counties or the executive director's designee;

(10) five public members appointed by the governor and confirmed by the senate and who represent:

(a) the environmental community;

(b) an irrigation or conservancy district that uses surface water;

(c) an irrigation or conservancy district that uses ground water;

(d) acequia water users; and

(e) soil and water conservation districts;

(11) one public member appointed by the Indian affairs commission; and

(12) the president of the Navajo Nation or the president's designee.

B. The chair of the board shall be elected by a quorum of the board members. The board shall meet at the call of the chair or whenever three members submit a request in writing to the chair, but not less often than once each calendar year. A majority of members constitutes a quorum for the transaction of business. The affirmative vote of at least a majority of a quorum present shall be necessary for an action to be taken by the board.

C. Each public member of the board appointed by the governor shall be appointed to a four-year term. To provide for staggered terms, two of the initially governor-appointed

public members shall be appointed for terms of two years and three members for terms of four years. Thereafter, all governor-appointed members shall be appointed for four-year terms. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term.

D. Public members of the board shall be reimbursed for attending meetings of the board as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Water Project Finance Act."

SECTION 125. Section 74-1-7 NMSA 1978 (being Laws 1971, Chapter 277, Section 10, as amended by Laws 2000, Chapter 86, Section 1 and also by Laws 2000, Chapter 96, Section 1) is amended to read:

"74-1-7. DEPARTMENT--DUTIES.--

A. The department is responsible for environmental management and consumer protection programs. In that respect, the department shall maintain, develop and enforce rules and standards in the following areas:

(1) food protection;

(2) water supply, including implementing a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial

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capacity in accordance with Section 1420 of the federal Safe Drinking Water Act of 1974 and establishing administrative penalties for enforcement;

(3) liquid waste, including exclusive authority to collect on-site liquid waste system fees that are no more than the average charged by the contiguous states to New Mexico for similar permits and services and to implement and administer an inspection and permitting program for on-site liquid waste systems;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control and collection of license, registration and other related fees as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

[~~(12) medical radiation, health and safety~~

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~~certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;~~

~~(13)~~] (12) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

[~~(14)~~] (13) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats."

SECTION 126. Section 74-1-8 NMSA 1978 (being Laws 1971, Chapter 277, Section 11, as amended by Laws 2000, Chapter 86, Section 2 and also by Laws 2000, Chapter 96, Section 2) is amended to read:

"74-1-8. BOARD--DUTIES.--

A. The board is responsible for environmental management and consumer protection. In that respect, the board shall promulgate rules and standards in the following areas:

(1) food protection;

(2) water supply, including a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with Section 1420 of the federal Safe Drinking Water Act of 1974 and rules authorizing imposition of administrative

penalties for enforcement;

(3) liquid waste, including exclusive authority to establish on-site liquid waste system fees that are no more than the average charged by the contiguous states to New Mexico for similar permits and services and to implement and administer an inspection and permitting program for on-site liquid waste systems;

(4) air quality management as provided in the Air Quality Control Act;

(5) radiation control and establishment of license and registration and other related fees not to exceed fees charged by the United States nuclear regulatory commission for similar licenses as provided in the Radiation Protection Act;

(6) noise control;

(7) nuisance abatement;

(8) vector control;

(9) occupational health and safety as provided in the Occupational Health and Safety Act;

(10) sanitation of public swimming pools and public baths;

(11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health;

[~~(12) medical radiation, health and safety~~

~~certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act;~~

~~(13)~~] (12) hazardous wastes and underground storage tanks as provided in the Hazardous Waste Act; and

[~~(14)~~] (13) solid waste as provided in the Solid Waste Act.

B. Nothing in Subsection A of this section imposes requirements for the approval of subdivision plats in addition to those required elsewhere by law. Nothing in Subsection A of this section preempts the authority of any political subdivision to approve subdivision plats.

C. Administrative penalties collected pursuant to Paragraph (2) of Subsection A of this section shall be deposited in the water conservation fund.

D. On-site liquid waste system fees shall be deposited in the liquid waste fund.

[~~D.~~] E. Radiation license and registration and other related fees shall be deposited in the radiation protection fund."

SECTION 127. Section 74-6-2 NMSA 1978 (being Laws 1967, Chapter 190, Section 2, as amended) is amended to read:

"74-6-2. DEFINITIONS.--As used in the Water Quality Act:

A. "gray water" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing

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machines and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

B. "water contaminant" means any substance that could alter, if discharged or spilled, the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954;

C. "water pollution" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

D. "wastes" means sewage, industrial wastes or any other liquid, gaseous or solid substance that may pollute any waters of the state;

E. "sewer system" means pipelines, conduits, pumping stations, force mains or any other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

F. "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes;

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G. "sewerage system" means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

H. "water" means all water, including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

I. "person" means an individual or any other entity, including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

J. "commission" means the water quality control commission;

K. "constituent agency" means, as the context may require, any or all of the following agencies of the state:

(1) the department of environment;

(2) the state engineer and the interstate stream commission;

(3) the [~~department of~~] game and fish division of the energy, minerals and natural resources department;

(4) the oil conservation commission;

(5) the [~~state parks division of the~~] energy,

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minerals and natural resources department;

(6) the New Mexico department of agriculture;

(7) the soil and water conservation commission; and

(8) the bureau of geology and mineral resources at the New Mexico institute of mining and technology;

L. "department" means the energy, minerals and natural resources department;

[~~L.~~] M. "new source" means:

(1) any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance applicable to the source; or

(2) any existing source when modified to treat substantial additional volumes or when there is a substantial change in the character of water contaminants treated;

[~~M.~~] N. "source" means a building, structure, facility or installation from which there is or may be a discharge of water contaminants directly or indirectly into water;

[~~N.~~] O. "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank for maintenance or disposal purposes;

[~~O.~~] P. "sludge" means solid, semi-solid or liquid waste generated from a municipal, commercial or industrial

wastewater treatment plant, water supply treatment plant or air pollution control facility that is associated with the treatment of these wastes. "Sludge" does not mean treated effluent from a wastewater treatment plant;

[~~P.~~] Q. "substantial adverse environmental impact" means that an act or omission of the violator causes harm or damage:

(1) to human beings; or

(2) that amounts to more than ten thousand dollars ($10,000) damage or mitigation costs to flora, including agriculture crops; fish or other aquatic life; waterfowl or other birds; livestock or wildlife or damage to their habitats; ground water or surface water; or the lands of the state;

[~~Q.~~] R. "federal act" means the Federal Water Pollution Control Act, its subsequent amendment and successor provisions; and

[~~R.~~] S. "standards of performance" means any standard, effluent limitation or effluent standard adopted pursuant to the federal act or the Water Quality Act."

SECTION 128. Section 74-6-3 NMSA 1978 (being Laws 1967, Chapter 190, Section 3, as amended) is amended to read:

"74-6-3. WATER QUALITY CONTROL COMMISSION CREATED.--

A. There is created the "water quality control commission" consisting of:

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(1) the secretary of environment or a member of the secretary's staff designated by the secretary;

(2) the secretary of health or a member of the secretary's staff designated by the secretary;

(3) the director of the [~~department of~~] game and fish division of the department or a member of the director's staff designated by the director;

(4) the state engineer or a member of the state engineer's staff designated by the state engineer;

(5) the chair of the oil conservation commission or a member of the chair's staff designated by the chair;

(6) the [~~director of the state parks division of the~~] secretary of energy, minerals and natural resources [~~department~~] or a member of the [~~director's~~] secretary's staff designated by the [~~director~~] secretary;

(7) the director of the New Mexico department of agriculture or a member of the director's staff designated by the director;

(8) the chair of the soil and water conservation commission or a soil and water conservation district supervisor designated by the chair;

(9) the director of the bureau of geology and mineral resources at the New Mexico institute of mining and technology or a member of the director's staff designated by the director;

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(10) a municipal or county government representative; and

(11) four representatives of the public to be appointed by the governor for terms of four years and who shall be compensated from the budgeted funds of the department of environment in accordance with the provisions of the Per Diem and Mileage Act. At least one member appointed by the governor shall be a member of a New Mexico Indian tribe or pueblo. Two members appointed by the governor shall be employed in industries regulated under the Water Quality Act.

B. A member of the commission shall not receive, or shall not have received during the previous two years, a significant portion of the member's income directly or indirectly from permit holders or applicants for a permit. A member of the commission shall, upon the acceptance of the member's appointment and prior to the performance of any of the member's duties, file a statement of disclosure with the secretary of state disclosing any amount of money or other valuable consideration, and its source, the value of which is in excess of ten percent of the member's gross personal income in each of the preceding two years, that the member received directly or indirectly from permit holders or applicants for permits required under the Water Quality Act. A member of the commission shall not participate in the consideration of an appeal if the subject of the appeal is an application filed or

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a permit held by an entity that either employs the commission member or from which the commission member received more than ten percent of the member's gross personal income in either of the preceding two years.

C. The commission shall elect a chair and other necessary officers and shall keep a record of its proceedings.

D. A majority of the commission constitutes a quorum for the transaction of business, but no action of the commission is valid unless concurred in by six or more members present at a meeting.

E. The commission is the state water pollution control agency for this state for all purposes of the federal act and the wellhead protection and sole source aquifer programs of the federal Safe Drinking Water Act of 1974 and may take all action necessary and appropriate to secure to this state, its political subdivisions or interstate agencies the benefits of that act and those programs.

F. The commission is administratively attached, as defined in the Executive Reorganization Act, to the department [~~of environment~~]."

SECTION 129. Section 74-6-3.1 NMSA 1978 (being Laws 1982, Chapter 73, Section 28, as amended) is amended to read:

"74-6-3.1. LEGAL ADVICE.--

A. In the exercise of any of its powers or duties, the water quality control commission shall act with independent

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legal advice. The manner in which such advice is provided shall be determined by the commission, but from among one of the following:

(1) the office of the attorney general;

(2) independent counsel hired by the commission, whether full- or part-time; or

(3) another state agency whose function is sufficiently distinct from the department and the department of environment and each constituent agency to assure independent, impartial advice.

B. Notwithstanding the provisions of Subsection A of this section, attorneys from constituent agencies may act for the water quality control commission in lawsuits filed against or on behalf of the commission, and the attorney general may, at the request of the commission, file and defend lawsuits on behalf of the commission."

SECTION 130. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) is amended to read:

"74-6-4. DUTIES AND POWERS OF COMMISSION.--The commission:

A. may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purposes for which provided;

B. shall adopt a comprehensive water quality

management program and develop a continuing planning process;

C. shall not adopt or promulgate a standard or regulation that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act authorizing the standard or regulation;

D. shall adopt water quality standards for surface and ground waters of the state based on credible scientific data and other evidence appropriate under the Water Quality Act. The standards shall include narrative standards and as appropriate, the designated uses of the waters and the water quality criteria necessary to protect such uses. The standards shall at a minimum protect the public health or welfare, enhance the quality of water and serve the purposes of the Water Quality Act. In making standards, the commission shall give weight it deems appropriate to all facts and circumstances, including the use and value of the water for water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes;

E. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking

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and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. Regulations may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants. In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

(1) the character and degree of injury to or interference with health, welfare, environment and property;

(2) the public interest, including the social and economic value of the sources of water contaminants;

(3) the technical practicability and economic reasonableness of reducing or eliminating water contaminants from the sources involved and previous experience with equipment and methods available to control the water contaminants involved;

(4) the successive uses, including but not

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limited to domestic, commercial, industrial, pastoral, agricultural, wildlife and recreational uses;

(5) feasibility of a user or a subsequent user treating the water before a subsequent use;

(6) property rights and accustomed uses; and

(7) federal water quality requirements;

F. shall assign responsibility for administering its regulations to constituent agencies so as to assure adequate coverage and prevent duplication of effort. To this end, the commission may make such classification of waters and sources of water contaminants as will facilitate the assignment of administrative responsibilities to constituent agencies. The commission shall also hear and decide disputes between constituent agencies as to jurisdiction concerning any matters within the purpose of the Water Quality Act. In assigning responsibilities to constituent agencies, the commission shall give priority to the primary interests of the constituent agencies. The department [~~of environment~~] shall provide technical services, including certification of permits pursuant to the federal act, and shall maintain a repository of the scientific data required by this act;

G. may enter into or authorize constituent agencies to enter into agreements with the federal government or other state governments for purposes consistent with the Water Quality Act and receive and allocate to constituent agencies

funds made available to the commission;

H. may grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

I. may adopt regulations to require the filing with it or a constituent agency of proposed plans and specifications for the construction and operation of new sewer systems, treatment works or sewerage systems or extensions, modifications of or additions to new or existing sewer systems, treatment works or sewerage systems. Filing with and approval by the federal housing administration of plans for an extension to an existing or construction of a new sewerage system intended to serve a subdivision solely residential in nature shall be deemed compliance with all provisions of this subsection;

J. may adopt regulations requiring notice to it or a

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constituent agency of intent to introduce or allow the introduction of water contaminants into waters of the state;

K. shall specify in regulations the measures to be taken to prevent water pollution and to monitor water quality. The commission may adopt regulations for particular industries. The commission shall adopt regulations for the dairy industry and the copper industry. The commission shall consider, in addition to the factors listed in Subsection E of this section, the best available scientific information. The regulations may include variations in requirements based on site-specific factors, such as depth and distance to ground water and geological and hydrological conditions. The constituent agency shall establish an advisory committee composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate regulations to be proposed for adoption by the commission. The regulations shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations;

L. may adopt regulations establishing pretreatment standards that prohibit or control the introduction into publicly owned sewerage systems of water contaminants that are not susceptible to treatment by the treatment works or that would interfere with the operation of the treatment works;

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M. shall not require a permit respecting the use of water in irrigated agriculture, except in the case of the employment of a specific practice in connection with such irrigation that documentation or actual case history has shown to be hazardous to public health or the environment;

N. shall not require a permit for applying less than two hundred fifty gallons per day of private residential gray water originating from a residence for the resident's household gardening, composting or landscape irrigation if:

(1) a constructed gray water distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

(2) a gray water storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

(3) a gray water system is sited outside of a floodway;

(4) gray water is vertically separated at least five feet above the ground water table;

(5) gray water pressure piping is clearly identified as a nonpotable water conduit;

(6) gray water is used on the site where it is generated and does not run off the property lines;

(7) gray water is applied in a manner that minimizes the potential for contact with people or domestic

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pets;

(8) ponding is prohibited, application of gray water is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

(9) gray water is not sprayed;

(10) gray water is not discharged to a watercourse; and

(11) gray water use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978; and

O. shall coordinate application procedures and funding cycles for loans and grants from the federal government and from other sources, public or private, with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act."

SECTION 131. Section 74-6-5.2 NMSA 1978 (being Laws 1993, Chapter 100, Section 4) is amended to read:

"74-6-5.2. WATER QUALITY MANAGEMENT FUND CREATED.--There is created in the state treasury the "water quality management fund" to be administered by the department [~~of environment~~]. All fees collected pursuant to the regulations adopted by the commission under Subsection [H] K of Section 74-6-5 NMSA 1978

shall be deposited in the fund. Money in the fund is appropriated to the department [~~of environment~~] for the purpose of administering the regulations adopted by the commission pursuant to Section 74-6-5 NMSA 1978. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of [~~environment~~] energy, minerals and natural resources."

SECTION 132. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS, APPROPRIATIONS, PERSONNEL AND PROPERTY--CONTRACTUAL OBLIGATIONS --STATUTORY REFERENCES.--

A. On the effective date of this act, all functions, personnel, appropriations, money, records, furniture, equipment and other property of the department of game and fish and the state game commission shall be transferred to the energy, minerals and natural resources department.

B. On the effective date of this act, all functions, personnel, appropriations, money, records, furniture, equipment and other property of the surface and ground water quality bureaus of the department of environment relating to administration of the Water Quality Act shall be transferred to the energy, minerals and natural resources department.

C. On the effective date of this act, all functions, appropriations, money, records, furniture, equipment and other property of the radiation control bureau of the department of

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environment relating to administration of the Medical Radiation Therapy Health and Safety Act shall be transferred to the department of health.

D. On the effective date of this act, all functions, appropriations, money, records, furniture, equipment and other property of the coal surface mining commission shall be transferred to the mining commission.

E. On the effective date of this act, contractual obligations of the department of game and fish, the state game commission and the surface and ground water quality bureaus of the department of environment are binding on the energy, minerals and natural resources department.

F. On the effective date of this act, contractual obligations of the surface and ground water quality bureaus of the department of environment relating to administration of the Water Quality Act are binding on the energy, minerals and natural resources department.

G. On the effective date of this act, contractual obligations of the radiation control bureau of the department of environment relating to administration of the Medical Radiation Therapy Health and Safety Act are binding on the department of health.

H. On the effective date of this act, contractual obligations of the coal surface mining commission are binding on the mining commission.

I. On the effective date of this act, all references in law to the department of game and fish shall be deemed to be references in law to the game and fish division of the energy, minerals and natural resources department. All references in law to the director of the department of game and fish shall be deemed to be references to the director of the game and fish division of the energy, minerals and natural resources department.

J. On the effective date of this act, all references in law to the coal surface mining commission shall be deemed to be references to the mining commission.

SECTION 133. TEMPORARY PROVISION--DUTIES OF STATE GAME COMMISSION.--Beginning July 1, 2011, the game and fish division of the energy, minerals and natural resources department shall assume the duties of the state game commission. All rules of the state game commission shall remain in force unless the game and fish division repeals or amends them.

SECTION 134. REPEAL.--Sections 17-1-2 through 17-1-4, 17-1-6, 17-1-15, 17-2-5, 17-3-25, 69-25A-4 and 69-25A-36 NMSA 1978 (being Laws 1921, Chapter 35, Sections 2 through 4, Laws 1955, Chapter 59, Section 2, Laws 1931, Chapter 117, Sections 6 and 4, Laws 1967, Chapter 26, Section 1, Laws 1979, Chapter 291, Section 4 and Laws 1987, Chapter 333, Section 14, as amended) are repealed.

SECTION 135. EFFECTIVE DATE.--The effective date of the

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provisions of this act is July 1, 2012.

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BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; REORGANIZING THE DEPARTMENT OF FINANCE AND ADMINISTRATION AND THE GENERAL SERVICES DEPARTMENT; CENTRALIZING ADMINISTRATIVE FUNCTIONS OF CERTAIN EXECUTIVE AGENCIES INTO THE DEPARTMENT OF FINANCE AND ADMINISTRATION; MOVING THE PERSONNEL OFFICE AND THE PURCHASING DIVISION OF THE GENERAL SERVICES DEPARTMENT INTO THE DEPARTMENT OF FINANCE AND ADMINISTRATION; MAKING THE GENERAL SERVICES DEPARTMENT A NON-CABINET DEPARTMENT; CREATING THE EXECUTIVE SERVICES BUREAU, STATE PERSONNEL DIVISION, PURCHASING DIVISION AND THE EDUCATIONAL FINANCE AND ACCOUNTABILITY DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION; ESTABLISHING QUALIFICATIONS FOR THE STATE PERSONNEL DIRECTOR; TRANSFERRING APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 9-6-1 NMSA 1978 (being Laws 1977, Chapter 247, Section 1) is amended to read:

"9-6-1. SHORT TITLE.--[~~Sections 1 through 7 of this act~~] Chapter 9, Article 6 NMSA 1978 may be cited as the "Department of Finance and Administration Act"."

SECTION 2. Section 9-6-2 NMSA 1978 (being Laws 1977, Chapter 247, Section 2, as amended) is amended to read:

"9-6-2. PURPOSE.--The purpose of the Department of Finance and Administration Act is to make state government more efficient and responsive through consolidating, and eliminating the overlapping of, certain state government functions; and to establish a single, unified department to administer laws relating to finance and oversight of state government; and to perform other duties as provided by law."

SECTION 3. Section 9-6-3 NMSA 1978 (being Laws 1977, Chapter 247, Section 3, as amended) is repealed and a new Section 9-6-3 NMSA 1978 is enacted to read:

"9-6-3. [NEW MATERIAL] DEPARTMENT OF FINANCE AND ADMINISTRATION--CREATED--DIVISIONS.--

A. The "department of finance and administration" is created as a cabinet department that includes the following organizational units:

(1) office of the secretary;

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(2) administrative services division, including:

(a) executive services bureau; and

(b) capital outlay planning and monitoring bureau;

(3) board of finance division;

(4) educational finance and accountability division;

(5) financial control division;

(6) local government division;

(7) purchasing division, which includes the management and contracts review bureau;

(8) state budget division; and

(9) state personnel division.

B. The secretary may organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy, but the secretary shall present the organization to the legislature for statutory revision. The secretary shall not create new divisions without the express authority of the legislature."

SECTION 4. A new section of Department of Finance and Administration Act is enacted to read:

"[NEW MATERIAL] ADMINISTRATIVELY ATTACHED AGENCIES.--The following agencies are administratively attached to the

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department:

A. the acequia commission;

B. the state board of finance;

C. the personnel board;

D. the New Mexico community development council;

E. the civil legal services commission; and

F. the land grant council."

SECTION 5. Section 9-6-4 NMSA 1978 (being Laws 1977, Chapter 247, Section 4, as amended) is amended to read:

"9-6-4. DEPARTMENT OF FINANCE AND ADMINISTRATION--SECRETARY--APPOINTMENT--QUALIFICATIONS.--The administrative and executive head of the department of finance and administration is the "secretary of finance and administration", who [~~shall be~~] is a member of the executive cabinet. The secretary shall be appointed by the governor with the advice and consent of the senate. The secretary shall be well versed in governmental finance."

SECTION 6. Section 9-6-5 NMSA 1978 (being Laws 1977, Chapter 247, Section 5, as amended) is amended to read:

"9-6-5. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary of finance and administration is responsible to the governor for the operation of the department. It is [~~his~~] the secretary's duty to manage all operations of the department and to administer and enforce the laws with which [~~he~~] the secretary or the department is

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charged.

B. To perform [~~his~~] the secretary's duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department, or any division or office of the department, except where authority conferred upon any division or office is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Department of Finance and Administration Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and [~~regulations~~] rules;

(2) delegate authority to subordinates as [~~he~~] the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations [~~thereto~~] of that authority;

(3) organize the department into those organizational units [~~he~~] that the secretary deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge [~~his~~] the secretary's duties;

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(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law with the administration or execution of which [~~he~~] the secretary is responsible, and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide [~~cooperation, at the request of heads of~~] administrative services to administratively attached agencies and cooperate with adjunct agencies in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts; and

(b) coordinate activities and resolve problems of mutual concern [~~and~~

~~(c) resolve by agreement the manner and~~

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~~extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies~~];

(10) appoint, with the governor's consent, one "deputy secretary", and, for each division and office, a "director". These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary; and

(11) serve as, or designate the deputy secretary to serve as, executive officer of the state board of finance

[~~(12) give bond as provided in the Surety Bond Act. The department shall pay the cost of such bond; and~~

~~(13) require faithful performance or other fidelity bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of such bonds~~].

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including [~~but not limited to~~] United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap, or a function assigned to one department could [~~better~~] be performed better by another department, [~~a~~] the secretary may recommend

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appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable administrative and procedural rules [~~and regulations~~] as may be necessary to carry out the duties of the department and its divisions. No rule [~~or regulation~~] promulgated by the director of any division or office in carrying out the functions and duties of the division or office shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no [~~regulation~~] rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by [~~him~~] the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the [~~regulation~~] rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed [~~regulation~~] rule or proposed amendment or repeal of an existing [~~regulation~~] rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules [~~and regulations~~] shall be filed in

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accordance with the State Rules Act."

SECTION 7. Section 9-6-5.1 NMSA 1978 (being Laws 1983, Chapter 296, Section 7) is amended to read:

"9-6-5.1. PLANNING POWERS AND DUTIES OF SECRETARY OF FINANCE AND ADMINISTRATION.--The secretary of [~~the department of~~] finance and administration, in addition to the other powers and duties conferred:

A. shall review federal grant applications and provide management assistance to other state agencies and local governments;

B. shall coordinate, in accordance with directives from the governor's office of policy and planning, state agency plans for economic, natural resource, energy resource and human resource development;

C. shall provide aid to planning and development districts in developing grant proposals and cooperate with other local entities in developing grant proposals;

D. shall acquire, study and review all plans for capital projects proposed by state agencies and render advice on the plans. The secretary shall maintain long-range estimates and plans for capital projects and develop standards for measuring the need for and utility of proposed projects;

E. may contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private;

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F. may provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico and [~~to~~] nonprofit entities having for their purpose local, regional or community betterment. The secretary, incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government and may participate in or receive aid from any federal or private program in relation to such a planning program or assistance;

G. shall confer with the state budget division of the department of finance and administration in developing comprehensive plans to assure coordination of planning and budgeting functions;

H. shall coordinate the state clearinghouse review process;

I. shall develop a status of the state report;

J. shall review and coordinate comment by state agencies on draft environmental impact statements;

K. shall provide community development block grant technical assistance to local governments;

L. shall administer, in consultation with and upon advice and direction from the community development block grant policy committee, the program for the state community

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development block grant program;

M. shall serve as staff to the New Mexico association of regional councils;

N. shall maintain a state planning library; and

O. shall provide planning assistance to county and multicounty districts relative to application by such districts for financial assistance and for regional plan development."

SECTION 8. Section 9-6-15 NMSA 1978 (being Laws 2003, Chapter 153, Section 69) is repealed and a new Section 9-6-15 NMSA 1978 is enacted to read:

"9-6-15. [NEW MATERIAL] EDUCATIONAL FINANCE AND ACCOUNTABILITY DIVISION--DUTIES.--

A. The educational finance and accountability division shall monitor and oversee public school and higher education finances and budgets and provide an independent evaluation of how well the two public education systems are performing and how well the public education department and higher education department perform in holding those systems accountable to students, taxpayers and citizens.

B. The director of the division shall be skilled in accountancy and auditing and familiar with the operation of public school and post-secondary educational institution budgets and finances. The director shall be appointed by the secretary of finance and administration with the governor's consent.

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C. The public education department, higher education department, school districts, public post-secondary educational institutions and other agencies of the state shall cooperate with the division and provide information as requested by the division.

D. In addition to overseeing and monitoring public school and post-secondary educational institution budgets and finances, the division shall conduct an ongoing evaluation of:

(1) the unified pre-kindergarten through post-graduate education accountability data system;

(2) for public schools, how well the public education department monitors public schools and compliance with the Public School Code, including the Assessment and Accountability Act, in particular the success of interventions made for schools in need of improvement; the School Personnel Act, in particular the three-tiered licensing system for teachers and school administrators and the evaluation system that is required for continued licensure; the Compulsory School Attendance Law; compliance with the Audit Act; implementation of federal laws, including the Individuals with Disabilities Education Act; and other requirements and measures intended to improve the administration and delivery of public education and improve outputs and outcomes, including decreasing dropout rates, increasing graduation rates, preparing students for college or careers and decreasing the need for remediation in

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higher education;

(3) for higher education, how well the higher education department monitors post-secondary educational institutions; the Post-Secondary Education Articulation Act; the use of common student identification numbers and participation in the unified pre-kindergarten through post-graduate education accountability system; higher education department annual accountability reports; the review process by the higher education department and the state board of finance regarding capital expenditures; the system of accounting and reporting provided for in Section 21-1-33 NMSA 1978; and other requirements and measures intended to improve the administration and delivery of post-secondary education and improve outputs and outcomes, including decreasing dropout rates, increasing graduation rates, particularly baccalaureate graduation within four or five years, and preparing students for professional or vocational careers; and

(4) any other matters related to pre-kindergarten through post-graduate education assigned to it by the legislature or the secretary."

SECTION 9. A new section of the Department of Finance and Administration Act is enacted to read:

"[NEW MATERIAL] EXECUTIVE SERVICES BUREAU--DUTIES.--The executive services bureau shall provide budgeting, recordkeeping and related administrative and clerical

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assistance for small agencies of the executive branch."

[MORE – GOTTA FILL IN THE BLANKS]

SECTION 10. Section 9-17-3 NMSA 1978 (being Laws 1983, Chapter 301, Section 3, as amended) is amended to read:

"9-17-3. GENERAL SERVICES DEPARTMENT--CREATION--TRANSFER AND MERGER OF DIVISION FUNCTIONS--MERGER AND CREATION OF DIVISIONS.--

A. The "general services department" is created as a non-cabinet department. The department shall consist of those divisions created by law or executive order, [~~as modified by executive order pursuant to Subsection C of this section~~] including:

(1) the administrative services division;

(2) the building services division;

(3) the property control division;

[~~(4) the purchasing division;~~

~~(5)~~] (4) the risk management division; and

[~~(6)~~] (5) the transportation services division, including:

(a) the state aviation bureau; and

(b) the surplus property bureau.

B. The secretary of general services is empowered to organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions and may merge divisions in the

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interest of efficiency and economy.

[~~C. The governor is empowered to merge divisions of the department or to create additional divisions by executive order in the interest of efficiency or economy.~~]"

SECTION 11. Section 9-17-4 NMSA 1978 (being Laws 1983, Chapter 301, Section 4) is amended to read:

"9-17-4. GENERAL SERVICES DEPARTMENT--[~~SECRETARY~~] SUPERINTENDENT--APPOINTMENT--QUALIFICATIONS.--The administrative and executive head of the general services department is the "[~~secretary~~] superintendent of general services" [~~who shall be a member of the executive cabinet~~]. The [~~secretary~~] superintendent shall be appointed by the governor with the advice and consent of the senate. The [~~secretary~~] superintendent shall be well versed in administrative services and management."

SECTION 12. Section 9-17-5 NMSA 1978 (being Laws 1983, Chapter 301, Section 5) is amended to read:

"9-17-5. [~~SECRETARY~~] SUPERINTENDENT--DUTIES AND GENERAL POWERS.--

A. The [~~secretary~~] superintendent is responsible to the governor for the operation of the department. It is [~~his~~] the superintendent's duty to manage all operations of the department and to administer and enforce the laws with which [~~he~~] the superintendent or the department is charged.

B. To perform [~~his~~] the superintendent's duties,

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the [~~secretary~~] superintendent has every power expressly enumerated in the laws, whether granted to the [~~secretary~~] superintendent or the department, or any division of the department, except where authority conferred upon any division is explicitly exempted from the [~~secretary's~~] superintendent's authority by statute. In accordance with these provisions, the [~~secretary~~] superintendent shall:

(1) except as otherwise provided in the General Services Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and [~~regulations~~] rules;

(2) delegate authority to subordinates as [~~he~~] the superintendent deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units [~~he~~] that the superintendent deems will enable it to function most efficiently, subject to any provisions of law, including executive orders of the governor, requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge [~~his~~] the superintendent's duties;

(5) take administrative action by issuing

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orders and instructions, not inconsistent with law, to assure implementation of and compliance with the provisions of law for whose administration or execution [~~he~~] the superintendent is responsible, and to enforce those orders and instructions by appropriate administrative action or action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to other departments and the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and to other persons involved in the administration of programs, with the objective of improving the operations and efficiency of administration;

(8) prepare the department's annual budget;

(9) cooperate with the heads of administratively attached agencies, and adjunct agencies, at their request, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts; and

(b) coordinate activities and resolve problems of mutual concern; and

[~~(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;~~]

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(10) appoint, with the governor's consent, one "deputy [~~secretary~~] superintendent" and, for each division, a "director". These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the [~~secretary~~] superintendent

[~~(11) give bond as provided in the Surety Bond Act. The department shall pay the cost of such bond; and~~

~~(12) require faithful performance or other fidelity bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the cost of such bonds~~].

C. The [~~secretary~~] superintendent may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could be better performed by another department, the [~~secretary~~] superintendent may recommend appropriate legislation to the next session of the legislature for its approval.

E. The [~~secretary~~] superintendent may make and adopt such reasonable administrative and procedural rules [~~and regulations~~] as may be necessary to carry out the duties of the

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department and its divisions. No rule [~~or regulation~~] promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the [~~secretary~~] superintendent unless otherwise provided by statute. Unless otherwise provided by statute, no [~~regulation~~] rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the [~~secretary~~] superintendent or a hearing officer designated by [~~him~~] the superintendent. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the [~~regulation~~] rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed [~~regulation~~] rule or proposed amendment or repeal of an existing [~~regulation~~] rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made written request for advance notice of hearing. All rules [~~and regulations~~] shall be filed in accordance with the State Rules Act."

SECTION 13. Section 9-17-6 NMSA 1978 (being Laws 1983, Chapter 301, Section 6, as amended) is repealed and a new Section 9-17-6 NMA 1978 is enacted to read:

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"9-17-6. "[NEW MATERIAL] ADMINISTRATIVELY ATTACHED AGENCY.--The governor's residence advisory commission is administratively attached to the general services department."

SECTION 14. Section 10-9-10 NMSA 1978 (being Laws 1961, Chapter 240, Section 7, as amended) is amended to read:

"10-9-10. BOARD DUTIES.--The board shall:

[~~A. promulgate regulations to effectuate the Personnel Act;~~

~~B.~~] A. hear appeals and make recommendations to employers;

[~~C. hire, with the approval of the governor, a director experienced in the field of personnel administration;~~

~~D. review budget requests prepared by the director for the operation of the personnel program and make appropriate recommendations thereon;~~

~~E.~~] B. make investigations, studies and audits necessary to the proper administration of the Personnel Act;

[~~F.~~] C. make an annual report to the governor at the end of each fiscal year; and

[~~G. establish and maintain liaison with the general services department; and~~

~~H.~~] D. represent the public interest in the improvement of personnel administration in the system."

SECTION 15. A new section of the Personnel Act is enacted to read:

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"[NEW MATERIAL] STATE PERSONNEL DIRECTOR--QUALIFICATIONS--CONFIRMATION.--The "state personnel director" shall be a person of recognized character and ability appointed by the secretary of finance and administration based solely on the director's qualifications for the position without regard to political affiliation. The director shall have at least a master's degree in human resource management or public or business administration or a related field and at least seven years' progressive experience in applying the principles, methods and techniques of personnel administration. The state personnel director shall be confirmed by the senate."

SECTION 16. Section 10-9-12 NMSA 1978 (being Laws 1961, Chapter 240, Section 8, as amended) is amended to read:

"10-9-12. DIRECTOR DUTIES.--The director shall:

A. supervise all administrative and technical personnel activities of the state;

[~~B. act as secretary to the board;~~

~~C.~~] B. establish, maintain and publish annually a roster of all employees of the state showing for each employee [~~his~~] the employee's division, title, pay rate and other pertinent data;

[~~D.~~] C. make annual reports to the board;

[~~E.~~] D. recommend to the [~~board~~] secretary of finance and administration rules [~~he~~] that the director considers necessary or desirable to effectuate the Personnel

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Act; and

[~~F.~~] E. supervise all tests and prepare lists of persons passing them to submit to prospective employers."

SECTION 17. Section 10-9-21 NMSA 1978 (being Laws 1961, Chapter 240, Section 15, as amended) is amended to read:

"10-9-21. PROHIBITED ACTS.--

A. No employer shall dismiss an employee for failure or refusal to pay or promise to pay any assessment, subscription or contribution to any political organization or candidate; however, nothing contained in this section shall prevent voluntary contributions to political organizations.

B. No person in the personnel office or employee in the service shall hold political office except for a non-partisan county or municipal office or be an officer of a political organization during [~~his~~] employment. For the purposes of the Personnel Act, being a local school board member or an elected board member of any post-secondary educational institution shall not be construed to be holding political office and being an election official shall not be construed to be either holding political office or being an officer of a political organization. Nothing in the Personnel Act shall deny employees the right to vote as they choose or to express their opinions on political subjects and candidates.

C. Any employee who becomes a candidate for public office shall, upon filing or accepting the nomination and

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during the campaign, take a leave of absence. This subsection does not apply to those employees of a grant-in-aid agency whose political activities are governed by federal statute.

D. The director shall investigate any written charge by any person that this section has been violated and take whatever steps deemed necessary.

E. No person shall be refused the right of taking an examination, from appointment to a position, from promotion or from holding a position because of political or religious opinions or affiliation or because of race or color.

F. No employee or probationer shall engage in partisan political activity while on duty.

G. With respect to employees of federal grant-in-aid agencies, the applicable personnel standards, regulations and federal laws limiting activities shall apply and shall be set forth in rules promulgated by the [~~board~~] department of finance and administration."

SECTION 18. Section 13-1-37 NMSA 1978 (being Laws 1984, Chapter 65, Section 10) is amended to read:

"13-1-37. DEFINITION--CENTRAL PURCHASING OFFICE.--"Central purchasing office" means that office or officer within a state agency or a local public body responsible for the control of procurement of items of tangible personal property, services or construction. "Central purchasing office" includes the purchasing division of the [~~general services~~] department of

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finance and administration and the state purchasing agent."

SECTION 19. Section 13-1-86 NMSA 1978 (being Laws 1984, Chapter 65, Section 59) is amended to read:

"13-1-86. DEFINITION--SECRETARY.--"Secretary" means the secretary of [~~general services~~] finance and administration."

SECTION 20. Section 13-1-90 NMSA 1978 (being Laws 1984, Chapter 65, Section 63) is amended to read:

"13-1-90. DEFINITION--STATE AGENCY.--"State agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. "State agency" includes the purchasing division of the [~~general services~~] department of finance and administration and the state purchasing agent but does not include local public bodies."

SECTION 21. Section 13-1-92 NMSA 1978 (being Laws 1984, Chapter 65, Section 65) is amended to read:

"13-1-92. DEFINITION--STATE PURCHASING AGENT.--"State purchasing agent" means the director of the purchasing division of the [~~general services~~] department of finance and administration."

SECTION 22. Section 13-1-95 NMSA 1978 (being Laws 1984, Chapter 65, Section 68) is amended to read:

"13-1-95. PURCHASING DIVISION--CREATION--DIRECTOR IS

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STATE PURCHASING AGENT--APPOINTMENT--DUTIES.--

A. The "purchasing division" is created within the [~~general services~~] department of finance and administration.

B. Subject to the authority of the secretary, the state purchasing agent shall be the administrator and [~~chief executive~~] director of the purchasing division. The state purchasing agent shall be appointed by the secretary with the approval of the governor.

C. The purchasing division and state purchasing agent shall be responsible for the procurement of services, construction and items of tangible personal property for all state agencies except as otherwise provided in the Procurement Code and shall administer the Procurement Code for those state agencies not excluded from the requirement of procurement through the state purchasing agent.

D. The state purchasing agent shall have the following additional authority and responsibility to:

(1) recommend procurement [~~regulations~~] rules to the secretary;

(2) establish and maintain programs for the development and use of procurement specifications and for the inspection, testing and acceptance of services, construction and items of tangible personal property;

(3) cooperate with the state budget division of the department of finance and administration in the

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preparation of statistical data concerning the acquisition and usage of all services, construction and items of tangible personal property by state agencies;

(4) require state agencies to furnish reports concerning usage, needs and stocks on hand of items of tangible personal property and usage and needs for services or construction;

(5) prescribe, with consent of the secretary, forms to be used by state agencies to requisition and report the procurement of items of tangible personal property, services and construction;

(6) provide information to state agencies and local public bodies concerning the development of specifications, quality control methods and other procurement information; and

(7) collect information concerning procurement matters, quality and quality control of commonly used services, construction and items of tangible personal property.

E. The state purchasing agent shall, upon the request of the central purchasing office of a local public body, procure a price agreement for the requested services, construction or items of tangible personal property."

SECTION 23. Section 13-1-97.1 NMSA 1978 (being Laws 2009, Chapter 107, Section 1) is amended to read:

"13-1-97.1. CONTRACT DATABASE.--

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A. The department of finance and administration, the department of information technology, the department of transportation and the general services department shall jointly develop a database of all state contracts with a term beginning on or after January 1, 2010 and having a value of more than twenty thousand dollars ($20,000) entered into pursuant to the Procurement Code or otherwise within the purview of any state agency. The [~~general services~~] department of finance and administration shall coordinate the maintenance of the database with the assistance of the other departments.

B. The [~~general services~~] department of finance and administration shall make the database available to the public on its online web site no later than January 1, 2010. The database shall be searchable by contractor name, subject matter, date, price or consideration, contract number, amendments and other categories of information that the departments identified in Subsection A of this section agree are necessary to inform the public fully about state contracts."

SECTION 24. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body

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from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books and periodicals from the publishers or copyright holders thereof;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections

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industries commission, which shall be reviewed by the purchasing division of the [~~general services~~] department of finance and administration prior to adoption;

J. minor purchases not exceeding five thousand dollars ($5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services or items of tangible personal property to be paid or compensated by

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money or other property transferred to New Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

R. contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;

S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;

T. works of art for museums or for display in public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to

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the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement of printing services for materials produced and intended for resale by the cultural affairs department;

Y. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars ($200,000);

Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act;

AA. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;

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BB. procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;

CC. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act;

DD. the purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock; and

EE. contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act and the federal Violence Against Women Act."

SECTION 25. Section 13-1-125 NMSA 1978 (being Laws 1984, Chapter 65, Section 98, as amended) is amended to read:

"13-1-125. SMALL PURCHASES.--

A. A central purchasing office shall procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars ($20,000) in accordance with the applicable small purchase [~~regulations~~] rules adopted by the secretary, a local public body or a central purchasing office that has the authority to issue

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[~~regulations~~] rules.

B. Notwithstanding the requirements of Subsection A of this section, a central purchasing office may procure professional services having a value not exceeding fifty thousand dollars ($50,000), excluding applicable state and local gross receipts taxes, except for the services of landscape architects or surveyors for state public works projects or local public works projects, in accordance with professional services procurement [~~regulations~~] rules promulgated by the department of finance and administration [~~the general services department~~] or a central purchasing office with the authority to issue [~~regulations~~] rules.

C. Notwithstanding the requirements of Subsection A of this section, a state agency or a local public body may procure services, construction or items of tangible personal property having a value not exceeding ten thousand dollars ($10,000) by issuing a direct purchase order to a contractor based upon the best obtainable price.

D. Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section."

SECTION 26. Section 13-1-135.1 NMSA 1978 (being Laws 1995, Chapter 60, Section 2) is amended to read:

"13-1-135.1. RECYCLED CONTENT GOODS--COOPERATIVE PROCUREMENT.--

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A. Beginning July 1, 1995, each central purchasing office shall, whenever its price, quality, quantity, availability and delivery requirements are met, purchase recycled content goods through contracts established by the purchasing division of the [~~general services~~] department of finance and administration or with other central purchasing offices.

B. For purposes of this section, "recycled content goods" means supplies and materials composed in whole or in part of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications."

SECTION 27. Section 13-1-136 NMSA 1978 (being Laws 1984, Chapter 65, Section 109) is amended to read:

"13-1-136. COOPERATIVE PROCUREMENT--REPORTS REQUIRED.--The [~~general services department and the department of finance and administration shall notify the~~] state purchasing agent shall notify the secretary of finance and administration on or before January 1 of each year of the cooperative procurement agreements entered into by state agencies with local public bodies or external procurement units during the preceding fiscal year."

SECTION 28. Section 13-1C-3 NMSA 1978 (being Laws 2005, Chapter 334, Section 3) is amended to read:

"13-1C-3. DEFINITIONS.--As used in the State Use Act:

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A. "central nonprofit agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the equitable distribution of orders for the services of:

(1) qualified individuals; and

(2) community rehabilitation programs;

B. "community rehabilitation program" means a nonprofit entity:

(1) that is organized under the laws of the United States or this state, operated in the interest of persons with disabilities and operated so that no part of the income of which inures to the benefit of any shareholder or other person;

(2) that complies with applicable occupational health and safety standards as required by federal or state law; and

(3) that, in the provision of services, whether or not procured under the State Use Act, employs during the state fiscal year at least seventy-five percent persons with disabilities in direct labor for the provision of services;

C. "council" means the New Mexico council for purchasing from persons with disabilities;

D. "direct labor" means all work directly relating to the provision of services, but not work required for or relating to supervision, administration or inspection;

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E. "local public body" means a political subdivision of the state and the political subdivision's agencies, instrumentalities and institutions;

F. "persons with disabilities" means persons who have a mental or physical impairment that constitutes or results in a substantial impediment to employment as defined by the federal Rehabilitation Act of 1973;

G. "qualified individual" means a person with a disability who is a business owner, or a business that is primarily owned and operated by persons with disabilities that employs at least seventy-five percent persons with disabilities in the provision of direct labor, which has been approved by the council to provide services to state agencies and local public bodies. A person who is receiving services pursuant to an individualized plan of employment from the vocational rehabilitation division of the public education department or from the commission for the blind shall be presumed to be a person with disability, as shall a person who is receiving supplemental security income or social security benefits based on disability;

H. "state agency" means a department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of government of this state; and

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I. "state purchasing agent" means the director of the purchasing division of the [~~general services~~] department of finance and administration."

SECTION 29. TEMPORARY PROVISION--TRANSFERS OF PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY PROVISIONS--STATE PERSONNEL OFFICE TO DEPARTMENT OF FINANCE AND ADMINISTRATION--RULES AND STATUTORY REVIEW REQUIRED.--

A. On the effective date of this act, all functions, appropriations, money, records, furniture, equipment and other property of the state personnel office are transferred to the department of finance and administration.

B. On the effective date of this act, contractual obligations of the state personnel office shall be binding on the department of finance and administration.

C. On the effective date of this act, statutory references to the state personnel office shall be deemed to be references to the state personnel division of the department of finance and administration.

D. Rules of the personnel board shall be deemed to be rules of the state personnel division of the department of finance and administration until amended or repealed. The department shall review the state personnel rules and statutes pertaining to state personnel within one year of the effective date of this act and shall report to the governor and the legislature on changes that are necessary to make the state

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personnel system equitable, effective, responsive and accountable for a modern, well-qualified and responsible state work force. Rules that are in conflict with state law shall be repealed or shall be suspended until the legislature has been given the opportunity to change the law.

SECTION 30. TEMPORARY PROVISION--TRANSFERS OF PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY PROVISIONS--PURCHASING DIVISION TO DEPARTMENT OF FINANCE AND ADMINISTRATION--RULES AND STATUTORY REVIEW REQUIRED.--

A. On the effective date of this act, all functions, appropriations, money, records, furniture, equipment and other property of the purchasing division of the general services department are transferred to the department of finance and administration.

B. On the effective date of this act, contractual obligations of the purchasing division of the general services department shall be binding on the department of finance and administration.

C. On the effective date of this act, statutory references to the purchasing division of the general services department shall be deemed to be references to the purchasing division of the department of finance and administration.

D. Rules of the purchasing division of the general services department pertaining to purchasing shall be deemed to be rules of the department of finance and administration until

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amended or repealed. The department of finance and administration shall review the procurement rules and statutes pertaining to procurement within one year of the effective date of this act and shall report to the governor and the legislature on changes that are necessary to make the procurement system more efficient, cost-effective, streamlined and accountable. Rules that are in conflict with state law shall be repealed or shall be suspended until the legislature has been given the opportunity to change the law.

SECTION 31. TEMPORARY PROVISION--STATUTORY REFERENCES TO SECRETARY OF GENERAL SERVICES.--On the effective date of this act, statutory references to the secretary of general services shall be deemed to be references to the superintendent of general services.

SECTION 32. REPEAL.--Section 10-9-11 NMSA 1978 (being Laws 1977, Chapter 247, Section 47, as amended) is repealed.

SECTION 33. CONTINGENT RECOMPILATION.--If Sections 9-6-12 through 9-6-14 NMSA 1978 (being Laws 2003, Chapter 126, Sections 1 through 3) are not repealed by another act of the fiftieth legislature, first session, the compiler is instructed to recompile them in the Cultural Affairs Department Act or other suitable location in the NMSA 1978.

SECTION 34. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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4A

SENATE JOINT RESOLUTION

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 11 OF THE CONSTITUTION OF NEW MEXICO BY REPEALING SECTIONS 1 AND 2 TO ELIMINATE THE PUBLIC REGULATION COMMISSION AS A CONSTITUTIONAL AGENCY AND PROVIDE BY LAW FOR ITS POWERS AND DUTIES.

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

SECTION 1. It is proposed to amend Article 11 of the constitution of New Mexico by repealing Section 1 and enacting a new Section 1 to read:

"The chartering and regulation of corporations and the regulation of utilities, transportation companies, transmission and pipeline companies and insurance and other businesses shall be as provided by law."

SECTION 2. It is proposed to amend Article 11 of the constitution of New Mexico by repealing Section 2.

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SECTION 3. The provisions of Sections 1 and 2 of this amendment shall take effect on July 1, 2014.

SECTION 4. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

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4B

SENATE BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; REPEALING THE PUBLIC REGULATION COMMISSION APPORTIONMENT ACT AND THE PUBLIC REGULATION COMMISSION ACT; PROVIDING FOR THE APPOINTMENT OF A LEGISLATIVE COMMITTEE TO RECOMMEND HOW THE JURISDICTION, AUTHORITY AND DUTIES OF THE PUBLIC REGULATION COMMISSION ARE INTEGRATED INTO THE EXECUTIVE BRANCH.

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

SECTION 1. TEMPORARY PROVISION--REGULATORY STRUCTURE COMMITTEE--MEMBERSHIP--DUTIES.--

A. The New Mexico legislative council shall appoint a "regulatory structure committee" to study the jurisdiction, authority and duties of the public regulation commission and to make recommendations to the legislature and the governor on how the powers and duties of the public regulation commission

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should be integrated into the executive branch.

B. The committee shall be composed of twelve members. The legislative council shall appoint six members from the house of representatives and six members from the senate. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the task force as prevails in each house; provided that in no event shall either party have less than two members from each house on the committee. At the time of making the appointments, the legislative council shall designate the chairperson and vice chairperson of the committee.

C. The legislative council may appoint no more than one member from each party from each house as advisory members.

D. At the request of the committee chairperson, a member may be removed from the committee by the legislative council for nonattendance according to legislative council policy. Vacancies on the committee, however caused, may be filled by appointment by the legislative council or the legislative council may reduce the size of the committee by not making replacement appointments. If the legislative council reduces the size of the committee, it need not readjust party representation unless a party has less than two members on the committee.

E. No action shall be taken by the committee if a

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majority of the total membership from either house on the committee rejects the action.

F. After its appointment, the committee shall hold one organizational meeting to develop a work plan and budget for the ensuing interim. The work plan and budget shall be submitted to the legislative council for approval.

G. The legislative council, in consultation with the governor, shall appoint an advisory panel of experts in the areas regulated by the public regulation commission and those knowledgeable about the organizational structure of the executive branch of government. The advisory panel shall assist the committee and make recommendations on technical aspects of the committee's work.

H. Subcommittees may be created only by majority vote of all members appointed to the committee. A subcommittee shall be composed of at least one member from the house of representatives and one member from the senate, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full committee in advance of the meeting or expenditure, and the approval shall be shown in the minutes of the committee.

I. The committee shall make a report of its findings and recommendations for the consideration of the second session of the fifty-first legislature. The report and

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proposed legislation shall be made available to the legislative council on or before December 30 preceding the session.

J. Staff for the committee shall be provided by the legislative council service. The public regulation commission, its staff and any other state agency shall assist the committee as requested by the legislative council service. The legislative council service may contract for professional, technical and clerical assistance as needed to assist the committee.

SECTION 2. REPEAL.--Sections 8-7-1 through 8-7-11 and 8-8-1 through 8-8-21 NMSA 1978 (being Laws 1997, Chapter 262, Sections 1 through 5, Laws 2001 (1st S.S.), Chapter 3, Sections 3 through 8, Laws 1998, Chapter 108, Sections 1 through 4, Laws 2009, Chapter 216, Section 1, Laws 1998, Chapter 108, Sections 5 through 9, Laws 2001, Chapter 80, Section 1, Laws 2007, Chapter 161, Section 4, Laws 1998, Chapter 108, Sections 10 through 12, Laws 2000, Chapter 100, Section 1 and Laws 2000, Chapter 102, Section 1 and Laws 1998, Chapter 108, Sections 13 through 20 and 80, as amended) are repealed.

SECTION 3. ACT CONTINGENT ON CONSTITUTIONAL AMENDMENT.--This act is contingent upon approval by the people of a constitutional amendment entitled PROPOSING TO AMEND ARTICLE 11 OF THE CONSTITUTION OF NEW MEXICO BY REPEALING SECTIONS 1 AND 2 TO ELIMINATE THE PUBLIC REGULATION COMMISSION AS A CONSTITUTIONAL AGENCY AND PROVIDE BY LAW FOR ITS POWERS AND

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DUTIES.

SECTION 4. EFFECTIVE DATE.--If the constitutional amendment is approved as provided in Section 3 of this act, the effective date of the provisions of Section 1 of this act is April 1, 2013 and the effective date of the provisions of Section 2 of this act is July 1, 2014.

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_____ JOINT RESOLUTION

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 12, SECTION 6 OF THE CONSTITUTION OF NEW MEXICO TO ELIMINATE THE PUBLIC EDUCATION COMMISSION AND TO PROVIDE BY LAW FOR THE POWERS AND DUTIES OF THE PUBLIC EDUCATION DEPARTMENT AND THE SECRETARY OF PUBLIC EDUCATION.

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

SECTION 1. It is proposed to amend Article 12, Section 6 of the constitution of New Mexico to read:

"A. There is hereby created a "public education department" [~~and a "public education commission"~~] that shall have such powers and duties as provided by law. The department shall be a cabinet department headed by a secretary of public education who is a qualified, experienced educator who shall be appointed by the governor and confirmed by the senate.

[~~B. Ten members of the public education commission~~

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~~shall be elected for staggered terms of four years as provided by law. Commission members shall be residents of the public education commission district from which they are elected. Change of residence of a commission member to a place outside the district from which he was elected shall automatically terminate the term of that member.~~

~~C. The governor shall fill vacancies on the commission by appointment of a resident from the district in which the vacancy occurs until the next regular election for membership on the commission.~~

~~D.~~] B. The secretary of public education shall have administrative and regulatory powers and duties [~~including all functions relating to the distribution of school funds and financial accounting for the public schools to be performed~~] as provided by law.

[~~E. The elected members of the 2003 state board of education shall constitute the public education commission, if this amendment is approved, until their terms expire and the districts from which the state board of education were elected shall constitute the state public education commission districts until changed by law.~~]"

SECTION 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that

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purpose.

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