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HOUSE BILL 587

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY
CISCO MCSORLEY

AN ACT

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

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

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

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

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

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1 agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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G. As used in this section:

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

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

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

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

"1-4-21. REFUSAL OF REGISTRATION--APPEAL. -- ~~[Mandamus may be brought in the district court against the county clerk by]~~
Any qualified elector whose registration has been refused or [by] the county chairman of any major political party who

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1 alleges that certain persons are qualified electors but have
2 been refused registration may bring an appeal regarding the
3 refused registration pursuant to the provisions of Section
4 12-8A-1 NMSA 1978. "

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

7 "3-2-5. INCORPORATION--DUTIES OF COUNTY COMMISSIONERS AFTER
8 FILING OF PETITION TO ACT--CENSUS REQUIRED--ELECTION--RIGHT OF
9 APPEAL TO DISTRICT COURT.--

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

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

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

24 (3) if the territory proposed to be
25 incorporated is within an existing municipality or within the

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1 urbanized area of a municipality.

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

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

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

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

23 D. If the board of county commissioners determines
24 that the conditions for incorporation have not been met, the
25 board of county commissioners shall notify the petitioners of

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

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

24 F. The signers of the petition or any municipality
25 within whose urbanized area the territory proposed to be

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1 incorporated is located may appeal any determination of the
2 board of county commissioners to the district court pursuant to
3 the provisions of Section 12-8A-1 NMSA 1978. "

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

6 "3-2-9. INCORPORATION COMPLETE-- JUDICIAL NOTICE-- DEFECTS
7 IN INCORPORATION-- [CONTEST] APPEAL. --

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

17 B. An action by a protestant against the
18 incorporation of a municipality shall be taken to the district
19 court ~~[within sixty days after the filing of the certified~~
20 ~~copies of the papers relating to the incorporation of a~~
21 ~~municipality in the offices of the county clerk and secretary of~~
22 ~~state. Any action commenced more than sixty days after the~~
23 ~~filing of the certified copies of the papers relating the~~
24 ~~incorporation of a municipality in the offices of the county~~
25 ~~clerk and secretary of state and questioning the incorporation,~~

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1 ~~formation or organization of a municipality is perpetually~~
2 ~~barred]~~ pursuant to the provisions of Section 12-8A-1 NMSA
3 1978. "

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

6 "3-19-8. APPEAL. -- [A.] Any person in interest
7 [(1)] dissatisfied with any order or
8 determination of the planning commission, [and
9 (2)] after review of the order or determination
10 by the governing body of the municipality, may commence an
11 [action] appeal in the district court [~~to vacate and set aside~~
12 ~~the order or determination on the ground that it is unlawful or~~
13 ~~unreasonable.~~

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

20 ~~C. The trial shall be de novo and shall be governed~~
21 ~~by the rules of civil procedure of the district court.~~

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

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

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

5 A. A zoning ordinance adopted by a joint municipal-
6 county zoning authority shall be an ordinance of the
7 municipality and an ordinance of the county joining in the
8 agreement pursuant to Subsection A of Section [~~14-20-2.2 NMSA~~
9 ~~1953~~] 3-21-3 NMSA 1978 and may be enforced by appropriate
10 procedures of either the municipality or the county. The
11 agreement entered into pursuant to Subsection A of Section
12 [~~14-20-2.2 NMSA 1953~~] 3-21-3 NMSA 1978 may specify whether the
13 municipality or the county shall assume primary enforcement
14 responsibility.

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

19 C. Appeals from the decisions of the
20 extraterritorial zoning commission shall be taken to the joint
21 municipal-county zoning authority in the manner provided in
22 Section [~~14-20-6 NMSA 1953~~] 3-21-8 NMSA 1978, and appeals from
23 the decisions of the joint municipal-county zoning authority
24 shall be taken to the district court in the manner provided in
25 Section [~~14-20-7 NMSA 1953~~] 12-8A-1 NMSA 1978. "

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

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

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

22 C. ~~In answering said writ, it shall not be necessary~~
23 ~~to return the original papers acted upon, but it shall be~~
24 ~~sufficient to return certified or sworn copies thereof or of~~
25 ~~such portions thereof as may be called for by such writ. The~~

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1 ~~return shall concisely set forth such further facts as may be~~
2 ~~pertinent or material to show the grounds of the decision~~
3 ~~appealed from and shall be verified.~~

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

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

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

19 "3-33-13. IMPROVEMENT DISTRICT--PROVISIONAL ORDER--
20 PROTEST-- [ACTION IN] APPEAL TO DISTRICT COURT. --

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

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1 (1) propriety and advisability of constructing
2 the improvement;

3 (2) estimated cost of the improvement;

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

5 (4) estimated maximum benefit to each

6 individual tract or parcel of land.

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

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

11 (1) concluded the hearing;

12 (2) determined:

13 (a) the advisability of constructing the
14 improvement; and

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

17 (3) created the improvement district,
18 any person who during the hearing filed a written protest with
19 the governing body protesting the construction of the
20 improvement may ~~commence an action in district court to correct~~
21 ~~or set aside the determination of the governing body. After the~~
22 ~~lapse of thirty days after adoption of the resolution by the~~
23 ~~governing body, any action attacking the validity of the~~
24 ~~proceedings and the amount of benefit to be derived from the~~
25 ~~improvement is perpetually barred] appeal the determination of~~

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1 the governing body pursuant to the provisions of Section 12-8A-1
2 NMSA 1978.

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

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

14 "3-33-16. IMPROVEMENT DISTRICT--PRELIMINARY HEARING--
15 PROTEST--ACTION OF THE GOVERNING BODY-- [~~ACTION IN~~] APPEAL TO
16 DISTRICT COURT. --

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

- 21 (1) the proposed assessment;
22 (2) the regularity of the proceedings relating
23 to the improvement;
24 (3) the benefits of the improvement; or
25 (4) any other matter relating to the

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1 improvement district.

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

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

13 (1) correct any mistake or irregularity in any
14 proceeding relating to the improvement;

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

17 (3) in case of any invalidity, reassess the
18 cost of the improvement against a benefiting tract or parcel of
19 land; [~~and~~] or

20 (4) recess the hearing from time to time.

21 D. [~~Within thirty days after the hearing~~] Any owner
22 of a tract or parcel of land assessed, whether he appeared at
23 the hearing or not, may commence an [~~action~~] appeal in district
24 court [~~seeking an account of any error or invalidity of the~~
25 ~~proceedings relating to the improvement district to set aside or~~

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1 ~~correct the assessment or any proceedings relating to the~~
2 ~~improvement district. Thereafter, any owner, his heirs,~~
3 ~~assigns, successors or personal representatives are perpetually~~
4 ~~barred from any action or any defense of error or invalidity in~~
5 ~~the proceedings or assessments. Where no owner of a tract or~~
6 ~~parcel to be assessed has presented a protest during the hearing~~
7 ~~and all owners of the property to be assessed upon conclusion of~~
8 ~~the hearing submit written statements in favor of the creation~~
9 ~~of the improvement district for the types and character of~~
10 ~~improvements indicated in the petition, such owners shall be~~
11 ~~deemed to have waived their right to bring any action in~~
12 ~~district court seeking an account of any error or invalidity of~~
13 ~~the proceedings relating to the improvement district or to set~~
14 ~~aside or correct the assessment or any proceedings relating to~~
15 ~~the improvement district] pursuant to the provisions of Section~~
16 12-8A-1 NMSA 1978. "

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

19 "3-33-22. IMPROVEMENT DISTRICT-- FILING OF OBJECTIONS--
20 ASSESSMENT HEARING-- ACTION OF THE GOVERNING BODY-- APPEAL TO
21 DISTRICT COURT. --

22 A. Not later than three days before the date of the
23 hearing on the assessment roll, any owner of a tract or parcel
24 of land [which] that is listed on the assessment roll may file
25 his specific objections in writing with the municipal clerk.

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1 Unless presented as required in this section, any objection to
2 the regularity, validity and correctness of:

- 3 (1) the proceedings;
- 4 (2) the assessment roll;
- 5 (3) each assessment contained on the assessment
6 roll; or
- 7 (4) the amount of the assessment levied against
8 each tract or parcel of land,
9 is deemed waived.

10 B. At the hearing, the governing body shall hear all
11 objections that have been filed as provided in this section and
12 may recess the hearing from time to time and, by resolution,
13 revise, correct, confirm or set aside any assessment and order
14 another assessment be made de novo.

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

- 22 (1) a final determination of the regularity,
23 validity and correctness of:
 - 24 (a) the proceedings;
 - 25 (b) the assessment roll;

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1 (c) each assessment contained on the
2 assessment roll; and

3 (d) the amount of the assessment levied
4 against each tract or parcel of land; and

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

7 D. ~~[Within fifteen days after the publication of the~~
8 ~~title and general summary of the ordinance or posting of the~~
9 ~~ordinance]~~ Any owner who has filed an objection as provided in
10 this section may commence an ~~[action]~~ appeal in district court
11 ~~[to correct or set aside the determination of the governing~~
12 ~~body. After the lapse of fifteen days after the publication or~~
13 ~~posting, all actions that include the defense of confiscation or~~
14 ~~attack the regularity, validity and correctness of:~~

15 (1) ~~the proceedings;~~

16 (2) ~~the assessment roll;~~

17 (3) ~~each assessment contained on the assessment~~
18 ~~roll; or~~

19 (4) ~~the amount of the assessment levied against~~
20 ~~each tract or parcel of land,~~

21 ~~are perpetually barred]~~ pursuant to the provisions of Section
22 12-8A-1 NMSA 1978. "

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

25 "3-33-35. IMPROVEMENT DISTRICT-- NOTICE OF APPEAL-- APPEAL

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

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

15 (1) ~~notice of appeal;~~

16 (2) ~~appeal;~~

17 (3) ~~reassessment roll;~~

18 (4) ~~reassessment proceedings, all certified by~~
19 ~~the municipal clerk; and~~

20 (5) ~~a bond to the municipality conditioned to~~
21 ~~pay all costs that may be awarded against the appellant in a sum~~
22 ~~of not less than two hundred dollars (\$200) with such security~~
23 ~~as shall be approved by the district court.~~

24 C. ~~The case shall:~~

25 (1) ~~be docketed by the clerk of the district~~

1 ~~court in the name of the owner taking such appeal against the~~
2 ~~municipality as "an appeal from reassessments";~~

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

5 ~~(a) the law relating to eminent domain by~~
6 ~~municipalities; or~~

7 ~~(b) actions of forcible entry and~~
8 ~~detainer; and~~

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

11 ~~The judgment of the district court shall be to confirm,~~
12 ~~modify or annul the reassessment insofar as the reassessment~~
13 ~~affects the tract or parcel of land of the appellant. If the~~
14 ~~reassessment is confirmed, the fees of the municipal clerk for~~
15 ~~copies of the record shall be taxed against the appellant with~~
16 ~~the other costs.~~

17 ~~D. On any judgment of the district court, appeal~~
18 ~~shall be to the supreme court as in other causes. If an appeal~~
19 ~~is taken to the supreme court, the transcript of the proceedings~~
20 ~~in the district court shall be filed in the office of the clerk~~
21 ~~of the supreme court within thirty days after the rendering of~~
22 ~~the decree being appealed. If the appeal is not filed within~~
23 ~~the thirty day period, the appeal shall be forthwith dismissed~~
24 ~~upon motion. If the appeal is properly prosecuted, the supreme~~
25 ~~court shall advance the cause on the docket and hear the appeal~~

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1 ~~at the earliest possible opportunity]~~ The appeal shall be filed
2 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

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

5 "3-35-3. HEARING ON PROVISIONAL ORDER--PROTEST BY PROPERTY
6 OWNER OR INTERESTED PERSON-- ~~[ACTION TO CORRECT OR SET ASIDE~~
7 ~~DETERMINATION]~~ APPEAL. --At the hearing on a provisional order,
8 any property owner or interested person may file a written
9 protest and may be heard by the governing body on the order.
10 Any person filing a written protest may ~~[within thirty days~~
11 ~~after the governing body has finally passed on the protest,~~
12 ~~bring an action in the district court to correct or set aside~~
13 ~~the determination, but thereafter, no actions shall be brought~~
14 ~~to attack the validity of the proceedings or the amount of~~
15 ~~benefits]~~ bring an appeal concerning the governing body's
16 determination on the protest pursuant to the provisions of
17 Section 12-8A-1 NMSA 1978. "

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

20 "3-39-23. JUDICIAL REVIEW. --

21 A. Any person aggrieved by any decision of the board
22 of appeals, or any taxpayer, or any officer, department, board
23 or bureau of the political subdivision may ~~[present to the~~
24 ~~district court a verified petition setting forth that the~~
25 ~~decision is illegal, in whole or in part, and specifying the~~

1 ~~grounds of the illegality. Such petition shall be presented to~~
2 ~~the court within thirty days after the decision is filed in the~~
3 ~~office of the board.~~

4 ~~B. Upon presentation of such petition, the court may~~
5 ~~allow a writ of certiorari directed to the board of appeals to~~
6 ~~review such decision of the board. The allowance of the writ~~
7 ~~shall not stay proceedings upon the decision appealed from, but~~
8 ~~the court may, on application, on notice to the board and on due~~
9 ~~cause shown, grant a restraining order.~~

10 ~~C. The board of appeals shall not be required to~~
11 ~~return the original papers acted upon by it, but it shall be~~
12 ~~sufficient to return certified or sworn copies thereof or of~~
13 ~~such portions thereof as may be called for by the writ. The~~
14 ~~return shall concisely set forth such other facts as may be~~
15 ~~pertinent and material to show the grounds of the decision~~
16 ~~appealed from and shall be verified.~~

17 ~~D. The court shall have exclusive jurisdiction to~~
18 ~~affirm, modify or set aside the decision brought up for review,~~
19 ~~in whole or in part, and if need be, to order further~~
20 ~~proceedings by the board of appeals. The findings of fact by~~
21 ~~the board, if supported by substantial evidence, shall be~~
22 ~~accepted by the court as conclusive, and no objection to a~~
23 ~~decision of the board shall be considered by the court unless~~
24 ~~such objection shall have been urged before the board or, if it~~
25 ~~was not so urged, unless there were reasonable grounds for~~

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1 ~~failure to do so~~ file an appeal pursuant to the provisions of
2 Section 12-8A-1 NMSA 1978.

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

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

9 "3-46-43. ORDINANCES RELATING TO REPAIR, CLOSING AND
10 DEMOLITION OF DWELLINGS UNFIT FOR HUMAN HABITATION--COMPLAINT--
11 SERVICE OF COMPLAINT--APPEAL. --

12 A. Whenever any municipality finds that there exist
13 dwellings [~~which~~] that are unfit for human habitation due to
14 dilapidation, defects increasing the hazards of fire, accidents
15 or other calamities, lack of ventilation, light or sanitary
16 facilities or due to other conditions, including those set forth
17 in Subsection C [~~hereof~~] of this section, rendering [~~such~~] the
18 dwellings unsafe and [~~insanitary~~] unsanitary or dangerous or
19 detrimental to the health, safety or morals or otherwise
20 inimical to the welfare of the residents of [~~such~~] the
21 municipality, power is [~~hereby~~] conferred upon the municipality
22 to require or cause the repair, closing or demolition or removal
23 of the dwelling in the manner [~~herein~~] provided in this section.
24 A "dwelling" means any building or structure or part thereof
25 used and occupied for human habitation or intended to be so used

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1 and includes any appurtenances usually enjoyed [~~therewith~~] in
2 the dwelling.

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

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

11 (2) whenever it appears to the public officer,
12 on his own motion, that any dwelling is unfit for human
13 habitation, he shall, if his preliminary investigation discloses
14 a basis for [~~such~~] the charges, issue and cause to be served on
15 the owner, every mortgagee of record and all parties in interest
16 in the dwelling, including persons in possession, a complaint
17 stating the charges in that respect. The complaint shall
18 contain a notice that a hearing will be held before the public
19 officer or his designated agent at a place [~~therein~~] fixed in
20 the complaint not less than ten days nor more than thirty days
21 after the serving of the complaint; that the owner, mortgagee
22 and parties in interest shall be given the right to file an
23 answer to the complaint and to appear in person or otherwise and
24 give testimony at the place and the time fixed in the complaint;
25 and that the rules of evidence prevailing in courts of law or

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1 equity shall not be controlling in hearings before the public
2 officer;

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

10 (a) if the repair, alteration or
11 improvement of the dwelling can be made at a reasonable cost in
12 relation to the value of the dwelling, the ordinance of the
13 municipality shall fix a certain percentage of the cost as being
14 reasonable for [~~such~~] that purpose, requires the owner, within
15 the time specified in the order, to repair, alter or improve the
16 dwelling to render it fit for human habitation or to vacate and
17 close the dwelling as a human habitation; or

18 (b) if the repair, alteration or
19 improvement of the dwelling cannot be made at a reasonable cost
20 in relation to the value of the dwelling, the ordinance of the
21 municipality shall fix a certain percentage of the cost as being
22 reasonable for the purpose, requires the owner, within the time
23 specified in the order, to remove or demolish the dwelling;

24 (4) if the owner fails to comply with an order
25 to repair, alter or improve or to vacate and close the dwelling,

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1 the public officer may cause the dwelling to be repaired,
2 altered or improved or to be vacated and closed;

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

6 (6) the amount of the cost of the repairs,
7 alterations or improvements or vacating and closing or removal
8 or demolition by the public officer shall be a lien against the
9 real property upon which the cost was incurred. If the dwelling
10 is removed or demolished by the public officer, he shall sell
11 the materials of the dwelling and shall credit the proceeds of
12 the sale against the cost of the removal or demolition, and any
13 balance remaining shall be deposited in the district court by
14 the public officer, shall be secured in the manner as may be
15 directed by the court and shall be disbursed by the court to the
16 persons found to be entitled ~~[thereto]~~ to the balance by final
17 order or decree of the court.

18 C. An ordinance adopted by a municipality pursuant
19 to this section shall provide that the public officer may
20 determine a dwelling is unfit for human habitation if he finds
21 that conditions exist in ~~[such]~~ the dwelling ~~[which]~~ that are
22 dangerous or injurious to the health, safety or morals of the
23 occupants of the dwelling, the occupants of neighboring
24 dwellings or other residents of the municipality or ~~[which]~~ that
25 have a blighting influence on properties in the area. The

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1 conditions may include the following, without limitations:
2 defects [~~therein~~] increasing the hazards of fire, accident or
3 other calamities; lack of adequate ventilation, light or
4 sanitary facilities; dilapidation; disrepair; structural
5 defects; uncleanliness; overcrowding; inadequate ingress and
6 egress; inadequate drainage; or any violation of health, fire,
7 building or zoning regulations or any other laws or regulations
8 relating to the use of land and the use and occupancy of
9 buildings and improvements. The ordinance may provide
10 additional standards to guide the public officer or his agents
11 or employees in determining the fitness of a dwelling for human
12 habitation.

13 D. Complaints or orders issued by a public officer
14 pursuant to an ordinance adopted under the provisions of the
15 Urban [~~Renewal~~] Development Law shall be served upon persons
16 either personally or by registered mail; but if the whereabouts
17 of the persons are unknown and cannot be ascertained by the
18 public officer in the exercise of reasonable diligence and the
19 public officer [~~shall make~~] makes an affidavit to that effect,
20 then the serving of the complaint or order upon the persons may
21 be made by publishing the [~~same~~] complaint or order once each
22 week for two consecutive weeks in a newspaper printed and
23 published in the municipality or, in the absence of a newspaper,
24 in one printed and published in the county and circulating in
25 the municipality in which the dwellings are located. A copy of

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1 the complaint or order shall be posted in a conspicuous place on
2 the premises affected by the complaint or order. A copy of the
3 complaint or order shall also be filed with the clerk of the
4 county in which the dwelling is located, and filing of the
5 complaint or order shall have the same force and effect as other
6 lis pendens notices provided by law.

7 E. Any person affected by an order issued by the
8 public officer may ~~[petition the district court for an~~
9 ~~injunction restraining the public officer from carrying out the~~
10 ~~provisions of the order, and the court may, upon the petition,~~
11 ~~issue a temporary injunction restraining the public officer~~
12 ~~pending the final disposition of the cause; provided that within~~
13 ~~sixty days after the posting and service of the order of the~~
14 ~~public officer, such person shall petition such court. Hearings~~
15 ~~shall be had by the court on the petitions within twenty days or~~
16 ~~as soon thereafter as possible and shall be given preference~~
17 ~~over other matters on the court's calendar. The court shall~~
18 ~~hear the matter de novo and enter a final judgment in accordance~~
19 ~~with its findings. The remedies herein provided shall be~~
20 ~~exclusive remedies, and no person affected by an order of the~~
21 ~~public officer shall be entitled to recover any damages for~~
22 ~~action taken pursuant to any order of the public officer or~~
23 ~~because of compliance by the person with any order of the public~~
24 ~~officer. Appeals may be taken in the same manner as civil~~
25 ~~actions] file an appeal pursuant to the provisions of Section~~

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1 12-8A-1 NMSA 1978.

2 F. An ordinance adopted by the governing body of the
3 municipality may authorize the public officer to exercise [~~such~~]
4 powers as may be necessary or convenient to carry out and
5 effectuate the purposes and provisions of the Urban [~~Renewal~~]
6 Development Law, including the following powers in addition to
7 others [~~herein~~] granted in the Urban Development Law:

8 (1) to investigate the dwelling conditions in
9 the municipality in order to determine which dwellings [~~therein~~]
10 are unfit for human habitation;

11 (2) to administer oaths and affirmations,
12 examine witnesses and receive evidence;

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

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

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

25 G. The governing body of any municipality adopting

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1 an ordinance under this section shall, as soon as possible
2 thereafter, prepare an estimate of the annual expenses or costs
3 to provide the equipment, personnel and supplies necessary for
4 periodic examinations and investigations of the dwellings in the
5 municipality for the purpose of determining the fitness of the
6 dwellings for human habitation and for the enforcement and
7 administration of its ordinance or ordinances adopted under this
8 section.

9 H. Nothing in this section shall be construed to
10 abrogate or impair the powers of the courts or of any department
11 of any municipality to enforce any provisions of its charter or
12 its ordinances or regulations [~~nor~~] or to prevent or punish
13 violations thereof [~~and~~]. The powers conferred by this section
14 shall be in addition and supplemental to the powers conferred by
15 any other law.

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

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

22 "3-51-12. FORMATION OF DISTRICT--PROVISIONAL ORDER
23 HEARING-- CONDUCT-- APPEAL. --

24 A. The owner [~~or owners~~] of any property within the
25 proposed district may, not less than two days preceding the

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1 hearing, file with the clerk his specific objections in writing.
2 Any objection to the regularity, validity and correctness of the
3 proceedings, including the validity and amount of the
4 preliminary fund assessment, shall be deemed waived unless
5 presented at the time and in the manner [herein] specified in
6 this subsection.

7 B. At the time and place [so] designated for hearing
8 the objections, the governing body of the city shall hear and
9 determine all objections [which] that have been [so] filed, and
10 [said] the governing body shall have the power to adjourn the
11 hearing from time to time and shall have power by resolution, in
12 its discretion, to revise, correct or confirm any proceedings
13 [~~theretofore~~] previously taken.

14 C. Within fifteen days after the publication of the
15 ordinance forming the parking district, any person who has filed
16 an objection [~~or objections~~], as [hereinbefore] provided in
17 Subsection A of this section, shall have the right to appeal to
18 the district court [~~for the county in which the city is located~~
19 ~~for review of errors in law; but, thereafter, all actions or~~
20 ~~suits, including the defense of confiscation, attacking the~~
21 ~~regularity, validity and correctness of the proceeding,~~
22 ~~including the validity and amount of preliminary fund~~
23 ~~assessment, shall be perpetually barred] pursuant to the
24 provisions of Section 12-8A-1 NMSA 1978. "~~

25 Section 16. Section 4-45-5 NMSA 1978 (being Laws 1876,

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1 Chapter 1, Section 22, as amended) is amended to read:

2 "4-45-5. ACCOUNTS AGAINST COUNTY--APPEAL FROM
3 DISALLOWANCE. -- [~~Sec. 163.~~] When any claim of any person against
4 a county [~~shall be~~] is disapproved in whole or in part by the
5 board of county commissioners, [~~such~~] that person may appeal
6 from the decision of [~~such~~] the board to the district court [~~for~~
7 ~~the same county by causing written notice of such appeal to be~~
8 ~~served on the clerk of such board within thirty days after such~~
9 ~~decision and executing bond to such county with sufficient~~
10 ~~security, to be approved by the clerk of said board, conditioned~~
11 ~~for the faithful prosecution of such appeal and payment of all~~
12 ~~costs that may be adjudged against such appellant] pursuant to
13 the provisions of Section 12-8A-1 NMSA 1978."~~

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

16 "4-55A-31. IMPROVEMENT DISTRICT-- [~~NOTICE OF APPEAL~~]--
17 APPEAL TO DISTRICT COURT [~~APPEAL TO SUPREME COURT~~]. -- [A.] After
18 an owner has filed a written objection with the county clerk to
19 any reassessment as provided in Section [~~19 of the County~~
20 ~~Improvement District Act~~] 4-55A-18 NMSA 1978 and the board has
21 determined the reassessment, any owner of a tract or parcel of
22 land that is reassessed may [~~within ten days after the~~
23 ~~reassessment roll has been ratified by ordinance file a notice~~
24 ~~of appeal to the district court. The notice to the county clerk~~
25 ~~shall describe the tract or parcel of land being reassessed and~~

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1 ~~shall state the objections of the appellant to the reassessment.~~

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

5 ~~(1) notice of appeal;~~

6 ~~(2) appeal;~~

7 ~~(3) reassessment roll;~~

8 ~~(4) reassessment proceedings, all certified by~~
9 ~~the county clerk; and~~

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

14 ~~C. The case shall:~~

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

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

20 ~~(a) the law relating to eminent domain by~~
21 ~~counties; or~~

22 ~~(b) actions of forcible entry and~~
23 ~~detainer; and~~

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

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1 ~~The judgment of the district court shall be to confirm,~~
2 ~~modify or annul the reassessment insofar as the reassessment~~
3 ~~affects the tract or parcel of land of the appellant. If the~~
4 ~~reassessment is confirmed, the fees of the county clerk for~~
5 ~~copies of the record shall be taxed against the appellant with~~
6 ~~the other costs.~~

7 ~~D. On any judgment of the district court, appeal~~
8 ~~shall be to the supreme court as in other causes. If an appeal~~
9 ~~is taken to the supreme court, the transcript of the proceedings~~
10 ~~in the district court shall be filed in the office of the clerk~~
11 ~~of the supreme court within thirty days after the rendering of~~
12 ~~the decree being appealed. If the appeal is not filed within~~
13 ~~the thirty-day period, the appeal shall be forthwith dismissed~~
14 ~~upon motion. If the appeal is properly prosecuted, the supreme~~
15 ~~court shall advance the cause on the docket and hear the appeal~~
16 ~~at the earliest possible opportunity] file a notice of appeal~~
17 ~~pursuant to the provisions of Section 12-8A-1 NMSA 1978."~~

18 Section 18. Section 7-8-26 NMSA 1978 (being Laws 1989,
19 Chapter 293, Section 27) is amended to read:

20 "7-8-26. APPEAL--ACTION TO ESTABLISH CLAIM --

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

24 B. A person whose claim has not been acted upon
25 within ninety days after its filing may bring an action to

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1 establish the claim in the district court of Santa Fe, naming
2 the administrator as a defendant. The action shall be brought
3 ~~[within ninety days after the decision of the administrator or]~~
4 within one hundred eighty days after the filing of the claim ~~[if~~
5 ~~he has failed to act on it]~~. If the aggrieved person
6 establishes the claim in an action against the administrator,
7 the court shall award him costs and reasonable ~~[attorney's]~~
8 attorneys' fees. "

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

11 "7-38-28. APPEALS FROM ORDERS OF THE DIRECTOR OR COUNTY
12 VALUATION PROTESTS BOARDS. --

13 A. A property owner may appeal an order made by the
14 director or a county valuation protests board by filing ~~[with~~
15 ~~the court of appeals a notice of appeal within thirty days, or~~
16 ~~such other time prescribed by the Rules of Appellate Procedure,~~
17 ~~SCRA 1986, of the date the order was made. A copy of the notice~~
18 ~~of appeal shall be mailed to the director. The appeal shall be~~
19 ~~on the record made at the hearing or upon a stipulation~~
20 ~~submitted by both the valuation authority and the property owner~~
21 ~~and shall not be de novo. The procedure for perfecting an~~
22 ~~appeal under this section to the court of appeals shall be as~~
23 ~~provided by the Rules of Appellate Procedure, SCRA 1986.~~

24 B. ~~Upon appeal, the court shall set aside a decision~~
25 ~~and order of the director or a county valuation protests board~~

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1 ~~only if it is found to be:~~

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

4 (2) ~~not supported by substantial evidence in~~
5 ~~the record taken as a whole; or~~

6 (3) ~~otherwise not in accordance with law] an~~

7 appeal pursuant to the provisions of Section 12-8A-1 NMSA 1978.

8 [~~C.~~] B. The director shall notify the appropriate
9 county assessor of the decision and order of the district court
10 [~~of appeals~~] and shall direct the assessor to take appropriate
11 action to comply with the decision and order. "

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

14 "10-7D-23. JUDICIAL ENFORCEMENT--STANDARD OF REVIEW. --

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

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

25 (2) not supported by substantial evidence on

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1 the record considered as a whole; or

2 (3) otherwise not in accordance with law.

3 B. Any person or party, including any labor
4 organization affected by a final regulation, order or decision
5 of the board or a local board, may appeal to the district court
6 for further relief [~~All such appeals shall be based upon the~~
7 ~~record made at the board or local board hearing. All such~~
8 ~~appeals to the district court shall be taken within thirty days~~
9 ~~of the date of the final regulation, order or decision of the~~
10 ~~board or local board. Actions taken by the board or local board~~
11 ~~shall be affirmed unless the court concludes that the action is:~~

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

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

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

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

20 "10-9-18. APPEALS BY EMPLOYEES TO THE BOARD. --

21 A. Any employee who is dismissed, demoted or
22 suspended may, within thirty days after the dismissal, demotion
23 or suspension, appeal to the board. The appealing employee and
24 the agency whose action is reviewed have the right to be heard
25 publicly and to present facts pertinent to the appeal.

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

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

5 D. A record shall be made of the hearing which shall
6 be transcribed if there is an appeal to the district court.
7 Costs of [~~such~~] the transcripts, including one copy for the
8 board, shall be paid initially by the agency. The cost of
9 [~~such~~] the transcripts may be [~~assesed~~] assessed by the court to
10 the losing party on appeal.

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

18 F. If the board finds that the action taken by the
19 agency was without just cause, the board may modify the
20 disciplinary action or order the agency to reinstate the
21 appealing employee to his former position or to a position of
22 like status and pay. Every consideration shall be given to
23 placing the appealing employee in the same geographical location
24 in which he was employed prior to the disciplinary action. The
25 board may recommend that the appealing employee be reinstated by

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1 an agency other than the one who disciplined the appealing
2 employee. When the board orders an agency to reinstate an
3 appealing employee, [~~such~~] the reinstatement shall be effective
4 within thirty days of the board's order. The board may award
5 back pay as of the date of the dismissal, demotion or suspension
6 or as of [~~such~~] the later date as the board may specify.

7 G. Any party aggrieved by the decision of the board
8 made pursuant to this section may appeal the decision to the
9 district court [~~for the district in which he resides, is~~
10 ~~employed or maintains his principal office or for the district~~
11 ~~of Santa Fe county. Such appeal shall be initiated by filing a~~
12 ~~notice of appeal with the clerk of the appropriate district~~
13 ~~court within thirty days after the service of a written copy of~~
14 ~~the decision of the board on that party. Upon appeal, the~~
15 ~~district court shall affirm the decision of the board unless the~~
16 ~~decision is found to be:~~

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

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

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

21 H. ~~An appeal from the decision of the district court~~
22 ~~may be taken to the court of appeals in accordance with the~~
23 ~~rules of civil procedure] pursuant to the provisions of Section~~
24 12-8A-1 NMSA 1978. "

25 Section 22. Section 10-11-120 NMSA 1978 (being Laws 1987,

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1 Chapter 253, Section 120) is amended to read:

2 "10-11-120. DENIAL OF BENEFIT CLAIM - APPEALS. --

3 A. A benefit claimant shall be notified in writing,
4 within thirty days, of denial of a claim for benefits. The
5 notification shall give the reason for the denial. A claimant
6 may appeal the denial and request a hearing. The appeal shall
7 be in writing filed with the association within ninety days of
8 the denial. The appeal shall contain a statement of the
9 claimant's reason for claiming the denial to be improper. The
10 retirement board shall schedule a hearing of the appeal before
11 the retirement board or, at the discretion of the retirement
12 board, a committee of the retirement board, within sixty days of
13 receipt of the appeal. A final decision on the matter being
14 appealed shall be made by the retirement board.

15 B. Appeals from a final decision of the retirement
16 board ~~[shall be made to the first judicial district court and~~
17 ~~initiated by filing a notice of appeal with the district court~~
18 ~~within thirty days after the retirement board has issued its~~
19 ~~final decision. The review of the district court shall be~~
20 ~~restricted to the record made before the retirement board, and~~
21 ~~the district court shall not permit the introduction of new~~
22 ~~evidence on any of the issues presented before the retirement~~
23 ~~board. The decision of the retirement board shall be upheld by~~
24 ~~the district court unless the district court finds the decision~~
25 ~~of the retirement board to be unlawful, arbitrary or capricious~~

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1 ~~or not supported by substantial evidence on the entire record as~~
2 ~~submitted by the retirement board] may be filed pursuant to the~~
3 ~~provisions of Section 12-8A-1 NMSA 1978.~~ "

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

6 "12-8-16. PETITION FOR JUDICIAL REVIEW. -- [A-] Any party
7 who has exhausted all administrative remedies available within
8 the agency and who is adversely affected by a final order or
9 decision in an adjudicatory proceeding [~~whether the order or~~
10 ~~decision is affirmative or negative in form, is entitled to~~
11 ~~certain, speedy, adequate and complete judicial review thereof~~
12 ~~under the Administrative Procedures Act, but nothing in this~~
13 ~~section prevents resort to other means of review, redress or~~
14 ~~relief available because of constitutional provisions or~~
15 ~~otherwise prescribed by statute. A preliminary procedural or~~
16 ~~intermediate action or ruling is immediately reviewable if it~~
17 ~~practically disposes of the merits of the action.~~

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

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1 ~~final order or decision or was required to exhaust~~
2 ~~administrative remedies or procedures.~~

3 ~~C. Except as the constitution or statutes~~
4 ~~specifically preclude judicial review or action, any person~~
5 ~~suffering legal wrong because of any agency action or inaction~~
6 ~~or adversely affected or aggrieved by the action or inaction,~~
7 ~~within the meaning of any relevant statute or constitutional~~
8 ~~provision, is entitled to judicial review thereof and relief.~~

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

20 ~~E. The form of proceeding for judicial review shall~~
21 ~~be any special statutory review proceeding relevant to the~~
22 ~~subject matter in any court specified by statute or, in the~~
23 ~~absence or inadequacy thereof, any applicable form of legal~~
24 ~~action, including actions for declaratory judgments, writs of~~
25 ~~prohibition or mandatory injunction or habeas corpus or by~~

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1 ~~appeal to the court of appeals.~~

2 ~~F. In all instances of review by appeal from an~~
3 ~~agency order or decision under the Administrative Procedures~~
4 ~~Act, unless otherwise provided by law, proceedings shall be~~
5 ~~instituted by filing a notice of appeal in the court of appeals~~
6 ~~within thirty days after the entry of the final agency order or~~
7 ~~decision.~~

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

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

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1 "13-1-183. JUDICIAL REVIEW - [~~LIMITATION--VENUE~~]. -- [~~A.~~]
2 All actions authorized by the Procurement Code for judicial
3 review of a determination shall be [~~based upon the records of~~
4 ~~the central purchasing office and all evidence submitted by the~~
5 ~~protestant and other interested parties.~~ All actions for
6 judicial review ~~must be filed within thirty days of receipt of~~
7 ~~notice of the determination as follows:~~

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

11 (2) ~~in the district court in which a state~~
12 ~~agency or a local public body is located when the decision to be~~
13 ~~reviewed is made by a local public body or a state agency not~~
14 ~~located in Santa Fe county.~~

15 B. ~~All determinations under the Procurement Code~~
16 ~~made by a state agency or a local public body shall be sustained~~
17 ~~unless arbitrary, capricious, contrary to law, clearly erroneous~~
18 ~~or not based upon substantial evidence] filed pursuant to the~~

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

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

22 "13-4-15. APPEALS. --

23 A. Any interested person may appeal any
24 determination, finding or action of the director of the labor
25 and industrial division of the labor department made pursuant to

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1 the Public Works Minimum Wage Act to the labor and industrial
2 commission sitting as the appeals board by filing notice of the
3 appeal with the director within fifteen days after the
4 determination has been issued or notice of the finding or action
5 has been given as provided in the Public Works Minimum Wage Act.

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

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

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

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1 ~~fact of the board shall be binding upon the district court when~~
2 ~~supported by substantial evidence. The court may affirm the~~
3 ~~decision of the board or remand the case for further~~
4 ~~proceedings. The court may reserve or modify the decision~~
5 ~~because the administrative findings, inferences, conclusions or~~
6 ~~decisions are:~~

7 (1) ~~in violation of constitutional or statutory~~
8 ~~provisions;~~

9 (2) ~~in excess of the statutory authority of the~~
10 ~~board;~~

11 (3) ~~made upon unlawful procedure;~~

12 (4) ~~affected by other error of law;~~

13 (5) ~~clearly erroneous in view of the reliable~~
14 ~~probative and substantial evidence on the whole record; or~~

15 (6) ~~arbitrary or capricious or characterized by~~
16 ~~abusive discretion or clearly unwarranted exercise of~~
17 ~~discretion.~~

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

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

25 "17-3-34. REVOCATION OF LICENSE, CERTIFICATE OR PERMIT FOR

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1 VIOLATION OF LAW - NOTICE AND HEARING - - JUDICIAL REVIEW. - -

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

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

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

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

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1 "19-7-17. APPEAL. -- Any person in interest aggrieved by the
2 decision of the commissioner in fixing the value of improvements
3 or in collecting costs may appeal to the district court [as
4 ~~provided by Sections 7-8-71 through 7-8-73, New Mexico Statutes~~
5 ~~Annotated, 1953 Compilation. All parties to the appeal shall be~~
6 ~~entitled to introduce additional evidence as to value] pursuant
7 to the provisions of Section 12-8A-1 NMSA 1978. "~~

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

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

22 ~~Notice of said motion shall be served upon the adverse~~
23 ~~party or his attorney at least ten days before the filing~~
24 ~~thereof] pursuant to the provisions of Section 12-8A-1 NMSA~~
25 1978. "

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

3 "19-10-23. APPEAL OF COMMISSIONER'S DECISION. -- Any person
4 or corporation aggrieved by any ruling or decision of the
5 commissioner affecting his interest in any lease issued under or
6 affected by the provisions relating to oil and gas leases of
7 state lands may ~~[within sixty days after rendering of the order~~
8 ~~or decision, apply to the district court of the county in which~~
9 ~~the lands or the greater part of them affected by the order or~~
10 ~~decision are located for an order directed to the commissioner~~
11 ~~requiring him to show cause why the order or decision should not~~
12 ~~be cancelled or set aside. The district court shall have~~
13 ~~jurisdiction as a court of equity to receive the application, to~~
14 ~~issue the order and to cancel or set aside the order or decision~~
15 ~~of the commissioner; provided that not less than twenty days are~~
16 ~~allowed the commissioner for making return to any order to show~~
17 ~~cause which may be issued. Any other person interested in the~~
18 ~~outcome of the controversy may, upon proper showing to the~~
19 ~~court, be made a party to or be permitted to intervene in the~~
20 ~~proceeding and have his rights in the subject matter determined.~~
21 ~~Appeals to and writs of error from the supreme court lie from~~
22 ~~the decisions of the district court as in other cases]~~ file an
23 appeal pursuant to the provisions of Section 12-8A-1 NMSA 1978."

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

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1 "21-24-8. JUDICIAL REVIEW. -- Any final determination of the
2 commission respecting the issuance, denial or revocation of a
3 registration may be appealed to the district court pursuant to
4 the provisions of Section 12-8A-1 NMSA 1978. "

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

7 "22-10-22. SUSPENSION AND REVOCATION OF CERTIFICATES--
8 APPEAL. --

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

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

15 (1) the state board serving written notice of
16 the suspension or revocation on the person holding the
17 certificate in accordance with the law for service of process in
18 civil actions. The notice of the suspension or revocation shall
19 state the grounds for the suspension or revocation of the
20 certificate. The notice of the suspension or revocation shall
21 also designate a place, time and date, not less than thirty days
22 from the date of the service of the notice of the suspension or
23 revocation, for a hearing before the state board;

24 (2) the state board or its designated hearing
25 officer conducting a hearing ~~[which]~~ that provides the person

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1 holding the certificate, or his attorney, an opportunity to
2 present evidence or arguments on all pertinent issues. A
3 transcript shall be made of the entire hearing conducted by the
4 state board or its designated hearing officer; and

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

16 C. Any person aggrieved by a decision of the state
17 board after a hearing pursuant to this section may appeal the
18 decision to the ~~[court of appeals by filing a notice of appeal~~
19 ~~with the clerk of the court within thirty days after service of~~
20 ~~a written copy of the decision of the state board on the person.~~
21 ~~The cost of transcripts on appeal, including one copy for the~~
22 ~~use of the state board, shall be borne by the appellant. Upon~~
23 ~~appeal, the court of appeals shall affirm the decision of the~~
24 ~~state board unless the decision is found to be:~~

25 (1) ~~arbitrary, capricious or unreasonable;~~

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1 ~~(2) not supported by substantial evidence; or~~
2 ~~(3) otherwise not in accordance with law]~~
3 district court pursuant to the provisions of Section 12-8A-1
4 NMSA 1978. "

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

7 "24-1-5. LICENSURE OF HEALTH FACILITIES--HEARINGS--
8 APPEALS. --

9 A. No health facility shall be operated without a
10 license issued by the department. If a health facility is found
11 to be operating without a license, in order to protect human
12 health or safety the director may issue a cease-and-desist
13 order. The health facility may request a hearing [~~which~~] that
14 shall be held in the manner provided in this section.

15 B. The department is authorized to make [~~such~~]
16 inspections and investigations and prescribe [~~such~~] regulations
17 as it deems necessary or desirable to promote the health, safety
18 and welfare of persons [~~utilizing~~] using health facilities.

19 C. Except as provided in Subsection F of this
20 section, upon receipt of an application for a license to operate
21 a health facility, the department shall promptly inspect the
22 health facility to determine if it is in compliance with all
23 regulations of the department. Applications for hospital
24 licenses shall include evidence that the bylaws or regulations
25 of the hospital apply equally to osteopathic and medical

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1 physicians.

2 D. Upon inspection of any health facility, if the
3 department finds any violation of its regulations, [~~it~~] the
4 department may deny the application for a license, whether
5 initial or renewal, or it may issue a temporary license. A
6 temporary license shall not be issued for a period exceeding one
7 hundred twenty days, nor shall more than two consecutive
8 temporary licenses be issued.

9 E. A one-year nontransferable license shall be
10 issued to any health facility complying with all regulations of
11 the department. The license shall be renewable for successive
12 one-year periods, upon filing of a renewal application, if the
13 department is satisfied that the health facility is in
14 compliance with all regulations of the department or, if not in
15 compliance with any regulation, has been granted a waiver or
16 variance of that regulation by the department pursuant to
17 procedures, conditions and guidelines adopted by regulation of
18 the department. Licenses shall be posted in a conspicuous place
19 on the licensed premises, except that child-care centers that
20 receive no state or federal funds may apply for and receive from
21 the department a waiver from the requirement that a license be
22 posted or kept on the licensed premises.

23 F. Any health facility that has been inspected and
24 licensed by the department and that has received certification
25 for participation in federal reimbursement programs and that has

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1 been fully accredited by the joint commission on accreditation
2 of healthcare organizations or the American osteopathic
3 association shall be granted a license renewal based on [~~such~~]
4 that accreditation. Health facilities receiving less than full
5 accreditation by the joint commission on the accreditation of
6 healthcare organizations or by the American osteopathic
7 association may be granted a license renewal based on [~~such~~]
8 that accreditation. License renewals shall be issued upon
9 application submitted by the facility upon forms prescribed by
10 the department. This subsection does not limit in any way the
11 department's various duties and responsibilities under other
12 provisions of the Public Health Act or under any other
13 subsection of this section, including any of the department's
14 responsibilities for the health and safety of the public.

15 G. The department may charge a reasonable fee not to
16 exceed three dollars (\$3.00) per bed for an in-patient health
17 facility or one hundred dollars (\$100) for any other health
18 facility for each license application, whether initial or
19 renewal, of an annual license or [~~renewal~~] the second
20 consecutive issuance of a temporary license. Fees collected
21 shall not be refundable. All fees collected pursuant to
22 licensure applications shall be deposited with the state
23 treasurer for credit to the general fund.

24 H. The department may revoke or suspend the license
25 of any health facility or may impose on any health facility

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1 after January 1, 1991, any intermediate sanction or civil
2 monetary penalty provided in Section 24-1-5.2 NMSA 1978 after
3 notice and an opportunity for a hearing before a hearing officer
4 designated by the department to hear the matter, upon a
5 determination that the health facility is not in compliance with
6 any regulation of the department. If immediate action is
7 required to protect human health and safety, the director may
8 suspend a license or impose any intermediate sanction pending a
9 hearing, provided [~~such~~] the hearing is held within five working
10 days of the suspension or imposition of the sanction, unless
11 waived by the licensee.

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

15 (1) within ten working days after receipt by
16 the licensee of notice of suspension, revocation, imposition of
17 an intermediate sanction or civil monetary penalty or denial of
18 an initial or renewal application;

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

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

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

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

24 K. Any party may appeal ~~[to the court of appeals on~~
25 ~~the record within thirty days after the final decision of the~~

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1 ~~department. The court shall set aside the final decision only~~
2 ~~if it is found to be arbitrary, capricious or an abuse of~~
3 ~~discretion; not supported by substantial evidence in the record;~~
4 ~~outside the authority of the department; or otherwise not in~~
5 ~~accordance with law] the final decision of the department~~
6 ~~pursuant to the provisions of Section 12-8A-1 NMSA 1978.~~

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

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

23 N. Notwithstanding any other provision of this
24 section, where there are reasonable grounds to believe that any
25 child is in imminent danger of abuse or neglect while in the

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1 care of a child-care facility, whether or not licensed, or upon
2 the receipt of a report pursuant to Section [~~32-1-15~~]
3 32A-4-3 NMSA 1978, the department shall consult with the owner
4 or operator of the child-care facility. Upon a finding of
5 probable cause, the department shall give the owner or operator
6 notice of its intent to suspend operation of the health facility
7 and provide an opportunity for a hearing to be held within three
8 working days, unless waived by the owner or operator. Within
9 seven working days from the day of notice, the director shall
10 make his decision, and, if it is determined that any child is in
11 imminent danger of abuse or neglect in the health facility, the
12 director may suspend operation of the health facility for a
13 period not in excess of fifteen days. Prior to the date of the
14 hearing, the department shall make a reasonable effort to notify
15 the parents of children in the health facility of the notice and
16 opportunity for hearing given to the owner or operator.

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

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

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

3 A. Regulations adopted by the board are subject to
4 judicial review under the provisions of Section [~~12-12-13 NMSA~~
5 ~~1953~~] 74-1-9 NMSA 1978.

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

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

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

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

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

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

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

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

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

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

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

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1 licensee by service of the complaint upon him.

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

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

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

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

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1 or

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

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

6 "27-3-4. ~~[REVIEW AND]~~ APPEAL. -- ~~[A.]~~ Within thirty days
7 after receiving written notice of the decision of the director
8 pursuant to Section ~~[3 of the Public Assistance Appeals Act]~~
9 27-3-3 NMSA 1978, an applicant or recipient may file a notice of
10 appeal with the ~~[court of appeals, together with a copy of the~~
11 ~~notice of the decision. The clerk of the court shall transmit a~~
12 ~~copy of the notice of appeal to the director.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 B. No person shall institute discriminatory,
14 disciplinary or retaliatory action against any officer or
15 employee of a long-term care facility or government agency or
16 against any patient, resident or client of a long-term care
17 facility or guardian or family member [thereof] for any
18 communication by him with the office or for any information
19 given or disclosed by him in good faith to aid the office in
20 carrying out its duties and responsibilities.

21 C. Any person [that] who violates Subsection A of
22 this section shall be subject to a civil penalty of up to two
23 thousand five hundred dollars (\$2,500) per occurrence. Any
24 person [that] who violates Subsection B of this section shall be
25 subject to a civil penalty of up to five thousand dollars

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1 (\$5,000) per occurrence. The agency may assess and collect the
2 penalty after notice and an opportunity for hearing, before a
3 hearing officer designated by the agency to hear the matter,
4 upon a determination that a person willfully interfered with the
5 office or discriminated, disciplined or retaliated against an
6 individual who communicated or disclosed information to the
7 office in good faith pursuant to Subsections A and B of this
8 section. The hearing officer has the power to administer oaths
9 on request of any party and issue subpoenas and subpoenas duces
10 tecum. However, if the violation is against a person covered by
11 the Personnel Act, the office shall refer the matter to the
12 agency employing the person for disciplinary action.

13 D. Any party may appeal to the ~~[court of appeals on~~
14 ~~the record within thirty days after the final decision of the~~
15 ~~agency]~~ district court pursuant to the provisions of Section
16 12-8A-1 NMSA 1978. "

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

19 "29-2-11. DISCIPLINARY PROCEEDINGS--APPEAL--No officer of
20 the New Mexico state police holding a permanent commission shall
21 be removed from office, demoted or suspended except for
22 incompetence, neglect of duty, violation of a published rule of
23 conduct, malfeasance in office or conduct unbecoming an officer,
24 except as provided in this section. The secretary may suspend
25 an officer for disciplinary reasons for not more than thirty

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1 days in accordance with New Mexico state police regulation.
2 Any officer holding a permanent commission who is suspended by
3 the secretary has the right to have the suspension reviewed by
4 the commission, but without further review or appeal. In the
5 event the officer is to be removed from office, demoted or
6 suspended for a period of more than thirty days, specific
7 written charges shall be filed with the commission. Timely and
8 adequate notice of the charges to the person charged shall be
9 provided and a prompt hearing on the charges shall be held by
10 the commission. The person [sø] charged has the right to be
11 represented by counsel of his own choice and at his own expense
12 at the hearings. A complete record of the hearing shall be made
13 and, upon request, a copy of it shall be furnished to the person
14 charged. The person may require that the hearing be public. In
15 the event the commission finds that the person charged shall be
16 removed, demoted or suspended for a period in excess of thirty
17 days, the person may appeal from the decision of the commission
18 to the district court [~~of Santa Fe county. The appeal shall be~~
19 ~~filed within twenty days after the decision of the commission is~~
20 ~~rendered, and the court shall determine promptly whether there~~
21 ~~is substantial evidence to support the commission's action and~~
22 ~~dispose of the appeal accordingly. The determination shall be~~
23 ~~made on the basis of the record except that, for cause shown,~~
24 ~~the court shall permit either the secretary or the person~~
25 ~~charged to introduce new evidence] pursuant to the provisions of~~

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

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

4 "29-10-8. REVIEW OF ARREST RECORD INFORMATION--APPEAL.-- A
5 person who believes that arrest record information concerning
6 him is inaccurate or incomplete [~~shall~~] is, upon satisfactory
7 verification of his identity, [~~be~~] entitled to review [~~such~~] the
8 information and obtain a copy of it for the purpose of challenge
9 or correction. In the event a law enforcement agency refuses to
10 correct challenged information to the satisfaction of the person
11 to whom the inaccurate or incorrect information relates, the
12 person [~~shall be~~] is entitled to [~~petition~~] appeal to the
13 district court to correct [~~such~~] the information, pursuant to
14 the provisions of Section 12-8A-1 NMSA 1978. "

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

17 "32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS--
18 APPEALS.--

19 A. The department shall promulgate updated standards
20 for all detention facilities, including standards for [~~the~~]
21 site, design, construction, equipment, care, program, personnel
22 and clinical services. The department shall certify as approved
23 all detention facilities in the state meeting the standards
24 promulgated. The department may establish by rule appropriate
25 procedures for provisional certification and the waiving of any

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

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

16 C. The department shall promulgate rules
17 establishing procedures that provide for prior notice and public
18 hearings on detention [~~facilities~~] facilities' standards
19 adoption and changes. The department shall also promulgate
20 rules establishing procedures for facility certification,
21 renewal of certification, refusal to renew certification and
22 revocation of certification. The procedures adopted on these
23 matters shall provide for adequate prior notice of intended
24 action by the department, opportunity for the aggrieved person
25 to have an administrative hearing and written notification of

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1 the administrative decision. Rules promulgated under this
2 subsection shall not be effective unless filed in accordance
3 with the State Rules Act.

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

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

14 (2) ~~the result of arbitrary or capricious~~
15 ~~department action; or~~

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

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

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

25 Section 43. Section 35-7-2 NMSA 1978 (being Laws 1968,

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1 Chapter 62, Section 97) is amended to read:

2 "35-7-2. MAGISTRATE ADMINISTRATION--SUSPENSION OF
3 CERTIFICATE--APPEALS. --

4 A. Whenever the director of the administrative
5 office of the courts determines that a magistrate has violated
6 any law or regulation of the administrative office concerning
7 the administration of the magistrate court, he shall suspend the
8 magistrate's certificate of magistrate qualification and take
9 into custody all books and records of the magistrate.

10 B. Within thirty days after suspension under this
11 section, the magistrate may petition the district court [~~of~~
12 ~~Santa Fe county for review of the director's determination upon~~
13 ~~which the suspension was based. The district court shall~~
14 ~~require the director to show cause for the suspension order. If~~
15 ~~the district court finds by a preponderance of evidence that the~~
16 ~~magistrate committed the violation alleged in the order of~~
17 ~~suspension or if the magistrate fails to petition the district~~
18 ~~court within the time allowed by this section, the magistrate's~~
19 ~~certificate of magistrate qualification is revoked, and the~~
20 ~~administrative office shall certify the existence of the vacancy~~
21 ~~to the governor. The certificate of magistrate qualification~~
22 ~~remains suspended during proceedings in the district court under~~
23 ~~this section and during any appeal therefrom] for an appeal of
24 the director's determination, pursuant to the provisions of
25 Section 12-8A-1 NMSA 1978.~~

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1 C. This section is cumulative with, and supplemental
2 to, any other provisions of law, civil or criminal, governing
3 the administration of magistrate courts. "

4 Section 44. Section 36-1A-9 NMSA 1978 (being Laws 1991,
5 Chapter 175, Section 9) is amended to read:

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

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

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

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

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

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

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

21 F. If the board or the state-personnel-office-
22 designated hearing officer finds that the action taken was
23 without just cause, the board or the state-personnel-office-
24 designated hearing officer may modify the disciplinary action or
25 order the reinstatement of the appellant to his former position

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

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

- 22 (a) ~~arbitrary, capricious or an abuse of~~
23 ~~discretion;~~
- 24 (b) ~~not supported by substantial evidence; or~~
- 25 (c) ~~otherwise not in accordance with law.~~

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1 H. ~~An appeal from the decision of the district court~~
2 ~~may be taken to the court of appeals in accordance with the~~
3 ~~rules of civil procedure] pursuant to the provisions of Section~~
4 12-8A-1 NMSA 1978. "

5 Section 45. Section 40-7A-6 NMSA 1978 (being Laws 1981,
6 Chapter 171, Section 6) is amended to read:

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

9 A. The division may deny, revoke, suspend, place on
10 probation or refuse to renew the license of any child placement
11 agency or foster home for failure to comply with the division's
12 regulations. The holder of the license sought to be denied,
13 revoked, suspended or placed on probation or ~~which~~ that is not
14 renewed shall be given notice in writing of the proposed action
15 and the reason therefor and shall, at a date and place to be
16 specified in the notice, be given a hearing before a hearing
17 officer appointed by the secretary with an opportunity to
18 produce testimony in the holder's behalf and to be assisted by
19 counsel. The hearing shall be held no earlier than twenty days
20 after service of notice thereof unless the time limitations are
21 waived. Any person whose license has been denied, revoked,
22 suspended, placed on probation or not renewed may, on
23 application to the division, have the license issued, reinstated
24 or reissued upon proof that the noncompliance with the
25 regulations has ceased.

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

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

21 Section 46. Section 42-3-14 NMSA 1978 (being Laws 1972,
22 Chapter 41, Section 15, as amended) is amended to read:

23 "42-3-14. ADMINISTRATIVE HEARINGS- - COURT REVIEW. - -

24 A. Any persons aggrieved by a determination as to
25 eligibility for relocation payments or the amount of payment

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1 received under the Relocation Assistance Act shall have the
2 right to a hearing before the displacing agency or before a
3 hearing officer designated by the displacing agency.

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

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

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

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

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

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

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

23 appeal to the district court pursuant to the provisions of
24 Section 12-8A-1 NMSA 1978. "

25 Section 47. Section 47-6-15 NMSA 1978 (being Laws 1973,

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1 Chapter 348, Section 15, as amended) is amended to read:

2 "47-6-15. APPEALS. --

3 ~~[A. Any party who is or may be adversely affected by~~
4 ~~a decision of the board of county commissioners in approving or~~
5 ~~disapproving a preliminary or final plat may appeal to the~~
6 ~~district court of the county in which the subdivision is located~~
7 ~~within thirty days of the date of the board's action.~~

8 ~~B. An appeal is perfected by filing a notice of~~
9 ~~appeal in the district court. A copy of the notice of appeal~~
10 ~~shall be served upon the board of county commissioners.~~

11 ~~C. Upon appeal, the district court shall set aside~~
12 ~~the action of the board of county commissioners only if it is~~
13 ~~found to be:~~

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

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

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

18 ~~D. Any party to the action in district court may~~
19 ~~appeal to the court of appeals for further relief.~~

20 ~~E.]~~ A. Any party who is or may be adversely affected
21 by a decision of a delegate of the board of county commissioners
22 in approving or disapproving a final plat under summary review
23 shall appeal the delegate's decision to the board of county
24 commissioners within thirty days of the date of the delegate's
25 decision. The board of county commissioners shall hear the

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1 appeal and shall render a decision within thirty days of the
2 date the board receives notice of the appeal. Thereafter, the
3 procedure for appealing the decision of the board of county
4 commissioners set out in [~~Subsections A, B and C~~] Subsection B
5 of this section shall apply.

6 B. Any party who is or may be adversely affected by
7 a decision of the board of county commissioners in approving or
8 disapproving a preliminary or final plat may appeal to the
9 district court pursuant to the provisions of Section 12-8A-1
10 NMSA 1978. "

11 Section 48. Section 50-9-17 NMSA 1978 (being Laws 1972,
12 Chapter 63, Section 16, as amended) is amended to read:

13 "50-9-17. ENFORCEMENT--APPEALS. --

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

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

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

22 C. If the department has reason to believe that an
23 employer has failed to correct a violation for which a citation
24 has been issued within the abatement period permitted, which
25 period shall not begin to run until the entry of a final order

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

15 D. If any employer notifies the department in
16 writing that he intends to contest the citation issued to him
17 [~~under~~] pursuant to provisions of Subsection A or notification
18 issued [~~under~~] pursuant to provisions of Subsection B or C of
19 this section or if within fifteen working days of the receipt of
20 notice [~~under~~] pursuant to the provisions of this section any
21 employee of an employer [~~so~~] cited or any [~~such~~] employee's
22 representative files a notice with the department alleging that
23 the period of time fixed in the citation for the abatement of
24 the violation is unreasonable, the department shall provide
25 prompt opportunity for informal administrative review. If the

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

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

25 F. Affected employees or their representatives shall

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1 be provided an opportunity to participate as parties at both
2 informal administrative review and commission hearings [~~under~~]
3 provided for in this section.

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

17 (1) ~~arbitrary, capricious or an abuse of~~
18 ~~discretion;~~
19 (2) ~~not supported by substantial evidence; or~~
20 (3) ~~beyond the scope of its legal authority]~~
21 district court pursuant to the provisions of Section 12-8A-1
22 NMSA 1978. "

23 Section 49. Section 51-1-8 NMSA 1978 (being Laws 1936
24 (S.S.), Chapter 1, Section 6, as amended) is amended to read:

25 "51-1-8. CLAIMS FOR BENEFITS--JUDICIAL REVIEW. --

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1 A. Claims for benefits shall be made in accordance
2 with such regulations as the secretary may prescribe. Each
3 employer shall post and maintain printed notices in places
4 readily accessible to employees, concerning their rights to file
5 claims for unemployment benefits upon termination of their
6 employment. [~~Such~~] The notices shall be supplied by the
7 division to each employer without cost to him.

8 B. A representative designated by the secretary as a
9 claims examiner shall promptly examine the application and each
10 weekly claim and, on the basis of the facts found, shall
11 determine whether the claimant is unemployed, the week with
12 respect to which benefits shall commence, the weekly benefit
13 amount payable, the maximum duration of benefits, whether the
14 claimant is eligible for benefits pursuant to Section 51-1-5
15 NMSA 1978 and whether the claimant shall be disqualified
16 pursuant to Section 51-1-7 NMSA 1978. With the approval of the
17 secretary, the claims examiner may refer, without determination,
18 claims or any specified issues involved therein that raise
19 complex questions of fact or law to a hearing officer for the
20 division for a fair hearing and decision in accordance with the
21 procedure described in Subsection D of this section. The claims
22 examiner shall promptly notify the claimant and any other
23 interested party of the determination and the reasons therefor.
24 Unless the claimant or any [~~such~~] interested party, within
25 fifteen calendar days after the date of notification or mailing

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1 of [~~such~~] the determination, files an appeal from [~~such~~] the
2 determination, [~~such~~] the determination shall be the final
3 decision of the division; provided that the claims examiner may
4 reconsider a nonmonetary determination if additional information
5 not previously available is provided or obtained or whenever he
6 finds an error in the application of law has occurred, but no
7 redetermination shall be made more than twenty days from the
8 date of the initial nonmonetary determination. Notice of a
9 nonmonetary redetermination shall be given to all interested
10 parties and shall be subject to appeal in the same manner as the
11 original nonmonetary determination. If an appeal is pending at
12 the time a redetermination is issued, the appeal, unless
13 withdrawn, shall be treated as an appeal from [~~such~~] that
14 redetermination.

15 C. In the case of a claim for waiting period credit
16 or benefits, "interested party", for purposes of determinations
17 and adjudication proceedings and notices thereof, means:

18 (1) in the event of an issue concerning a
19 separation from work for reasons other than lack of work, the
20 claimant's most recent employer or most recent employing unit;

21 (2) in the event of an issue concerning a
22 separation from work for lack of work, the employer or employing
23 unit from whom the claimant separated for reasons other than
24 lack of work if he has not worked and earned wages in insured
25 work or bona fide employment other than self-employment in an

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1 amount equal to or exceeding five times his weekly benefit
2 amount; or

3 (3) in all other cases involving the allowance
4 or disallowance of a claim, the secretary, the claimant and any
5 employing unit directly involved in the facts at issue.

6 D. Upon appeal by any party, a hearing officer
7 designated by the secretary shall afford the parties reasonable
8 opportunity for a fair hearing to be held de novo, and the
9 hearing officer shall issue findings of fact and a decision
10 which affirms, modifies or reverses the determination of the
11 claims examiner or tax representative on the facts or the law,
12 based upon the evidence introduced at [~~such~~] the hearing,
13 including the documents and statements in the claim records of
14 the department. All hearings shall be held in accordance with
15 regulations of the secretary and decisions issued promptly in
16 accordance with time lapse standards promulgated by the
17 secretary of the United States department of labor. The parties
18 shall be duly notified of the decision, together with the
19 reasons therefor, which shall be deemed to be the final decision
20 of the department, unless within fifteen days after the date of
21 notification or mailing of [~~such~~] the decision further appeal is
22 initiated pursuant to Subsection H of this section.

23 E. Except with the consent of the parties, no
24 hearing officer or members of the board of review, established
25 in Subsection F of this section, or secretary shall sit in any

1 administrative or adjudicatory proceeding in which:

2 (1) either of the parties is related to him by
3 affinity or consanguinity within the degree of first cousin;

4 (2) he was counsel for either party in that
5 action; or

6 (3) he has an interest [~~which~~] that would
7 prejudice his rendering an impartial decision.

8 The secretary, any member of the board of review or appeal
9 tribunal hearing officer shall withdraw from any proceeding in
10 which he cannot accord a fair and impartial hearing. Any party
11 may request a disqualification of any appeal tribunal hearing
12 officer or board of review member by filing an affidavit with
13 the board of review or appeal tribunal promptly upon discovery
14 of the alleged grounds for disqualification, stating with
15 particularity the grounds upon which it is claimed that the
16 person cannot be fair and impartial. The disqualification shall
17 be mandatory if sufficient factual basis is set forth in the
18 affidavit of disqualification. If a member of the board of
19 review is disqualified or withdraws from any proceeding, the
20 remaining members of the board of review may appoint an appeal
21 tribunal hearing officer to sit on the board of review for the
22 proceeding involved.

23 F. There is established within the department for
24 the purpose of providing higher level administrative appeal and
25 review of determinations of a claims examiner or decisions

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1 issued by a hearing officer pursuant to Subsection B or D of
2 this section a "board of review" consisting of three members.
3 Two members shall be appointed by the governor with the consent
4 of the senate. The members [sø] appointed shall hold office at
5 the pleasure of the governor for terms of four years. One
6 member appointed by the governor shall be a person who, on
7 account of his previous vocation, employment or affiliation, can
8 be classed as a representative of employers, and the other
9 member appointed by the governor shall be a person who, on
10 account of his previous vocation, employment or affiliation, can
11 be classed as a representative of employees. The third member
12 shall be an employee of the department appointed by the
13 secretary who shall serve as chairman of the board. Either
14 member of the board of review appointed by the governor who has
15 missed two consecutive meetings of the board may be removed from
16 the board by the governor. Actions of the board shall be taken
17 by majority vote. If a vacancy on the board in a position
18 appointed by the governor occurs between sessions of the
19 legislature, the position shall be filled by the governor until
20 the next regular legislative session. The board shall meet at
21 the call of the secretary. Members of the board appointed by
22 the governor shall be paid per diem and mileage in accordance
23 with the Per Diem and Mileage Act for necessary travel to attend
24 regularly scheduled meetings of the board of review for the
25 purpose of conducting the board's appellate and review duties.

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1 G. The board of review shall hear and review all
2 cases appealed in accordance with Subsection H of this section.
3 The board of review may modify, affirm or reverse the decision
4 of the hearing officer or remand any matter to the claims
5 examiner, tax representative or hearing officer for further
6 proceedings. Each member appointed by the governor shall be
7 compensated at the rate of fifteen dollars (\$15.00) for each
8 case reviewed up to a maximum compensation of twelve thousand
9 dollars (\$12,000) in any one fiscal year.

10 H. Any party aggrieved by a final decision of a
11 hearing officer may file, in accordance with regulations
12 prescribed by the secretary, an application for appeal and
13 review of [~~such~~] the decision with the secretary. The secretary
14 shall review the application and shall, within fifteen days
15 after receipt of the application, either affirm the decision of
16 the hearing officer, remand the matter to the hearing officer
17 for an additional hearing or refer the decision to the board of
18 review for further review and decision on the merits of the
19 appeal. If the secretary affirms the decision of the hearing
20 officer, that decision shall be the final administrative
21 decision of the department and any appeal [~~therefrom must~~] shall
22 be taken to the district court in accordance with the provisions
23 of Subsections M and N of this section. If the secretary
24 remands a matter to a hearing officer for an additional hearing,
25 judicial review shall be permitted only after issuance of a

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1 final administrative decision. If the secretary refers the
2 decision of the hearing officer to the board of review for
3 further review, the board's decision on the merits of the appeal
4 will be the final administrative decision of the department,
5 which may be appealed to the district court in accordance with
6 the provisions of Subsections M and N of this section. If the
7 secretary takes no action within fifteen days of receipt of the
8 application for appeal and review, the decision will be promptly
9 scheduled for review by the board of review as though it had
10 been referred by the secretary. The secretary may request the
11 board of review to review a decision of a hearing officer that
12 the secretary believes to be inconsistent with the law or with
13 applicable rules of interpretation or that is not supported by
14 the evidence, and the board of review shall grant the request if
15 it is filed within fifteen days of the issuance of the decision
16 of the hearing officer. The secretary may also direct that any
17 pending determination or adjudicatory proceeding be removed to
18 the board of review for a final decision. If the board of
19 review holds a hearing on any matter, the hearing shall be
20 conducted by a quorum of the board of review in accordance with
21 regulations prescribed by the secretary for hearing appeals.
22 The board of review shall promptly notify the interested parties
23 of its findings and decision. A decision of the board of review
24 on any disputed matter reviewed and decided by it shall be based
25 upon the law and the lawful rules of interpretation issued by

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1 the secretary, and it shall be the final administrative decision
2 of the department, except in cases of remand. If the board of
3 review remands a matter to a hearing officer, claims examiner or
4 tax representative, judicial review shall be permitted only
5 after issuance of a final administrative decision.

6 I. Notwithstanding any other provision of this
7 section granting any party the right to appeal, benefits shall
8 be paid promptly in accordance with a determination or a
9 decision of a claims examiner, hearing officer, secretary, board
10 of review or a reviewing court, regardless of the pendency of
11 the period to file an appeal or petition for judicial review
12 that is provided with respect thereto in Subsection D or M of
13 this section or the pendency of any ~~[such]~~ filing or petition
14 until ~~[such]~~ determination or decision has been modified or
15 reversed by a subsequent decision. The provisions of this
16 subsection shall apply to all claims for benefits pending on the
17 date of its enactment.

18 J. If a prior determination or decision allowing
19 benefits is affirmed by a decision of the department, including
20 the board of review or a reviewing court, ~~[such]~~ the benefits
21 shall be paid promptly regardless of any further appeal ~~[which]~~
22 that may thereafter be available to the parties, and no
23 injunction, supersedeas, stay or other writ or process
24 suspending the payment of ~~[such]~~ the benefits shall be issued by
25 the secretary or board of review or any court, and no action to

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1 recover [~~such~~] the benefits paid to a claimant shall be taken.
2 If a determination or decision allowing benefits is finally
3 modified or reversed, the appropriate contributing employer's
4 account will be relieved of benefit charges in accordance with
5 Subsection B of Section 51-1-11 NMSA 1978.

6 K. The manner in which disputed claims shall be
7 presented, the reports thereon required from the claimant and
8 from employers and the conduct of hearings and appeals shall be
9 in accordance with rules prescribed by the secretary for
10 determining the rights of the parties, whether or not [~~such~~] the
11 rules conform to common law or statutory rules of evidence and
12 other technical rules of procedure. A hearing officer or the
13 board of review may refer to the secretary for interpretation
14 any question of controlling legal significance, and the
15 secretary shall issue a declaratory interpretation, which shall
16 be binding upon the decision of the hearing officer and the
17 board of review. A full and complete record shall be kept of
18 all proceedings in connection with a disputed claim. All
19 testimony at any hearing upon a disputed claim shall be
20 recorded, but need not be transcribed unless the disputed claim
21 is appealed to the district court.

22 L. Witnesses subpoenaed pursuant to this section
23 shall be allowed fees at a rate fixed by the secretary. [~~Such~~]
24 The fees and all administrative expenses of proceedings
25 involving disputed claims shall be deemed a part of the expense

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1 of administering the Unemployment Compensation Law.

2 M Any determination or decision of a claims
3 examiner or hearing officer or by a representative of the tax
4 section of the department in the absence of an appeal therefrom
5 as provided by this section shall become final fifteen days
6 after the date of notification or mailing thereof, and judicial
7 review thereof shall be permitted only after any party claiming
8 to be aggrieved thereby has exhausted his remedies as provided
9 in Subsection H of this section. The division and any employer
10 or claimant who is affected by the decision shall be joined as a
11 party in any judicial action involving any such decision. All
12 parties shall be served with an endorsed copy of the petition
13 within thirty days from the date of filing and an endorsed copy
14 of the order granting the petition within fifteen days from
15 entry of the order. Service on the department shall be made on
16 the secretary or his designated legal representative either by
17 mail with accompanying certification of service or by personal
18 service. The division may be represented in any such judicial
19 action by an attorney employed by the department or, when
20 requested by the secretary, by the attorney general or any
21 district attorney.

22 N. The final decision of the secretary or board of
23 review upon any disputed matter may be reviewed both upon the
24 law, including the lawful rules of interpretation issued by the
25 secretary, and the facts by the district court of the county

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1 wherein the person seeking the review resides upon certiorari,
2 unless it is determined by the district court where the petition
3 is filed that, as a matter of equity and due process, venue
4 should be in a different county. For the purpose of [such] the
5 review, the division shall return on [~~such~~] the certiorari the
6 reports and all of the evidence heard by it on any such reports
7 and all the papers and documents in its files affecting the
8 matters and things involved in [~~such~~] the certiorari. The
9 district court shall render its judgment after hearing, and
10 either the department or any other party thereto affected may
11 appeal from [~~such~~] the judgment to the [~~supreme court of the~~
12 ~~state in accordance with the rules governing special statutory~~
13 ~~proceedings.~~ Such] court of appeals. Certiorari shall not be
14 granted unless the same is applied for within thirty days from
15 the date of the final decision of the secretary or board of
16 review. [~~Such~~] Certiorari shall be heard in a summary manner
17 and shall be given precedence over all other civil cases except
18 cases arising under the Workers' Compensation Act of this state.
19 It shall not be necessary in any proceedings before the division
20 to enter exceptions to the rulings and no bond shall be required
21 in obtaining certiorari from the district court as [~~hereinabove~~]
22 provided, but [~~such~~] certiorari shall be granted as a matter of
23 right to the party applying therefor. "

24 Section 50. Section 53-8-91 NMSA 1978 (being Laws 1975,
25 Chapter 217, Section 89, as amended) is amended to read:

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1 "53-8-91. APPEAL FROM CORPORATION COMMISSION. --

2 A. If the corporation commission fails to approve
3 any articles of incorporation, amendment, merger, consolidation
4 or dissolution, or any other document required by the Nonprofit
5 Corporation Act to be approved by the corporation commission
6 before the same is filed in its office, the commission shall,
7 within fifteen working days after the delivery thereof, give
8 written notice of its disapproval to the person or corporation,
9 domestic or foreign, delivering the same, specifying the reasons
10 therefor. The person or corporation may appeal the disapproval
11 to the district court [~~of the county of Santa Fe by filing with~~
12 ~~the clerk of the court a petition setting forth a copy of the~~
13 ~~articles or other document sought to be filed and a copy of the~~
14 ~~written disapproval thereof by the corporation commission. The~~
15 ~~matter shall be tried de novo by the district court, and the~~
16 ~~court shall either sustain the action of the commission or~~
17 ~~direct it to take such action as the court may deem proper]~~
18 pursuant to the provisions of Section 12-8A-1 NMSA 1978.

19 B. If the corporation commission revokes a
20 certificate of authority to conduct affairs in New Mexico of any
21 foreign corporation or a certificate of incorporation of a
22 domestic corporation, pursuant to the provisions of the
23 Nonprofit Corporation Act, the foreign or domestic corporation
24 may appeal to the district court [~~of the county of Santa Fe by~~
25 ~~filing with the clerk of the court a petition setting forth a~~

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1 ~~copy of its certificate of authority or incorporation and a copy~~
2 ~~of the notice of revocation given by the corporation~~
3 ~~commission. The matter shall be tried de novo by the district~~
4 ~~court, and the court shall either sustain the action of the~~
5 ~~commission or direct it to take such action as the court may~~
6 ~~deem proper.~~

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

12 Section 51. Section 53-18-2 NMSA 1978 (being Laws 1967,
13 Chapter 81, Section 123, as amended) is amended to read:

14 "53-18-2. APPEAL FROM COMMISSION. --

15 A. If the commission fails to approve any articles
16 of incorporation, amendment, merger, consolidation or
17 dissolution or any other document required by the Business
18 Corporation Act to be approved by the commission before it is
19 filed in its office, it shall, within fifteen working days after
20 the delivery thereof to it, give written notice of its
21 disapproval to the person or corporation, domestic or foreign,
22 delivering the same, specifying the reasons therefor. From the
23 disapproval, the person or corporation may appeal to the
24 district court [~~of Santa Fe county by filing with the clerk of~~
25 ~~the court a petition setting forth the articles or other~~

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1 ~~document sought to be filed and a copy of the written~~
2 ~~disapproval thereof by the commission, whereupon the matter~~
3 ~~shall be tried de novo by the court, and the court shall either~~
4 ~~sustain the action of the commission or direct it to take action~~
5 ~~the court may deem proper]~~ pursuant to the provisions of Section
6 12-8A-1 NMSA 1978.

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

18 C. ~~Appeals from all final orders and judgments~~
19 ~~entered by the district court of Santa Fe county under this~~
20 ~~section in review of any ruling or decision of the commission~~
21 ~~may be taken as in other civil actions]~~ pursuant to the
22 provisions of Section 12-8A-1 NMSA 1978. "

23 Section 52. Section 53-19-67 NMSA 1978 (being Laws 1993,
24 Chapter 280, Section 67) is amended to read:

25 "53-19-67. APPEAL FROM COMMISSION. -- [A.] If the

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1 commission fails to approve any articles of organization,
2 articles of amendment, articles of merger or consolidation or
3 articles of dissolution or any other document required or
4 permitted by the Limited Liability Company Act to be approved by
5 the commission before it is filed in its office, it shall,
6 within fifteen working days after the delivery thereof to it,
7 give written notice of its disapproval to the person delivering
8 the same, specifying the reasons therefor. From the
9 disapproval, the person may appeal to the district court [of
10 ~~Santa Fe county by filing with the clerk of the court a petition~~
11 ~~setting forth the articles or other document sought to be filed~~
12 ~~and a copy of the written disapproval thereof by the commission,~~
13 ~~whereupon the matter shall be tried de novo by the court, and~~
14 ~~the court shall either sustain the action of the commission or~~
15 ~~direct it to take action the court may deem proper.~~

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

21 Section 53. Section 57-19-36 NMSA 1978 (being Laws 1993,
22 Chapter 98, Section 12) is amended to read:

23 "57-19-36. PENALTIES-- ADMINISTRATIVE PROCEDURES--
24 APPEALS. --

25 A. No person, by himself, by his servant or agent or

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1 as the servant or agent of another person shall:

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

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

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

8 B. Any person who violates Subsection A of this
9 section [~~shall be~~] is guilty of a petty misdemeanor and shall be
10 sentenced in accordance with the provisions of Section
11 31-19-1 NMSA 1978.

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

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

24 (2) violations for which administrative
25 penalties may be assessed shall be clearly defined, along with a

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1 scale of administrative penalties relating the amount of the
2 administrative penalty to the severity and frequency of the
3 violation;

4 (3) provisions shall be included for due
5 process, including proper notification of administrative
6 proceedings, right to discovery of charges and evidence and
7 appeal procedures; and

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

12 D. Appeals from decisions of the director regarding
13 the assessment of an administrative penalty shall be to the
14 district court [~~in the county where the violation is alleged to~~
15 ~~have occurred. The appeal shall be limited to the record of the~~
16 ~~administrative proceedings, except that in cases of alleged~~
17 ~~irregularities not shown in the record, testimony may be taken]~~
18 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

19 Section 54. Section 58-1-45 NMSA 1978 (being Laws 1963,
20 Chapter 305, Section 34) is amended to read:

21 "58-1-45. COURT REVIEW. -- [A-] Any person aggrieved and
22 directly affected by an order of the [~~commissioner~~] director may
23 appeal to the district court [~~in the county in which said person~~
24 ~~resides or maintains his principal office within thirty days~~
25 ~~after issuance of the order. The filing of a petition for~~

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1 ~~review shall not stay enforcement of an order, but the court may~~
2 ~~order a stay upon such terms as it deems proper.~~

3 B. ~~The court may affirm the order of the~~
4 ~~commissioner, may direct the commissioner to take action as may~~
5 ~~be affirmatively required by law or may reverse or modify the~~
6 ~~order of the commissioner if the court finds the order:~~

7 (1) ~~was issued pursuant to an unconstitutional~~
8 ~~statutory provision;~~

9 (2) ~~was in excess of statutory authority;~~

10 (3) ~~was issued upon unlawful procedure; or~~

11 (4) ~~is not supported by substantial evidence in~~
12 ~~the record.~~

13 ~~Due weight shall be accorded the experience, technical~~
14 ~~competence and specialized knowledge of the commissioner as well~~
15 ~~as the discretionary authority conferred upon him.~~

16 C. ~~The decision of the district court shall be~~
17 ~~subject to appeal as in other civil cases] pursuant to the~~
18 ~~provisions of Section 12-8A-1 NMSA 1978. "~~

19 Section 55. Section 58-10-13 NMSA 1978 (being Laws 1967,
20 Chapter 61, Section 13) is amended to read:

21 "58-10-13. REFUSAL OF CHARTER APPLICATION-- APPEAL. --

22 A. Whenever the supervisor is unable to make the
23 findings required by Section [12 of the Savings and Loan Act]
24 58-10-12 NMSA 1978, he shall serve upon each party of record and
25 his attorney, if any, a written copy of his decision denying the

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1 application by certified mail to the party's address of record.

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

4 (1) findings of fact made by the supervisor;

5 (2) conclusions of law reached by the
6 supervisor; and

7 (3) the decision of the supervisor based upon
8 the findings of fact and conclusions of law.

9 B. Any party aggrieved by the decision of the
10 supervisor may appeal the decision to the district court [~~of the~~
11 ~~county in which the principal office of the association is~~
12 ~~located by filing a notice of appeal with the clerk of the court~~
13 ~~within thirty days after service of the decision of the~~
14 ~~supervisor. Notice of the appeal shall be served on the~~
15 ~~supervisor and all parties of record in the manner provided by~~
16 ~~law for the service of a summons in civil actions. The notice~~
17 ~~of appeal shall contain a certification that arrangements have~~
18 ~~been made with the supervisor for preparation at the appellant's~~
19 ~~expense of a sufficient number of copies of the record of the~~
20 ~~hearing. The record of the hearing shall include:~~

21 (1) ~~all pleadings, motions and intermediate~~
22 ~~rulings;~~

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

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

25 (4) ~~questions and offers of proof, objections~~

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1 ~~and rulings thereon;~~

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

3 ~~(6) the decision of the supervisor and any~~
4 ~~decision, opinion or report by any hearing examiner conducting~~
5 ~~the hearing; and~~

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

7 ~~C. Upon review, the district court shall not~~
8 ~~consider any errors in the decision of the supervisor which were~~
9 ~~not raised in the hearing before the supervisor. The review~~
10 ~~shall be upon the record of the hearing before the supervisor,~~
11 ~~and no new evidence shall be introduced upon appeal. The~~
12 ~~decision of the supervisor shall be sustained unless the court~~
13 ~~finds that the decision was:~~

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

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

16 ~~(3) against the clear weight of substantial~~
17 ~~evidence on the record] pursuant to the provisions of Section~~
18 ~~12-8A-1 NMSA 1978.~~ "

19 Section 56. Section 58-10-84 NMSA 1978 (being Laws 1967,
20 Chapter 61, Section 81) is amended to read:

21 "58-10-84. WHEN ORDER IS FINAL--APPEAL. --

22 A. If a hearing has been held in regard to an order
23 made [~~under Sections 78 or 79 the Savings and Loan Act~~] pursuant
24 ~~to Section 58-10-80 or 58-10-81 NMSA 1978~~ and the supervisor's
25 order is continued either in its original form or a modified

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1 form, the order is final when the supervisor enters his decision
2 in the record of the hearing [~~his decision~~] after the hearing.
3 If no hearing is requested on the order, the order is final
4 after the expiration of thirty days from the date the order is
5 entered by the supervisor.

6 B. The supervisor's decision after any hearing under
7 the Savings and Loan Act shall be served on each party of record
8 and shall contain the same elements as required in Section [~~13~~
9 ~~of the Savings and Loan Act~~] 58-10-13 NMSA 1978. Any party
10 aggrieved by the decision of the supervisor after hearing may
11 appeal to the district court [~~in the county in which the party~~
12 ~~resides or in which its principal office is located~~] pursuant to
13 the provisions of Section 12-8A-1 NMSA 1978. "

14 Section 57. Section 58-13A-21 NMSA 1978 (being Laws 1985,
15 Chapter 163, Section 21) is amended to read:

16 "58-13A-21. JUDICIAL REVIEW OF ORDERS. --

17 A. Any person aggrieved by a final order of the
18 director may obtain a review of the order in the [~~court of~~
19 ~~appeals by filing in court, within thirty days after the entry~~
20 ~~of the order, a written petition praying that the order be~~
21 ~~modified or set aside in whole or in part. A copy of the~~
22 ~~petition for review shall be served upon the director.~~

23 B. ~~Upon the filing of a petition for review, except~~
24 ~~where the taking of additional evidence is ordered by the court~~
25 ~~pursuant to Subsection E or F of this section, the court shall~~

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1 ~~have exclusive jurisdiction of the matter, and the director may~~
2 ~~not modify or set aside the order, in whole or part] district~~
3 ~~court pursuant to the provisions of Section 12-8A-1 NMSA 1978.~~

4 ~~[C.]~~ B. The filing of ~~[a petition for review under]~~
5 an appeal pursuant to Subsection A of this section does not,
6 unless specifically ordered by the court, operate as a stay of
7 the director's order, and the director may enforce or ask the
8 court to enforce the order pending the outcome of the review
9 proceedings.

10 ~~[D. Upon receipt of the petition for review, the~~
11 ~~director shall certify and file in the court a copy of the order~~
12 ~~and the transcript or record of the evidence upon which it was~~
13 ~~based. If the order became final by operation of law under~~
14 ~~Subsection D of Section 20 of the Model State Commodity Code,~~
15 ~~the director shall certify and file in court the summary order,~~
16 ~~evidence of its service upon the parties to it and an affidavit~~
17 ~~certifying that no hearing has been held and the order became~~
18 ~~final pursuant to Subsection D of Section 20 of the Model State~~
19 ~~Commodity Code.~~

20 ~~E. If either the aggrieved party or the director~~
21 ~~applies to the court for leave to adduce additional evidence and~~
22 ~~shows to the satisfaction of the court that there were~~
23 ~~reasonable grounds for failure to adduce the evidence in the~~
24 ~~hearing before the director or other good cause, the court may~~
25 ~~order the additional evidence to be taken by the director under~~

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1 ~~such conditions as the court considers proper.~~

2 ~~F. If new evidence is ordered taken by the court,~~
3 ~~the director may modify the findings and order by reason of the~~
4 ~~additional evidence and shall file in the court the additional~~
5 ~~evidence together with any modified or new findings or order.~~

6 ~~G. The court shall review the petition based upon~~
7 ~~the original record before the director as amended under~~
8 ~~Subsections E and F of this section. The findings of the~~
9 ~~director as to the facts, if supported by competent, material~~
10 ~~and substantive evidence, are conclusive. Based upon this~~
11 ~~review, the court may affirm, modify, enforce or set aside the~~
12 ~~order, in whole or in part.~~

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

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

17 "58-13B-56. JUDICIAL REVIEW OF ORDERS. --

18 A. Any person aggrieved by a final order of the
19 director may obtain a review of the order in the [court of
20 appeals by filing in court, within thirty days after the entry
21 of the order, a written petition praying that the order be
22 modified or set aside in whole or in part. A copy of the
23 petition for review shall be served upon the director.

24 B. ~~Upon the filing of a petition for review, except~~
25 ~~where the taking of additional evidence is ordered by the court~~

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1 ~~pursuant to Subsection E or F of this section, the court shall~~
2 ~~have exclusive jurisdiction of the matter, and the director may~~
3 ~~not modify or set aside the order, in whole or part] district~~
4 ~~court pursuant to the provisions of Section 12-8A-1 NMSA 1978.~~

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

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

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

14 ~~(2) if the order was issued following a~~
15 ~~hearing, the transcript or record of the evidence upon which the~~
16 ~~order was based or, if the order became final by operation of~~
17 ~~law pursuant to Subsection D of Section 53 of the New Mexico~~
18 ~~Securities Act of 1986, record of notification to all parties~~
19 ~~against whom action is taken or contemplated of the entry of the~~
20 ~~order and an affidavit certifying that no hearing was held~~
21 ~~because the party requesting a hearing did not appear or the~~
22 ~~time period for requesting such hearing has expired.~~

23 ~~E. If either the aggrieved party or the director~~
24 ~~applies to the court for leave to adduce additional evidence,~~
25 ~~and shows to the satisfaction of the court that there were~~

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1 ~~reasonable grounds for failure to adduce the evidence at the~~
2 ~~hearing before the director or other good cause, the court may~~
3 ~~order the additional evidence to be taken by the director under~~
4 ~~such conditions as the court considers proper.~~

5 ~~F. If new evidence is ordered taken by the court,~~
6 ~~the director may modify the findings and order by reason of the~~
7 ~~additional evidence and shall file in the court the additional~~
8 ~~evidence together with any modified or new findings or order.~~

9 ~~G. The court shall review the petition based upon~~
10 ~~the original record before the director as amended under~~
11 ~~Subsections E and F of this section. The findings of the~~
12 ~~director as to the facts, if supported by competent, material~~
13 ~~and substantive evidence, are conclusive. Based upon this~~
14 ~~review, the court may affirm, modify, enforce or set aside the~~
15 ~~order, in whole or in part.~~

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

18 Section 59. Section 58-15-25 NMSA 1978 (being Laws 1955,
19 Chapter 128, Section 23, as amended) is amended to read:

20 "58-15-25. REVIEW. --

21 ~~[A. Any interested party to a formal hearing before~~
22 ~~the director may, within twenty days after written notice of his~~
23 ~~decision, file an application before the director for a~~
24 ~~rehearing.~~

25 ~~B. Within twenty days after notice of the director's~~

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

16 C. ~~The director, the attorney general and any party~~
17 ~~to the hearing or proceeding before the director and any other~~
18 ~~person the court shall determine to be necessary to a complete~~
19 ~~adjudication shall have the right to appear in the review~~
20 ~~proceeding. Upon the hearing, the court shall enter judgment~~
21 ~~either affirming the director's order or directing what order~~
22 ~~the director shall issue.~~

23 D. ~~The provisions of the Code of Civil Procedure~~
24 ~~relating to writs of certiorari or writ of review shall, so far~~
25 ~~as applicable and not in conflict with the New Mexico Small Loan~~

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1 ~~Act of 1955, apply to proceedings in the courts under the~~
2 ~~provisions of the New Mexico Small Loan Act of 1955.~~

3 E. ~~The writ of injunction shall not be available to~~
4 ~~any person to suspend or delay the director from conducting~~
5 ~~hearings relating to the granting or denial of applications for~~
6 ~~licenses hereunder or revocation or suspension proceedings~~
7 ~~unless and until the director shall have entered a final order~~
8 ~~thereon, it being intended that review proceedings hereinabove~~
9 ~~provided for shall be the exclusive remedy in such matters. No~~
10 ~~court except the district court of Santa Fe county and the~~
11 ~~supreme court shall have jurisdiction to review, reverse or~~
12 ~~annul or to suspend or delay the operation or execution of any~~
13 ~~order of the director relating to the granting or denial,~~
14 ~~revocation or suspension of licenses hereunder; but, as regards~~
15 ~~to any other matter, any person aggrieved by any order or act of~~
16 ~~the director shall not be limited in his manner or method of~~
17 ~~proceeding but may proceed by any applicable proceeding provided~~
18 ~~or recognized by law and] Any licensee or any person~~
19 ~~[considering himself] aggrieved by any act or order of the~~
20 ~~director [hereunder other than as above specified may, within~~
21 ~~thirty days from the entry of the order complained of or within~~
22 ~~sixty days of the act complained of if there is no order, bring~~
23 ~~an action in the district court to review such order or act.]~~
24 pursuant to the New Mexico Small Loan Act of 1955 may file an
25 appeal in the district court pursuant to the provisions of

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

2 Section 60. Section 58-19-4 NMSA 1978 (being Laws 1959,
3 Chapter 204, Section 4, as amended) is amended to read:

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

6 A. Renewal of a license originally granted under the
7 Motor Vehicle Sales Finance Act may be denied or a license may
8 be suspended or revoked by the director on any of the following
9 grounds:

10 (1) material misstatement in application for
11 license;

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

14 (3) defrauding any retail buyer to the buyer's
15 detriment while a licensee [~~hereunder~~] under that act;

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

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

24 B. If a licensee is a firm, association or
25 corporation, it shall be sufficient cause for the suspension or

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1 revocation of a license that any officer, director or trustee of
2 a licensed firm, association or corporation, or any member of a
3 licensed partnership, has [~~so~~] acted or failed to act in the
4 conduct of the business under its license as would be cause for
5 suspending or revoking a license to [~~such~~] the person as an
6 individual. Each licensee shall be responsible for the acts of
7 any of its employees while acting as its agent, if [~~such~~] the
8 licensee after actual knowledge of the acts retained the
9 benefits, proceeds, profits or advantages accruing from the acts
10 or otherwise ratified the acts.

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

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1 ~~[D. Within thirty days after any such denial,~~
2 ~~suspension or revocation of a license, the person aggrieved may~~
3 ~~apply for a review thereof by an application to the district~~
4 ~~court of the county in which the applicant resides in accordance~~
5 ~~with the practice of the court. The court shall determine, de~~
6 ~~novo, all questions both of fact and of law touching upon the~~
7 ~~legality and reasonableness of the determination of the director~~
8 ~~and shall render such judgment as shall be lawful and just]~~

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

12 E. The director shall publish a notice that a
13 license has been revoked or suspended within thirty days after
14 [such] the revocation or suspension in a newspaper of general
15 circulation in the county in which the licensee was doing
16 business. "

17 Section 61. Section 58-21-16 NMSA 1978 (being Laws 1983,
18 Chapter 86, Section 16) is amended to read:

19 "58-21-16. REVIEW OF ORDER OF DIRECTOR. - -

20 A. Any person aggrieved by a final order of the
21 director may ~~[obtain a review of the order in the district court~~
22 ~~of the first judicial district of Santa Fe county by filing in~~
23 ~~court, within thirty days after the entry of the order, a~~
24 ~~written petition praying that the order be modified or set aside~~
25 ~~in whole or in part. A copy of the petition shall be served~~

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1 ~~upon the director, and, thereupon, the director shall certify~~
2 ~~and file in court a copy of the filing and evidence upon which~~
3 ~~the order was entered. The findings of the director as to the~~
4 ~~facts, if supported by competent, material and substantial~~
5 ~~evidence, are conclusive. If either party applies to the court~~
6 ~~for leave to adduce additional material evidence and shows to~~
7 ~~the satisfaction of the court that there were reasonable grounds~~
8 ~~for failure to adduce the evidence in the hearing before the~~
9 ~~director and to be adduced upon the hearing in such manner and~~
10 ~~upon such conditions as the court considers proper, the director~~
11 ~~may modify his findings and order by reason of the additional~~
12 ~~evidence together with any modified or new findings or order]~~
13 appeal to the district court pursuant to the provisions of
14 Section 12-8A-1 NMSA 1978.

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

19 Section 62. Section 58-22-29 NMSA 1978 (being Laws 1983,
20 Chapter 135, Section 29) is amended to read:

21 "58-22-29. REVIEW OF ORDER OF DIRECTOR. --

22 A. Any person aggrieved by a final order of the
23 director may ~~[obtain a review of the order in the district court~~
24 ~~of the first judicial district of Santa Fe county by filing in~~
25 ~~court, within thirty days after the entry of the order, a~~

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1 ~~written petition praying that the order be modified or set aside~~
2 ~~in whole or in part. A copy of the petition shall be forthwith~~
3 ~~served upon the director, and the director shall certify and~~
4 ~~file in court a copy of the filing and evidence upon which the~~
5 ~~order was entered. The findings of the director as to the~~
6 ~~facts, if supported by competent, material and substantial~~
7 ~~evidence, are conclusive] appeal to the district court pursuant~~
8 ~~to the provisions of Section 12-8A-1 NMSA 1978.~~

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

12 Section 63. Section 59A-4-20 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 67, as amended) is amended to read:

14 "59A-4-20. APPEAL TO COURT. --

15 A. A party may appeal from an order of the
16 superintendent made after an informal hearing or an
17 administrative hearing. ~~[and the court shall try the matter de~~
18 ~~novo; provided that if an administrative hearing was held, the~~
19 ~~court may, in its discretion, limit its review to that provided~~
20 ~~in Section 12-8-22 NMSA 1978, in which case Sections 12-8-17~~
21 ~~through 12-8-22 NMSA 1978 shall apply.~~

22 B. ~~The appeal shall be taken within sixty days after~~
23 ~~receipt, by the party appealing, of a copy of the decision from~~
24 ~~the review of the superintendent's order by the corporation~~
25 ~~commission or insurance board, if such review is sought. If no~~

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1 ~~such review is sought, the appeal shall be taken within sixty~~
2 ~~days after receipt of a copy of the superintendent's order by~~
3 ~~the party appealing.~~

4 ~~C. The appeal shall be taken to the district court~~
5 ~~for Santa Fe county in the same manner and under the same rules~~
6 ~~of pleading, practice and procedure in civil actions as apply to~~
7 ~~appeals to court from actions of state administrative officers~~
8 ~~or agencies in general.~~

9 ~~D. Filing of an appeal pursuant to this section~~
10 ~~shall not stay the effectiveness of the order on hearing~~
11 ~~appealed from unless, after notice and opportunity given the~~
12 ~~parties to be heard and for good cause shown, the court~~
13 ~~determines that a stay should be granted and would not be~~
14 ~~detrimental to the interests of any other party or to~~
15 ~~policyholders, stockholders, creditors or to the public.~~

16 ~~E. The district court may affirm, reinstate, modify~~
17 ~~or vacate the order appealed from or remand for rehearing by the~~
18 ~~superintendent as to designated matters involved in the hearing.~~
19 ~~The judgment of the district court may be appealed to the court~~
20 ~~of appeals or to the supreme court of New Mexico] The appeal~~
21 ~~shall be taken to the district court pursuant to the provisions~~
22 ~~of Section 12-8A-1 NMSA 1978.~~

23 [F.] B. This section shall not apply as to matters
24 arising under Chapter 59A, Article 17 NMSA 1978. "

25 Section 64. Section 59A-11A-4 NMSA 1978 (being Laws 1989,

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1 Chapter 97, Section 4) is amended to read:

2 "59A-11A-4. INSURANCE CONSULTANT LICENSE--SUSPENSION OR
3 REVOCATION--APPEAL--PENALTY. --

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

10 B. Any person aggrieved by the action of the
11 superintendent in revoking, suspending or refusing to grant,
12 renew or reissue a license may appeal that action [~~as provided~~
13 ~~in the Insurance Code~~] to the district court pursuant to the
14 provisions of Section 12-8A-1 NMSA 1978.

15 C. The superintendent may at any time require such
16 information as he deems necessary in respect to the business
17 methods, policies and transactions of a licensee. Any person
18 who fails or refuses to furnish the superintendent in the form
19 he may require any such information within ten days after
20 receiving a written request for it is guilty of a misdemeanor
21 and upon conviction shall be fined not less than fifty dollars
22 (\$50.00) [~~nor~~] or more than five hundred dollars (\$500)."

23 Section 65. Section 59A-17-35 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 330, as amended) is amended to read:

25 "59A-17-35. APPEALS FROM INSURANCE BOARD. -- [A.] Any order

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1 made by the insurance board pursuant to Section 59A-17-34 NMSA
2 1978 shall be subject to review by appeal to the district court
3 [~~of Santa Fe county in the same manner as provided for taking of~~
4 ~~appeals in other civil actions]~~ pursuant to the provisions of
5 Section 12-8A-1 NMSA 1978. Upon institution of the appeal and
6 for good cause shown upon motion and hearing, the court may, in
7 the following cases, stay operation of the insurance board's
8 order:

9 [(1)] A. where, pursuant to Chapter 59A, Article 17
10 NMSA 1978, a rate service organization has been refused a
11 license or an insurer has been refused a certificate of
12 authority or had its license or certificate of authority
13 suspended, it may, with leave of court, be allowed to continue
14 to engage in business, subject to the provisions of that
15 article, pending final disposition of its application for
16 review; or

17 [(2)] B. where any order of the insurance board
18 shall provide for, or sustain the superintendent's order for, a
19 change in any rate or rating system [~~which~~] that results in an
20 increase or decrease in rates, any insurer affected [~~thereby~~]
21 may, with leave of court pending final disposition of the
22 proceedings in the district court, continue to charge rates
23 [~~which~~] that existed prior to such order, on condition that the
24 difference in the rates be deposited in a special escrow or
25 trust account with a reputable financial institution by the

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1 insurer affected, to be held in trust by [~~such~~] the insurer and
2 to be retained by the insurer or paid to the holders of policies
3 issued after the order of the court, as the court may determine.

4 [~~B. The court shall sustain the administrative~~
5 ~~action appealed from unless the court finds such action to have~~
6 ~~been unlawful or arbitrary or capricious or not based upon~~
7 ~~substantial evidence and after giving due consideration to the~~
8 ~~expertise of the superintendent and insurance board.]"~~

9 Section 66. Section 59A-29-6 NMSA 1978 (being Laws 1985,
10 Chapter 61, Section 6, as amended) is amended to read:

11 "59A-29-6. APPEALS-- JUDICIAL REVIEW [~~DE NOVO~~]. -- Any person
12 aggrieved by any action or decision of the administrators of the
13 FAIR plan or the underwriting association or of any insurer as a
14 result of its participation [~~therein~~] may appeal to the
15 superintendent [~~of insurance~~] within thirty days from the date
16 of the action or the decision. The superintendent [~~of~~
17 ~~insurance~~] shall, after hearing held upon thirty days' written
18 notice, issue an order approving the action or decision or
19 disapproving the action or decision with respect to the matter
20 [~~which~~] that is the subject of appeal. All final orders and
21 decisions of the superintendent [~~of insurance~~] shall be subject
22 to judicial review [~~de novo~~] in the district court pursuant to
23 the provisions of Section 12-8A-1 NMSA 1978."

24 Section 67. Section 59A-30-9 NMSA 1978 (being Laws 1985,
25 Chapter 28, Section 9) is amended to read:

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1 "59A-30-9. REVIEW - APPEALS. -- [A-] Any person aggrieved by
2 an order of the superintendent promulgating rates under the New
3 Mexico Title Insurance Law shall have the rights to review and
4 appeal provided for in [Section] Sections 59A-17-34 [~~NMSA 1978~~]
5 and [Section] 59A-17-35 NMSA 1978.

6 [~~B. Any party may appeal the decision of the~~
7 ~~district court under Section 59A-17-35 NMSA 1978 to the supreme~~
8 ~~court in the same manner as provided for the taking of appeals~~
9 ~~in other civil actions.]"~~

10 Section 68. Section 59A-42-12 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 761) is amended to read:

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

13 A. Any member insurer may appeal to the
14 superintendent from any action of the board of directors of the
15 association by filing with the superintendent a notice of appeal
16 within thirty [~~(30)~~] days after the action appealed from.

17 B. Any final order of the superintendent on appeal
18 is subject to judicial review by an action in the district court
19 [~~of Santa Fe county to set aside the order as being unlawful or~~
20 ~~not supported by substantial evidence. If an action for~~
21 ~~judicial review is not filed within thirty (30) days after the~~
22 ~~superintendent's order on appeal, the order becomes final and~~
23 ~~conclusive] pursuant to the provisions of Section 12-8A-1 NMSA
24 1978. "~~

25 Section 69. Section 59A-43-14 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 780) is amended to read:

2 "59A-43-14. APPEALS. --

3 A. Any claimant whose claim is denied in whole or in
4 part by the association may, pursuant to ~~[this article]~~ Chapter
5 59A, Article 43 NMSA 1978, request the receivership court to
6 review the decision of the association. Any ~~[such]~~ request for
7 review shall be filed within thirty ~~[(30)]~~ days of ~~[such]~~ the
8 denial. The receivership court shall have jurisdiction of all
9 ~~[such]~~ claims and the decision of the court shall be binding on
10 both the claimant and the association.

11 B. Any member insurer may appeal to the
12 superintendent from any action of the board of directors of the
13 association by filing with the superintendent a notice of appeal
14 within thirty ~~[(30)]~~ days after the action appealed from.

15 C. Any final order of the superintendent on appeal
16 is subject to judicial review by an action in the district court
17 ~~[of Santa Fe county to set aside the order as being unlawful or~~
18 ~~not supported by substantial evidence. If an action for~~
19 ~~judicial review is not filed within thirty (30) days after the~~
20 ~~superintendent's order on appeal, the order becomes final and~~
21 ~~conclusive] pursuant to the provisions of Section 12-8A-1 NMSA~~
22 1978. "

23 Section 70. Section 59A-47-29 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 879.28) is amended to read:

25 "59A-47-29. SETTLEMENT OF DISPUTES--APPEAL. --The parties

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1 to any dispute between a health care plan and any purveyor
2 arising out of a health care expense payments contract may
3 submit the dispute to the superintendent for his final decision
4 [thereon] and [such] his final decision shall then be binding
5 upon the parties to [such] the contract. [~~except, that any such~~
6 ~~party, within thirty (30) days following filing of such decision~~
7 ~~but not thereafter, may file in a court of competent~~
8 ~~jurisdiction any action or proceeding relating to the subject~~
9 ~~matter of the dispute which might have been filed in absence of~~
10 ~~this provision]~~ A party to the contract may seek review of the
11 superintendent's decision by filing an appeal in the district
12 court pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

13 Section 71. Section 59A-52-22 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 968) is amended to read:

15 "59A-52-22. JUDICIAL REVIEW OF ORDER. --Any person [~~may,~~
16 ~~within thirty (30) days after the state fire board has filed its~~
17 ~~decision, appeal to the district court of Santa Fe county for a~~
18 ~~review of the decision. The appeal shall be taken by filing a~~
19 ~~petition for review in the district court of Santa Fe county~~
20 ~~setting forth the grounds of complaint against the decision.~~
21 ~~All rules of pleading, practice and procedure in force with~~
22 ~~respect to civil actions shall apply to such actions insofar as~~
23 ~~they are applicable. The judgment of the district court in any~~
24 ~~such action may be appealed to the supreme court as in the case~~
25 ~~of other civil actions]~~ aggrieved by a decision of the state

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1 fire board may appeal to the district court pursuant to the
2 provisions of Section 12-8A-1 NMSA 1978. "

3 Section 72. Section 60-2B-4 NMSA 1978 (being Laws 1981,
4 Chapter 259, Section 4, as amended) is amended to read:

5 "60-2B-4. LICENSING AUTHORITY-- POWERS-- DUTIES-- HEARINGS--
6 APPEALS. --

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

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

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1 certified mail to the licensee at the address contained in the
2 license. Any license may be temporarily suspended for a period
3 not to exceed thirty days pending any prosecution, investigation
4 or public hearing;

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

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

18 (4) to keep records of all actions and
19 transactions of the licensing authority;

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

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

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

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

24 D. When proceedings are brought against a licensee
25 for a violation of the Bingo and Raffle Act, the licensing

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1 authority shall hear the matter and make written findings in
2 support of its decision. The licensee shall be informed
3 immediately of the decision and, in the event of a suspension or
4 revocation, the effective date of the suspension or revocation.

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

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

20 G. Upon the finding of a violation of the Bingo and
21 Raffle Act or the rules and regulations, or both, that would
22 warrant the suspension or revocation of a license, the licensing
23 authority, in addition to any other penalties ~~[which]~~ that may
24 be imposed, may declare the violator ineligible to conduct a
25 game of chance and to apply for a license under that act for a

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1 period not exceeding twelve months. The declaration of
2 ineligibility may be extended to include, in addition to the
3 violator, any of its subsidiary organizations, its parent
4 organization or an organization otherwise affiliated with the
5 violator when in the opinion of the licensing authority the
6 circumstances of the violation warrant that action.

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

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

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

24 K. Hearings may be convened by the licensing
25 authority from time to time at the request of any party, but

1 only for good cause shown. Hearings shall be held and concluded
2 with reasonable dispatch and without unnecessary delay. The
3 licensing authority shall decide any matter within thirty days
4 of the hearing.

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

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

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

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

25 P. If a person subpoenaed to attend in any

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

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

25 R. Every witness is entitled to be paid for

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1 attendance or attendance and travel by the party on whose behalf
2 he is subpoenaed, at the rates prescribed by law, before being
3 required to testify.

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

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

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

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

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

21 Section 73. Section 60-6B-2 NMSA 1978 (being Laws 1981,
22 Chapter 39, Section 38, as amended) is amended to read:

23 "60-6B-2. APPLICATIONS--APPEALS. --

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

1 license shall:

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

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

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

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

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

1 securities exchange;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 application pursuant to Subsection [~~H~~] K of this section.

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

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

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1 No person shall file more than one application for each
2 available license and no more than three applications per
3 calendar year.

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

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

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

24 L. In determining whether a license shall be issued,
25 the director shall take into consideration all requirements of

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

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

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

25 O. All costs of publication and posting shall be

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1 paid by the applicant.

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

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

23 Section 74. Section 60-6C-6 NMSA 1978 (being Laws 1981,
24 Chapter 39, Section 102, as amended) is amended to read:

25 "60-6C-6. NO INJUNCTION OR MANDAMUS PERMITTED-- APPEAL--

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1 ~~[PREFERENCE--NOTICE OF APPEAL]. --~~

2 A. No injunction or writ of mandamus or other legal
3 or equitable process shall issue in any suit, action or
4 proceeding to prevent or enjoin any finding of guilt or order of
5 suspension or revocation or fine made by a liquor control
6 hearing officer under the provisions of Section 60-6C-4 NMSA
7 1978. Any licensee aggrieved or adversely affected by any order
8 of revocation, suspension or fine shall have the right to appeal
9 to the district court ~~[of the county in which the licensed~~
10 ~~premises are located for a judicial review of the order within~~
11 ~~thirty days of the entry of the order. The appeal shall be~~
12 ~~taken by filing a petition for review setting forth the grounds~~
13 ~~of complaint against the order of suspension, revocation or~~
14 ~~fine. The matter on appeal shall be heard by the court without~~
15 ~~a jury, and the court shall grant the matter a preference on the~~
16 ~~docket. The court shall set aside any order of suspension,~~
17 ~~revocation or fine found to be:~~

- 18 (1) ~~arbitrary, capricious, an abuse of~~
19 ~~discretion or otherwise not in accordance with law;~~
20 (2) ~~in excess of statutory jurisdiction,~~
21 ~~authority or limitations or short of statutory right; or~~
22 (3) ~~unsupported by substantial evidence.~~

23 B. ~~In making the determinations, the court shall~~
24 ~~review the entire record or such portions as may be cited by any~~
25 ~~party. The director shall be given at least ten days' notice~~

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1 ~~before hearing on an appeal may be held. A complete copy of the~~
2 ~~record of hearing shall be filed in the office of the clerk of~~
3 ~~the court before the hearing on the appeal, which copy shall be~~
4 ~~furnished by the department at the request of the licensee or~~
5 ~~his attorney. The cost of preparation of the hearing record~~
6 ~~shall be borne by the losing party] pursuant to the provisions~~
7 ~~of Section 12-8A-1 NMSA 1978.~~

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

15 [D. ~~Appeals from the decision of the court to the~~
16 ~~supreme court of the state may be made in accordance with the~~
17 ~~rules of the supreme court.]"~~

18 Section 75. Section 61-1-17 NMSA 1978 (being Laws 1957,
19 Chapter 247, Section 17, as amended) is amended to read:

20 "61-1-17. PETITION FOR REVIEW - ~~[WAIVER OF RIGHT]~~. -- Any
21 person entitled to a hearing [~~under~~] provided for in the Uniform
22 Licensing Act, who is aggrieved by an adverse decision of a
23 board issued after hearing, may obtain a review of the decision
24 in the district court [~~of Santa Fe county or in the district~~
25 ~~court of the county in which the hearing was held or, upon~~

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1 ~~agreement of the parties to the appeal, in any other district~~
2 ~~court of the state. In order to obtain such review, the person~~
3 ~~shall, within twenty days after the date of service of the~~
4 ~~decision as required by Section 61-1-14 NMSA 1978, file with the~~
5 ~~court a petition for review, a copy of which shall be served on~~
6 ~~the office of the attorney general and on the board secretary,~~
7 ~~stating all exceptions taken to the decision and indicating the~~
8 ~~court in which the appeal is to be heard. The court shall not~~
9 ~~consider any exceptions not stated in the petition. Failure to~~
10 ~~file a petition for review in the manner and within the time~~
11 ~~stated shall operate as a waiver of the right to judicial review~~
12 ~~and shall result in the decision of the board becoming final,~~
13 ~~except that for good cause shown, within the time stated, the~~
14 ~~judge of the district court may issue an order granting one~~
15 ~~extension of time not to exceed sixty days] pursuant to the~~
16 provisions of Section 12-8A-1 NMSA 1978. "

17 Section 76. Section 61-1-19 NMSA 1978 (being Laws 1957,
18 Chapter 247, Section 19, as amended) is amended to read:

19 "61-1-19. STAY.--At any time before or during the review
20 proceeding pursuant to Section 61-1-17 NMSA 1978, the aggrieved
21 person may apply to the board or file a motion in accordance
22 with the Rules of Civil Procedure for the District Courts in the
23 reviewing court for an order staying the operation of the board
24 decision pending the outcome of the review. The board or court
25 may grant or deny the stay in its discretion. No [such] order

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1 granting or denying a stay shall be reviewable. "

2 Section 77. Section 61-12A-16 NMSA 1978 (being Laws 1983,
3 Chapter 267, Section 16) is amended to read:

4 "61-12A-16. RIGHT OF REVIEW. -- Any person [~~who deems~~
5 ~~himself to be~~] aggrieved by any final decision of the board has
6 the right to obtain a review of the decision in the district
7 court [~~of Santa Fe county. A review may be obtained by filing~~
8 ~~an appeal no later than fifteen days subsequent to the entering~~
9 ~~of the final decision of the board sought to be reviewed]~~
10 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

11 Section 78. Section 61-14-13 NMSA 1978 (being Laws 1967,
12 Chapter 62, Section 9, as amended) is amended to read:

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

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

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1 Uniform Licensing Act that a licensee:

2 (1) has committed an act of fraud,
3 misrepresentation or deception in obtaining a license or permit;

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

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

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

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

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

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

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

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

1 (10) is guilty of cruelty to animals;

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

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

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

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

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

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

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

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

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

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

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

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

16 Section 79. Section 61-18A-32 NMSA 1978 (being Laws 1987,
17 Chapter 252, Section 32) is amended to read:

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

24 Section 80. Section 66-4-3 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 216) is amended to read:

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1 "66-4-3. REFUSAL TO ISSUE LICENSE-- CANCELLATION OR
2 SUSPENSION OF LICENSE OR USE OF TEMPORARY PERMITS-- HEARING--
3 APPEAL. --

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

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

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

22 D. Within ten days after completion of the hearing,
23 the director shall cause to be served upon all parties, in the
24 manner provided in Section [~~64-2-11 NMSA 1953~~] 66-2-11 NMSA
25 1978, his findings and decision. The decision shall be:

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

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

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

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

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

19 Section 81. Section 66-5-36 NMSA 1978 (being Laws 1978,
20 Chapter 35, Section 258) is amended to read:

21 "66-5-36. RIGHT OF APPEAL TO COURT. --Any person denied a
22 license or whose license has been [~~canceled~~] canceled,
23 suspended or revoked by the division, except [~~where such~~] when
24 the cancellation or revocation is mandatory under the provisions
25 of [~~this article, shall have the right to file a petition within~~

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

12 Section 82. Section 66-5-204 NMSA 1978 (being Laws 1983,
13 Chapter 318, Section 5) is amended to read:

14 "66-5-204. ADMINISTRATIVE AND COURT REVIEW. -- Any owner of
15 a motor vehicle registered in New Mexico who is aggrieved by the
16 decision of the director made under the provisions of the
17 Mandatory Financial Responsibility Act may appeal to the hearing
18 officer of the division for a hearing to be held within twenty
19 days of the receipt by the division of the appeal. Any person
20 who continues aggrieved after the decision made by the hearing
21 officer may appeal that decision [~~within twenty days to the~~
22 ~~district court. The court shall determine whether there is~~
23 ~~sufficient evidence to uphold the decision of the hearing~~
24 ~~officer] to the district court pursuant to the provisions of
25 Section 12-8A-1 NMSA 1978. "~~

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1 Section 83. Section 67-8-19 NMSA 1978 (being Laws 1959,
2 Chapter 310, Section 5) is amended to read:

3 "67-8-19. PROCEDURE--APPEAL. --

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

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

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

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

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

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

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

13 Section 84. Section 67-10-2 NMSA 1978 (being Laws 1891,
14 Chapter 44, Section 2, as amended) is amended to read:

15 "67-10-2. RATES AND TOLLS--APPEALS. -- ~~[Sec. 95. That]~~ Such
16 corporation may, after the completion of such wagon road or any
17 part thereof and after the completion of any such bridge or
18 ferry for and by the traveling public, apply by petition in
19 writing to the board of county commissioners of the county ~~[or~~
20 ~~counties]~~ in or through which ~~[such]~~ the road, bridge or ferry
21 is or has been constructed, for rates, prices and tolls to be
22 charged and collected from the traveling public ~~[so]~~ using and
23 traveling on ~~[such]~~ the toll road, bridge or ferry, which
24 petition shall state such facts in reference to a road, bridge
25 or ferry as will be sufficient to inform the board of county

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

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1 ~~shall be paid by the corporation so appealing for their services~~
2 ~~such sum and on such terms as the judge may allow, together with~~
3 ~~the other costs incurred by such appeal]~~ to the district court
4 pursuant to the provisions of Section 12-8A-1 NMSA 1978."

5 Section 85. Section 67-13-12 NMSA 1978 (being Laws 1973,
6 Chapter 17, Section 12) is amended to read:

7 "67-13-12. ZONING--PETITION FOR REVIEW [~~TIME LIMIT~~]
8 RESTRAINING ORDER.--

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

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

17 Section 86. Section 69-6-2 NMSA 1978 (being Laws 1933,
18 Chapter 153, Section 308) is amended to read:

19 "69-6-2. RIGHT OF APPEAL.--Every owner, operator or
20 employee of any such mine [~~shall have]~~ has a right of appeal to
21 the district court [~~in the county wherein such mine is situated~~
22 ~~and from such district court to the supreme court as to the~~
23 ~~necessity or reasonableness of the order or requirement of the~~
24 ~~inspector under any of the provisions of this act]~~ pursuant to
25 the provisions of Section 12-8A-1 NMSA 1978."

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1 Section 87. Section 69-36-16 NMSA 1978 (being Laws 1993,
2 Chapter 315, Section 16) is amended to read:

3 "69-36-16. JUDICIAL REVIEW. --

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

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

20 C. Any person who is or may be affected by a final
21 action of the commission other than a regulation may appeal the
22 action of the commission by filing a notice of appeal with the
23 district court [for the first judicial district within thirty
24 days from the date of the commission's action. The appeal shall
25 be taken on the record made before the commission.]

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1 D. ~~The notice of appeal shall include a concise~~
2 ~~statement of the facts upon which jurisdiction is based, facts~~
3 ~~showing that the appellant is aggrieved, the grounds upon which~~
4 ~~the appellant is appealing and the relief that the appellant is~~
5 ~~seeking.~~

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

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

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

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

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

19 Section 88. Section 70-2-25 NMSA 1978 (being Laws 1935,
20 Chapter 72, Section 17, as amended) is amended to read:

21 "70-2-25. REHEARINGS--APPEALS. --

22 A. Within twenty days after entry of any order or
23 decision of the commission, any party of record adversely
24 affected [thereby] may file with the commission an application
25 for rehearing in respect of any matter determined by [such] the

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1 order or decision, setting forth the respect in which [such] the
2 order or decision is believed to be erroneous. The commission
3 shall grant or refuse [~~any such~~] the application in whole or in
4 part within ten days after the [same] application is filed, and
5 failure to act [~~thereon~~] on the application within [such] that
6 period shall be deemed a refusal [~~thereof~~] and [a] final
7 disposition of [such] that application. In the event the
8 rehearing is granted, the commission may enter [such] a new
9 order or decision after rehearing as may be required under the
10 circumstances.

11 B. Any party of record to [such] the rehearing
12 proceeding dissatisfied with the disposition of the application
13 for rehearing may appeal [~~therefrom~~] to the district court [~~of~~
14 ~~the county wherein is located any property of such party~~
15 ~~affected by the decision by filing a petition for the review of~~
16 ~~the action of the commission within twenty days after the entry~~
17 ~~of the order following rehearing or after the refusal or~~
18 ~~rehearing, as the case may be. Such petition shall state~~
19 ~~briefly the nature of the proceedings before the commission and~~
20 ~~shall set forth the order or decision of the commission~~
21 ~~complained of and the grounds of invalidity thereof upon which~~
22 ~~the applicant will rely; provided, however, that the questions~~
23 ~~reviewed on appeal shall be only questions presented to the~~
24 ~~commission by the application for rehearing. Notice of such~~
25 ~~appeal shall be served upon the adverse party or parties and the~~

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

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

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

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

16 Section 89. Section 70-5-16 NMSA 1978 (being Laws 1973,
17 Chapter 362, Section 16, as amended) is amended to read:

18 "70-5-16. APPEAL. -- Any licensee whose license is canceled
19 or suspended by order of the commission may appeal the decision
20 by filing [with the court of appeals a notice of appeal within
21 thirty days after the date the order is made. The appeal must
22 be on the record made at the hearing. The licensee shall
23 certify in his notice of appeal that arrangements have been made
24 with the commission for preparation of a sufficient number of
25 transcripts of the record of the hearing on which the appeal

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1 ~~depends to support his appeal to the court, at the expense of~~
2 ~~the licensee, including two copies which he shall furnish to the~~
3 ~~commission. Upon appeal, the court of appeals shall set aside~~
4 ~~the decision and order of the commission only if found to be:~~

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

6 B. ~~not supported by substantial evidence in the~~
7 ~~record; or~~

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

9 with the district court pursuant to the provisions of Section
10 12-8A-1 NMSA 1978. "

11 Section 90. Section 70-5-17 NMSA 1978 (being Laws 1947,
12 Chapter 214, Section 17, as amended) is amended to read:

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

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1 Section 91. Section 71-5-18 NMSA 1978 (being Laws 1975,
2 Chapter 272, Section 18, as amended) is amended to read:

3 "71-5-18. REHEARINGS--APPEALS. --

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

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

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

Underscored material = new
[bracketed material] = delete

1 ~~district court shall be expedited to the fullest possible~~
2 ~~extent]~~ pursuant to the provisions of Section 12-8A-1 NMSA 1978.

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

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

24 Section 92. Section 73-11-29 NMSA 1978 (being Laws 1919,
25 Chapter 20, Section 21, as amended) is amended to read:

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[bracketed material] = delete

1 "73-11-29. APPLICATION FOR WATER--BUDGET MEETING OF
2 DIRECTORS--NOTICE OF MEETING--TAX ASSESSMENTS AND WATER
3 CHARGES--EXEMPTIONS FROM TAX--APPEAL--SUCCESSION TO RIGHTS OF
4 WATER USERS' ASSOCIATION.--

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

11 B. The board of directors, on a date to be fixed by
12 a standing order of the board, which shall not be later than
13 July [first] 1 of each year, shall estimate and determine the
14 amount of funds required to meet the obligations and needs of
15 the district for the ensuing year, together with [such] the
16 additional amount as may be necessary to meet any deficiency in
17 the payment of expenses or obligations previously incurred by
18 the district and remaining unpaid, for [such] any of the
19 following purposes [as] that may be required by the activities
20 of the district: [~~to-wit~~

21 ~~Item One~~] (1) the payment of the interest upon
22 bonds of the district and any [~~instalment~~] installment on the
23 principal [~~thereof~~] of the bonds;

24 [~~Item Two~~] (2) any payment to become due under
25 any contract with the United States, to secure which bonds have

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[bracketed material] = delete

1 not been deposited with the United States, whether for the cost
2 of irrigation or drainage system or for the operation and
3 maintenance [~~thereof~~], or both; or if the lands of the district
4 have been divided by the secretary of the interior into units,
5 not necessarily contiguous, for repayment purposes the board
6 shall prepare separate estimates for each such unit;

7 [~~Item Three~~] (3) the portion of the expenses of
8 operation and maintenance of the irrigation and drainage systems
9 to be collected by tax assessment and levy, including funds
10 required to meet obligations as provided in Section [~~5~~-(Section
11 ~~77-2348~~) ~~hereof~~] 73-11-49 NMSA 1978. This portion shall not be
12 less than one-half of that portion required for [~~such~~] the
13 operation and maintenance costs for the ensuing year and shall
14 be determined by the board of directors of [~~said~~] the district
15 from year to year [~~and~~]. The [~~said~~] portion of [~~said~~] the
16 operation and maintenance expenses [~~so~~] collected by tax
17 assessment and levy shall be collected from all lands of the
18 district, whether irrigated or not, except [~~such~~] those lands as
19 may be exempted from taxation by the terms of [~~this act~~] Chapter
20 73, Articles 10 and 11 NMSA 1978, and the same, when collected,
21 shall be applied to the cost of operating and maintaining [~~of~~]
22 the irrigation and drainage systems. The remainder of [~~said~~]
23 the estimated amount shall be paid by the parties actually using
24 [~~said~~] the systems and water for irrigation or other purposes in
25 accordance with the terms of their contract for water; or

Underscored material = new
[bracketed material] = delete

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

12 C. Lands [~~which~~], that in the opinion of the board of
13 directors, are unfit for cultivation by irrigation on account of
14 seepage, alkali or physical condition and location of the land,
15 or other conditions, or lands to which the existing distributing
16 system or its extensions [~~thereof~~] cannot furnish water at such
17 points of delivery as the board may consider reasonable, shall
18 not be taxed for [~~Item Three; and~~] Paragraph (3) of Subsection B
19 of this section. Provided, that tax shall not be assessed for
20 [~~Item Three~~] Paragraph (3) of Subsection B of this section
21 against land involved in the boundary suit now pending in the
22 United States supreme court between the state of Texas and the
23 state of New Mexico until the final determination of [~~said~~] the
24 suit, unless [~~such~~] the land is in cultivation and using water
25 for irrigation; and lands shall not be taxed for [~~Items One and~~]

Underscored material = new
[bracketed material] = delete

1 ~~Two]~~ Paragraphs (1) and (2) of Subsection B of this section for
2 the periods and to the extent that, on account of seepage or
3 other conditions, in the opinion of the directors or the
4 secretary of the interior, as may be provided by contract with
5 the United States, or with district bondholders, such lands are
6 not fit for cultivation by irrigation on account of ~~[such]~~ those
7 conditions; but nothing ~~[herein]~~ contained in this section shall
8 be construed to relieve the district from making provision to
9 raise the amount required to make full payment to private
10 creditors or to the United States for the full cost of
11 construction or of operation and maintenance, irrespective of
12 the exemption of any lands from taxation, unless expressly
13 provided by the assent of the bondholders or other private
14 creditors or by agreement with the United States, as the case
15 may be ~~[and]~~. In determining the amount required for the
16 respective items aforesaid, the board shall take into
17 consideration the gross amount of exemption and credits
18 allowable pursuant to entries made by the board upon the
19 assessor's certified list, as provided in Section ~~[22-(§~~
20 ~~77-2331) of this act provided]~~ 73-11-31 NMSA 1978. Proper entry
21 shall be made by the district officers of all exemptions made
22 and of credits allowed. The amount required to meet the
23 obligations of the district, except ~~[the]~~ that portion ~~[thereof]~~
24 collected from tolls and charges, shall be raised by tax
25 assessments, levy and collection, as ~~[hereinafter]~~ provided in

Underscored material = new
[bracketed material] = delete

1 Chapter 73, Articles 10 and 11 NMSA 1978, to be extended pro
2 rata per acre over all lands in the [~~said~~] district or, in
3 appropriate cases, under [~~Item Two above~~] Paragraph (2) of
4 Subsection B of this section, against all land in each
5 respective unit of the district. When the board [~~shall~~
6 ~~assemble~~] meets for the purposes [~~hereinbefore~~] prescribed, it
7 shall consider, determine and designate the lands within [~~said~~]
8 the district [~~which~~] that shall be subjected to [~~the~~] those
9 assessments and levies [~~hereinbefore mentioned~~].

10 D. Notice of the time, place and purpose of [~~such~~] the
11 meeting shall be given by publication in English and Spanish in
12 [~~some~~] a newspaper [~~or newspapers~~] of general circulation
13 published within the county [~~wherein~~] where the headquarters of
14 the district are located and shall inform all the persons
15 interested that, at the time and place specified, an opportunity
16 will be afforded to appear before the board of directors and
17 show cause why any particular tract of land, or any portion
18 [~~there of~~] of it, should be exempted from taxation under the
19 provisions of [~~this act. Such~~] Chapter 73, Articles 10 and 11
20 NMSA 1978. The notice shall be published once a week for four
21 [~~(4)~~] consecutive weeks, and the last publication shall be not
22 less than three [~~(3)~~] days prior to the date fixed for [~~such~~]
23 the meeting. Proof of [~~such~~] publication shall be furnished by
24 the publisher and shall be filed in the archives of the
25 secretary of the district.

Underscored material = new
[bracketed material] = delete

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

14 F. Any person [~~feeling himself~~] aggrieved by [~~such~~]
15 the decision [~~as aforesaid~~] may appeal [~~therefrom~~] to the
16 district court [~~of the county wherein the decision is rendered~~
17 ~~at any time within thirty (30) days from and after the rendition~~
18 ~~and mailing as aforesaid of said copy of the decision complained~~
19 ~~of, by serving upon the secretary of the district written notice~~
20 ~~of such action and filing a copy thereof, together with the copy~~
21 ~~of the decision complained of, in the office of the clerk of the~~
22 ~~court to which the appeal is taken. Upon being served with such~~
23 ~~notice, the secretary of the district shall forthwith transmit~~
24 ~~to the clerk of such court a certified transcript of all the~~
25 ~~papers and records pertaining to the case which may have been~~

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[bracketed material] = delete

1 ~~filed in connection therewith. Upon such appeal, the case shall~~
2 ~~be tried in such district court, subject to the law, rules and~~
3 ~~practice governing such court as upon writ of certiorari]~~
4 pursuant to the provisions of Section 12-8A-1 NMSA 1978.

5 G. The filing of [said] the appeal in [said] the
6 district court shall not stay the proceedings relating to the
7 collection of [said] the tax [~~but~~]. In the event that the
8 appellant has paid [said] the tax before the rendition of final
9 judgment in [said] the suit and judgment is rendered in [said]
10 the suit in favor of the appellant, the appellant shall have
11 refunded to him such sum of money as shall be determined by the
12 judgment of the court, together with legal interest [~~thereon~~] on
13 it and costs of court. [~~But~~] If the appellant fails to recover
14 in [said] the suit, the appellant shall pay all costs of court.
15 In case the assets and liabilities of any water users'
16 association are taken over as provided in Section [~~1-(§ 77-2201)~~
17 ~~of this act provided~~] 73-10-1 NMSA 1978, the board of directors
18 shall allow to the owner of lands, on account of which payment
19 [~~shall have~~] has been made to [said] the association, all proper
20 and equitable credits to which the [said] owner may be entitled,
21 according to the books and records of [said] the association,
22 which shall be prima facie evidence of the credits of its
23 various members [~~and such~~]. The credits shall be taken into
24 consideration by the board of directors in determining the
25 amount of money required to meet obligations, maintenance,

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1 operating and current expenses of the district for the ensuing
2 year, and the board of directors shall certify to the county
3 commissioners the amount of [~~such~~] the credits, and levy
4 [~~hereinafter~~] as provided for in Chapter 73, Articles 10 and 11
5 NMSA 1978 shall be made accordingly.

6 H. The term "asset" as used [~~herein~~] in this section
7 includes any and all grants, rights, powers, privileges and
8 appropriations [~~heretofore~~] conferred by [~~any~~] law [~~general or~~
9 ~~special~~] and upon any water users' association and upon taking
10 over the assets of any water users' association as
11 [~~hereinbefore~~] provided in Chapter 73, Articles 10 and 11 NMSA
12 1978 by any irrigation district. [~~Said~~] The district shall
13 succeed to all such grants, rights, powers, privileges and
14 appropriations, and the officers of [~~said~~] the irrigation
15 district are authorized and empowered to perform such duties and
16 execute such instruments in regard thereto as [~~said~~] the law
17 required of the officers of [~~said~~] the water users'
18 association. "

19 Section 93. Section 73-12-4 NMSA 1978 (being Laws 1929,
20 Chapter 76, Section 4) is amended to read:

21 "73-12-4. [~~THE~~] PETITION HEARING [~~ON THE PETITION AND ANY~~]
22 -- OBJECTIONS [~~TO ORGANIZATION; ESTABLISH~~] -- BOUNDARIES [~~CALLING~~
23 AN] -- ELECTION -- [~~AND PROVIDING FOR~~] APPEALS. --

24 A. At the hearing before the board of county
25 commissioners provided for in [~~the preceding~~] Section 73-12-3

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1 NMSA 1978, the ~~[said]~~ board shall proceed to determine whether
2 ~~[said]~~ the petition has been signed by the requisite number of
3 petitioners; whether ~~[or not]~~ the lands in the proposed district
4 are arid or semiarid lands; whether ~~[such]~~ the lands are
5 ~~[susceptible of]~~ susceptible to irrigation and have a fertile
6 soil that will warrant farming ~~[the same]~~ them by irrigation;
7 whether there is a supply of water ~~[which]~~ that can be made
8 efficiently available for irrigation by the use of pumps;
9 whether the proposed plan is practicable; and whether, on the
10 whole, the development said to result from the introduction of
11 power is of such interest and benefit to the whole district as
12 to impress it with the character of public use. For the purpose
13 of determining the public use of the operations of the proposed
14 district and all other of the foregoing questions, the board of
15 county commissioners is ~~[hereby]~~ established as an inferior
16 court and its decisions shall be binding upon all persons
17 interested unless reversed on appeal as ~~[hereinafter]~~ provided
18 in this section, and if modified or affirmed, it shall be so
19 binding.

20 B. If the board of county commissioners hearing the
21 matter ~~[shall determine]~~ determines that the petition has been
22 signed by the requisite number of petitioners as required by
23 ~~[this act]~~ Chapter 73, Article 12 NMSA 1978 and ~~[shall~~
24 ~~determine]~~ determines that ~~[such]~~ the proposed development is of
25 such interest and benefit to the whole district as to impress

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[bracketed material] = delete

1 with the character of public use, it shall then proceed to hear
2 any ~~[and all]~~ objections, exceptions and protests ~~[which]~~ that
3 have been made in writing to the organization of ~~[such]~~ the
4 district or to the inclusion of any lands within ~~[such]~~ the
5 district or to the exclusion of lands from ~~[such]~~ the district
6 and ~~[such]~~ other objections, exceptions and protests as may be
7 presented in writing to the organization of the district. All
8 persons whose lands have not been included in the proposed
9 district, as defined in the petition, ~~[shall]~~ have the right to
10 appear before ~~[said]~~ the board at ~~[such]~~ the time and place as
11 parties interested in or affected by the organization of the
12 district and ~~[shall]~~ have the right to petition that their lands
13 be included within ~~[such]~~ the district, and, if it ~~[shall~~
14 ~~appear]~~ appears to the board that the inclusion of such lands
15 may be made without materially increasing the cost of service,
16 the commissioners may by order include such lands within ~~[said]~~
17 the district.

18 C. If the board ~~[shall make]~~ makes findings approving
19 of the organization of ~~[such]~~ the district, it shall then
20 proceed to define the boundaries of ~~[such]~~ the proposed district
21 from ~~[said]~~ the petition and from ~~[such]~~ applications in writing
22 for the exclusion of lands ~~[therefrom]~~ and the inclusion of
23 lands ~~[therein]~~ from and in the district, as may be made in
24 accordance with the intent of ~~[this Act]~~ Chapter 73, Article 12
25 NMSA 1978. The board may adjourn ~~[such]~~ the meeting from time

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[bracketed material] = delete

1 to time not exceeding three weeks in all and shall, by final
2 order duly entered upon ~~[their]~~ its records, allow the prayer of
3 ~~[said]~~ the petition and define and establish the boundaries of
4 ~~[such]~~ the proposed district. Provided that ~~[said]~~ the board
5 shall not modify ~~[such]~~ the proposed boundaries described in the
6 petition so as to change the objects of ~~[said]~~ the petition or
7 so as to exempt from the operation of ~~[this Act]~~ Chapter 73,
8 Article 12 NMSA 1978 any land within the boundaries proposed by
9 the petition ~~[suseptable]~~ susceptible to irrigation by the same
10 system or power works applicable to other lands in ~~[such]~~ the
11 proposed district ~~[nor shall any]~~. No land ~~[which]~~ that will
12 not, in the judgment of the board, be benefited by ~~[such]~~ the
13 proposed system shall be included in ~~[such]~~ the district if
14 ~~[the]~~ its owner ~~[thereof shall make]~~ makes written application
15 at ~~[such]~~ the hearing to withdraw ~~[the same]~~ it.

16 D. Any persons aggrieved by the decision of the board
17 of county commissioners, upon the hearing ~~[hereinbefore]~~
18 provided for ~~[is hereby]~~ in this section, are given the right of
19 appeal ~~[from such decision or any part thereof to the district~~
20 ~~court in and for the county in which said hearing was held.~~
21 ~~Said appeal shall be taken and perfected by the service of~~
22 ~~notice within fifteen days from the time of the decision and not~~
23 ~~thereafter. Such notice of appeal shall be served upon each of~~
24 ~~the three members of the committee presenting the petition,~~
25 ~~herein provided for, to the board of county commissioners]~~ to

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

3 E. When the petition has been allowed and the
4 boundaries established and the name of the proposed district
5 designated, which shall be _____ electrical
6 district, the [said] board of county commissioners shall, by
7 further order duly entered upon [their] its records, call an
8 election of the qualified electors of [said] the district to be
9 held for the purpose of determining whether [such] the district
10 shall be organized under the provisions of [~~this Act~~] Chapter
11 73, Article 12 NMSA 1978 and by such order shall submit the
12 names of one or more persons from each of three divisions of
13 [said] the district, as [hereinafter] provided in this section,
14 to be voted for as directors therein, and for the purpose of
15 [said] the election shall [~~divide said~~] divide the district into
16 three divisions, as nearly equal in size as may be practicable,
17 to be numbered, respectively, [~~I, II~~] 1, 2 and [~~III~~] 3 and shall
18 provide that a qualified elector of each of [said] the three
19 divisions shall be elected as a member of the board of directors
20 of [said] the district by the qualified electors of the whole
21 district. Each of [said] the divisions shall constitute an
22 election precinct and the commissioners shall appoint three
23 judges for each of [such] the precincts, one of whom shall act
24 as clerk of [said] the election.

25 [~~Upon appeal having been taken, as in this section~~]

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1 ~~provided, the clerk of the court of the county wherein such~~
2 ~~proceedings have been instituted shall transmit a certified copy~~
3 ~~of the petition and of all orders and findings made by the board~~
4 ~~of county commissioners in said cause and of all written~~
5 ~~objections, exceptions or protests or applications of whatsoever~~
6 ~~nature filed in such matter with the board of county~~
7 ~~commissioners to the district court of such county. Such~~
8 ~~certified copy of such proceedings must be transmitted to said~~
9 ~~district court within fifteen days from the date which such~~
10 ~~appeal is taken. The district court shall determine all~~
11 ~~questions submitted to the said board of county commissioners on~~
12 ~~their merits, and appeals from the decision of the district~~
13 ~~court in such matters may be taken to the supreme court of the~~
14 ~~state in the same manner as appeals are taken to the supreme~~
15 ~~court from the district courts of the state in civil matters.~~
16 ~~The findings of fact in the district court shall have the effect~~
17 ~~as the findings of fact in that court in all civil cases at~~
18 ~~law.]"~~

19 Section 94. Section 74-3-9 NMSA 1978 (being Laws 1971,
20 Chapter 284, Section 7, as amended) is amended to read:

21 "74-3-9. LICENSING OF RADIOACTIVE MATERIAL--APPEAL. --

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

25 (1) a license issued by the nuclear regulatory

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1 commission and notification by the licensee to the agency of
2 license identification;

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

6 (3) a license issued by the agency.

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

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

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

22 E. Any person who is or may be affected by licensing
23 action of the agency may appeal [for further relief] to the
24 district court [in which the subject facilities or activities
25 are located. All such appeals shall be upon the agency's

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1 ~~administrative records and shall be taken within thirty days~~
2 ~~from the date the decision is final. Upon appeal, the district~~
3 ~~court shall set aside the licensing action only if found to be:~~

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

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

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

10 Section 95. Section 74-4B-14 NMSA 1978 (being Laws 1992,
11 Chapter 5, Section 3) is amended to read:

12 "74-4B-14. CLEANUP OF ORPHAN HAZARDOUS MATERIALS--
13 DEPARTMENT RECOURSE--APPEAL. --The department may assess charges
14 against [persons] a party identified as responsible for orphan
15 hazardous materials for costs the department incurs in cleanup
16 of the orphan hazardous materials and for damage to state
17 property. Amounts received in payment of assessments for
18 cleanup of the orphan hazardous materials shall be deposited in
19 the orphan material recovery fund. Amounts received in payment
20 of assessments for damage to state property shall be used to
21 repair the damage. Any person who is assessed charges pursuant
22 to this section may appeal the assessment to the district court
23 [~~within thirty days of receipt of notice of the assessment~~]
24 pursuant to the provisions of Section 12-8A-1 NMSA 1978. "

25 Section 96. Section 75-3-11 NMSA 1978 (being Laws 1965,

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1 Chapter 235, Section 11) is amended to read:

2 "75-3-11. JUDICIAL REVIEW. -- Rulings by the commission on
3 the issuance, refusal or revocation of a license are subject to
4 review [~~only in the district court for Santa Fe county and the~~
5 ~~state supreme court~~] in the district court pursuant to the
6 provisions of Section 12-8A-1 NMSA 1978."

7 Section 97. REPEAL. -- Sections 4-45-6, 12-8-17 through
8 12-8-22, 61-1-18, 61-1-20, 61-1-22, 61-1-23, 61-1-26, 61-12-16,
9 61-18A-24 and 61-27A-15 NMSA 1978 (being Laws 1876, Chapter 1,
10 Section 23, Laws 1969, Chapter 252, Sections 17 through 22, Laws
11 1957, Chapter 247, Sections 18, 20, 22, 23 and 26, Laws 1953,
12 Chapter 136, Section 16, Laws 1987, Chapter 252, Section 24 and
13 Laws 1993, Chapter 212, Section 15, as amended) are repealed.

14 Section 98. EFFECTIVE DATE. -- The effective date of the
15 provisions of this act is September 1, 1996.

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**State of New Mexico
House of Representatives**

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

February 7, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 587

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

Respectfully submitted,

Cisco McSorley, Chairman

FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____

(Chief Clerk)
(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Baca, Gubbels, King, Luna, Sanchez, R. G.

Absent: None

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Underscored material = new
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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

February 14, 1996

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 587

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

Respectfully submitted,

Janice D. Paster, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

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Date _____

The roll call vote was 5 For 0 Against
Yes: 5
No: 0
Excused: None
Absent: Carraro, Stefani cs, Tsosie, Vernon

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Underscored material = new
~~[bracketed material] = delete~~