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SENATE BILL 429

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

DIANNA J. DURAN & SUE WILSON

AN ACT

RELATING TO GOVERNMENT ORGANIZATION; REORGANIZING CERTAIN STATE GOVERNMENT AGENCIES AND RE-ALLOCATING FUNCTIONS; CREATING A WORKFORCE DEVELOPMENT DEPARTMENT; PROVIDING POWERS AND DUTIES; PROVIDING FOR TRANSFERS OF APPROPRIATIONS, FUNDS, FUNCTIONS AND PROPERTY; ABOLISHING CERTAIN GOVERNMENTAL ENTITIES; MAKING APPROPRIATIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1 through 14 of this act may be cited as the "Workforce Development Department Act".

Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the Workforce Development Department Act:

A. "department", appearing without qualification,

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1 means the workforce development department created by the  
2 Workforce Development Department Act; and

3 B. "secretary" means the secretary of workforce  
4 development.

5 Section 3. [NEW MATERIAL] PURPOSE. --The purpose of the  
6 Workforce Development Department Act is to establish a single,  
7 unified department to administer welfare- and workforce-related  
8 programs. The department shall administer all laws and  
9 functions formerly administered by the labor department, the  
10 human services department, the youth conservation corps unit of  
11 the energy, minerals and natural resources department, the  
12 americorps unit of the children, youth and families department  
13 and the occupational health and safety bureau of the department  
14 of environment.

15 Section 4. [NEW MATERIAL] WORKFORCE DEVELOPMENT DEPARTMENT  
16 ESTABLISHED. --

17 A. There is created in the executive branch the  
18 "workforce development department". The department is a cabinet  
19 department.

20 B. Until July 1, 1998, the department shall consist  
21 of, but not be limited to, six divisions:

- 22 (1) employment security division;
- 23 (2) income support division;
- 24 (3) child support enforcement division;
- 25 (4) medical assistance division;

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- 1 (5) programs division; and
- 2 (6) administrative services division.

3 C. Beginning July 1, 1998, the department shall  
4 consist of, but not be limited to, five divisions:

- 5 (1) employment security division;
- 6 (2) income support division;
- 7 (3) child support enforcement division;
- 8 (4) programs division; and
- 9 (5) administrative services division.

10 D. The secretary is empowered to organize the  
11 department and the divisions specified in Subsections B and C of  
12 this section and may transfer or merge functions between  
13 divisions in the interest of efficiency and economy.

14 Section 5. [NEW MATERIAL] GOVERNMENTAL ENTITIES  
15 ABOLISHED. -- On July 1, 1997 the labor department and the human  
16 services department are abolished.

17 Section 6. [NEW MATERIAL] SECRETARY OF WORKFORCE  
18 DEVELOPMENT-- APPOINTMENT. --

19 A. The chief executive and administrative officer of  
20 the department is the "secretary of workforce development". The  
21 secretary shall be appointed by the governor with the advice and  
22 consent of the senate. The secretary holds office at the  
23 pleasure of the governor and shall serve in the executive  
24 cabinet.

25 B. A secretary who has been appointed but not yet

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1 confirmed shall serve and have all the duties, responsibilities  
2 and authority assigned by law to that office during the period  
3 of time prior to the final action by the senate to confirm or  
4 reject his appointment.

5 Section 7. [NEW MATERIAL] SECRETARY--DUTIES AND GENERAL  
6 POWERS. --

7 A. The secretary is responsible to the governor for  
8 the operation of the department. It is his duty to manage all  
9 operations of the department and to administer and enforce the  
10 laws with which he or the department is charged.

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

17 (1) exercise general supervisory and appointing  
18 authority over all department employees, subject to any  
19 applicable personnel laws and regulations;

20 (2) delegate authority to subordinates as he  
21 deems necessary and appropriate, clearly delineating the  
22 delegated authority and any limitations on it;

23 (3) organize the department into those  
24 organizational units he deems will enable it to function most  
25 efficiently, subject to any provisions of law requiring or

1 establishing specific organizational units;

2 (4) within the limitations of available  
3 appropriations and applicable laws, employ and fix the  
4 compensation of those persons necessary to discharge his duties;

5 (5) take administrative action by issuing orders  
6 and instructions, not inconsistent with the law, to assure  
7 implementation of and compliance with the provisions of law with  
8 the administration or execution of which he is responsible, and  
9 to enforce those orders and instructions by appropriate  
10 administrative action or actions in the court;

11 (6) conduct research and studies that will  
12 improve the operation of the department;

13 (7) provide courses of instruction and practical  
14 training for employees of the department and other persons  
15 involved in the administration of programs with the objective of  
16 improving the operations and efficiency of administration;

17 (8) prepare an annual budget of the department;

18 (9) provide cooperation, at the request of heads  
19 of administratively attached agencies, in order to:

20 (a) minimize or eliminate duplication of  
21 services and jurisdictional conflicts;

22 (b) coordinate activities and resolve  
23 problems of mutual concern; and

24 (c) resolve by agreement the manner and  
25 extent to which the department shall provide budgeting,

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1 recordkeeping and related clerical assistance to  
2 administratively attached agencies, if any;

3 (10) appoint, with the governor's consent, for  
4 each division, a director, who shall be exempt from the  
5 provisions of the Personnel Act and shall serve at the pleasure  
6 of the secretary;

7 (11) give bond in the penal sum of twenty-five  
8 thousand dollars (\$25,000) and require directors to each give  
9 bond in the penal sum of ten thousand dollars (\$10,000)  
10 conditioned upon the faithful performance of duties as provided  
11 in the Surety Bond Act with the department paying the cost of  
12 such bonds;

13 (12) require performance bonds of such employees  
14 and officers as he deems necessary as provided in the Surety  
15 Bond Act with the department paying the costs of such bonds; and

16 (13) enter into contracts.

17 C. The secretary may bring suit on behalf of the  
18 department, and the secretary, the department and its employees  
19 may be sued subject to the provisions of the Tort Claims Act.

20 D. The secretary may apply for and receive, with the  
21 governor's approval, in the name of the department, any public  
22 or private funds.

23 E. If functions of state government departments  
24 overlap a function of the department or a function assigned to  
25 the department could better be performed by another state

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1 government department or a function assigned to another state  
2 government department could best be performed by the department,  
3 the secretary may recommend appropriate legislation to re-  
4 allocate those functions to the next session of the legislature  
5 for its consideration.

6 F. The secretary may adopt and promulgate reasonable  
7 rules and regulations necessary to carry out the duties of the  
8 department and its divisions. A rule or regulation adopted by a  
9 division director in carrying out the functions and duties of  
10 the division shall not be effective until approved by the  
11 secretary unless otherwise provided explicitly by statute.  
12 Unless otherwise provided explicitly by statute, no regulation  
13 affecting any person or agency outside the department shall be  
14 adopted, amended or repealed without a public hearing on the  
15 proposed action before the secretary or a hearing officer  
16 designated by him. The public hearing shall be held in Santa Fe  
17 unless otherwise permitted by statute. Notice of the subject  
18 matter of the regulation, the action proposed to be taken, the  
19 time and place of the hearing, the manner in which interested  
20 persons may present their views and the method by which copies  
21 of the proposed regulation, proposed amendment or repeal of an  
22 existing regulation may be obtained shall be published once at  
23 least thirty days prior to the hearing date in a newspaper of  
24 general circulation in the state and mailed at least thirty days  
25 prior to the hearing date to all persons who have made a written

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1 request for advance notice of hearing.

2 G. All rules and regulations shall be filed in  
3 accordance with the State Rules Act.

4 Section 8. [NEW MATERIAL] ADMINISTRATIVELY ATTACHED  
5 AGENCIES, BOARDS AND COMMISSIONS. --The human rights commission,  
6 the labor and industrial commission, the workforce development  
7 board, the New Mexico youth conservation corps commission, the  
8 occupational health and safety review commission, the New Mexico  
9 office of Indian affairs and the commission on the status of  
10 women are administratively attached to the department and shall  
11 have the status of administratively attached agencies pursuant  
12 to the provisions of the Executive Reorganization Act.

13 Section 9. [NEW MATERIAL] DIRECTORS. --The secretary shall  
14 appoint, with the approval of the governor, directors of the  
15 divisions established within the department.

16 Section 10. [NEW MATERIAL] BUREAUS--CHIEFS. --The secretary  
17 shall establish within each division those bureaus as he deems  
18 necessary to carry out the provisions of the Workforce  
19 Development Department Act. He shall employ a chief to be  
20 administrative head of each bureau.

21 Section 11. [NEW MATERIAL] PERSONNEL ACT COVERAGE. --All  
22 employees and positions in the department, except for the  
23 positions of secretary, division director and other positions  
24 expressly permitted pursuant to the Personnel Act and designated  
25 as exempt by the secretary shall be covered by and shall be



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1 subject to the provisions of the Personnel Act.

2 Section 12. [NEW MATERIAL] COOPERATION WITH THE FEDERAL  
3 GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE AGENCY  
4 STATUS. --

5 A. The department is authorized to cooperate with the  
6 federal government in the administration of employment, training  
7 and public assistance programs under the jurisdiction of the  
8 department in which financial or other participation by the  
9 federal government is authorized or mandated pursuant to federal  
10 laws, regulations, rules or orders. The secretary may enter  
11 into agreements with agencies of the federal government to  
12 implement employment, training and public assistance programs  
13 subject to availability of appropriated state funds and any  
14 provisions of state laws applicable to those agreements or  
15 participation by the state.

16 B. The governor or the secretary may designate the  
17 department or an organizational unit of the department as the  
18 single state agency for the administration of any employment,  
19 training or public assistance program, either in the governor's  
20 or the secretary's discretion or when the designation is a  
21 condition of federal financial or other participation in the  
22 program under federal law, regulation, rule or order. No  
23 designation of a single state agency under the authority granted  
24 in this subsection shall be made in contravention of state law.

25 Section 13. [NEW MATERIAL] ADVISORY COMMITTEES. -- The

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1 secretary, with the consent of the governor, may create advisory  
2 committees in accordance with the provisions of Section 9-1-9  
3 NMSA 1978. The secretary shall appoint the members of the  
4 advisory committees with the consent of the governor. If the  
5 existence of an advisory committee, its representational  
6 membership requirements or other matters are required or  
7 specified under any federal law, regulation, rule or order as a  
8 condition for receiving federal funds for any program  
9 administered by the department, the secretary and the governor  
10 shall comply with those requirements in creating the advisory  
11 committee.

12 Section 14. [NEW MATERIAL] ORGANIZATIONAL UNITS OF THE  
13 DEPARTMENT-- POWERS AND DUTIES SPECIFIED BY LAW - ACCESS TO  
14 INFORMATION. --

15 A. Those organizational units of the department and  
16 the officers of those units specified by law shall have all the  
17 powers and duties enumerated in the specific laws assigned to  
18 their organizational units for administration. However, the  
19 carrying out of those powers and duties shall be subject to the  
20 direction and supervision of the secretary, and the secretary  
21 shall retain the final decision-making authority and  
22 responsibility in accordance with the provisions of Subsection B  
23 of Section 7 of the Workforce Development Department Act. The  
24 department shall be given access to all records, data and  
25 information of other departments, agencies and institutions not

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1 specifically made confidential by law.

2 B. Subject to the provisions of Subsection B of  
3 Section 7 of the Workforce Development Department Act:

4 (1) the employment security division has the  
5 powers and duties conferred by law upon the former employment  
6 security division of the labor department;

7 (2) the income support division has the powers  
8 and duties conferred by law upon the former income support  
9 division of the human services department;

10 (3) the child support enforcement division has  
11 the powers and duties conferred by law upon the former child  
12 support enforcement division of the human services department;

13 (4) the medical assistance division has the  
14 powers and duties conferred by law upon the former medical  
15 assistance division of the human services department; and

16 (5) the programs division has the powers and  
17 duties conferred upon the former labor and industrial division  
18 and human rights division of the labor department, the  
19 occupational health and safety bureau of the department of  
20 environment, the youth conservation corps unit of the energy,  
21 minerals and natural resources department and the americorps  
22 unit of the children, youth and families department.

23 Section 15. Section 9-5B-3 NMSA 1978 (being Laws 1992,  
24 Chapter 91, Section 3) is amended to read:

25 "9-5B-3. DEFINITIONS. -- As used in the New Mexico Youth

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1 Conservation Corps Act:

2 A. "commission" means the New Mexico youth  
3 conservation corps commission;

4 B. "corps" means the New Mexico youth conservation  
5 corps;

6 C. "corps member" means a person enrolled in the  
7 corps;

8 D. "department" means the [energy, ~~minerals and~~  
9 ~~natural resources~~] workforce development department;

10 E. "nonprofit organization" means any organization  
11 that has been granted an exemption from federal income tax by  
12 the United States commissioner of internal revenue as an  
13 organization described in Section 501(c) of the United States  
14 Internal Revenue Code of 1986, as amended or renumbered;

15 F. "project" means an activity that can be completed  
16 in six months or less, results in a specific identifiable  
17 service or product that otherwise would not be accomplished with  
18 existing funds and does not duplicate the routine services or  
19 functions of the sponsor;

20 G. "resident" means an individual who has resided in  
21 New Mexico for at least six months before applying for  
22 employment with the corps; and

23 H. "sponsor" means any local unit of government, state  
24 agency, federal agency, nonprofit organization or federally  
25 recognized [~~Native American~~] Indian nation, tribe or pueblo."

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1           Section 16. Section 9-5B-5 NMSA 1978 (being Laws 1992,  
2 Chapter 91, Section 5) is amended to read:

3           "9-5B-5. COMMISSION CREATED-- MEMBERSHIP-- APPOINTMENTS--  
4 TERMS-- VACANCIES-- COMPENSATION. --

5           A. There is created a nine-member "New Mexico youth  
6 conservation corps commission" [~~which~~] that is administratively  
7 attached to the department. The commission consists of the  
8 following members:

9                       (1) the superintendent of public instruction or  
10 his designee;

11                      (2) the commissioner of public lands or his  
12 designee;

13                      (3) the secretary of [~~energy, minerals and~~  
14 ~~natural resources~~] workforce development or his designee;

15                      (4) the secretary of [~~the youth authority~~]  
16 children, youth and families or his designee; and

17                      (5) five members of the general public appointed  
18 by the governor to reflect the geographic diversity of the  
19 state, one of whom is knowledgeable in the current policies of  
20 the United States forest service and one of whom is Native  
21 American.

22           B. One [~~of the members~~] public member of the  
23 commission shall be appointed by the governor for a one-year  
24 term, two public members shall be appointed for two-year terms  
25 and two public members shall be appointed for three-year terms

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1 [and]. All subsequent appointments of public members shall be  
2 made for three-year terms.

3 C. The public members shall serve at the pleasure of  
4 the governor. Vacancies on the commission caused by the loss of  
5 a public member shall be filled by appointment by the governor  
6 for the unexpired term within sixty days of the vacancy. Public  
7 commission members shall serve until their successors have been  
8 appointed.

9 D. A majority of the members of the commission  
10 constitutes a quorum for transaction of business. The  
11 commission shall elect a chairman from its membership.

12 E. Members of the commission shall be compensated as  
13 provided in the Per Diem and Mileage Act and shall receive no  
14 other compensation, perquisite or allowance."

15 Section 17. Section 9-7A-14 NMSA 1978 (being Laws 1977,  
16 Chapter 253, Section 78, as amended) is amended to read:

17 "9-7A-14. OCCUPATIONAL HEALTH AND SAFETY REVIEW  
18 COMMISSION--EXEMPTIONS FROM AUTHORITY OF SECRETARY OF  
19 [~~ENVIRONMENT~~] WORKFORCE DEVELOPMENT. --The occupational health  
20 and safety review commission shall receive staff support from  
21 the workforce development department [~~of environment~~]. All  
22 powers, duties and responsibilities of the occupational health  
23 and safety review commission under Sections 50-9-9, 50-9-17 and  
24 50-9-24 NMSA 1978 are hereby explicitly exempted from the  
25 authority of the secretary of workforce development under

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1 provisions of Subsection B of Section [~~6 of The Department of~~  
2 ~~Environment Act~~] 9-7A-6 NMSA 1978. "

3 Section 18. Section 13-4-11 NMSA 1978 (being Laws 1965,  
4 Chapter 35, Section 1, as amended) is amended to read:

5 "13-4-11. MINIMUM WAGES ON PUBLIC WORKS--WEEKLY PAYMENT--  
6 POSTING WAGE SCALE--WITHHOLDING FUNDS.--Every contract or  
7 project in excess of twenty thousand dollars (\$20,000) to which  
8 the state or any political subdivision thereof is a party for  
9 construction, alteration, demolition or repair or any  
10 combination of these, including painting and decorating, of  
11 public buildings, public works or public roads of the state and  
12 [~~which~~] that requires or involves the employment of mechanics,  
13 laborers or both shall contain a provision stating the minimum  
14 wages to be paid to various classes of laborers and mechanics,  
15 which shall be based upon the wages that will be determined by  
16 the [~~director of the~~] labor and industrial [~~division~~] bureau of  
17 the [~~labor~~] workforce development department to be prevailing  
18 for the corresponding classes of laborers and mechanics employed  
19 on contract work of a similar nature in the state or locality,  
20 and every contract or project shall contain a stipulation that  
21 the contractor, subcontractor, employer or any person acting as  
22 a contractor shall pay all mechanics and laborers employed on  
23 the site of the project, unconditionally and not less often than  
24 once a week and without subsequent unlawful deduction or rebate  
25 on any account, the full amounts accrued at time of payment

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1 computed at wage rates not less than those stated in the minimum  
2 wage rates issued for the project.

3 A. For the purpose of making wage determinations, the  
4 [~~director of the~~] labor and industrial [~~division~~] bureau of the  
5 [~~labor~~] workforce development department shall conduct a  
6 continuing program for the obtaining and compiling of wage-rate  
7 information and shall encourage the voluntary submission of  
8 wage-rate data by contractors, contractors' associations, labor  
9 organizations, interested persons and public officers. Before  
10 making a determination of wage rates for any project, [~~he~~] the  
11 bureau shall give due regard to the information thus obtained.  
12 Whenever the [~~director~~] bureau deems that the data at hand are  
13 insufficient to make a wage determination, [~~he~~] it may have a  
14 field survey conducted for the purpose of obtaining sufficient  
15 information upon which to make determination of wage rates. Any  
16 interested person shall have the right to submit to the  
17 [~~director~~] bureau written data, views and arguments why the wage  
18 determination should be changed.

19 B. The scale of wages to be paid shall be posted by  
20 the contractor or person acting as a contractor in a prominent  
21 and easily accessible place at the site of the work; and it is  
22 further provided that there may be withheld from the contractor,  
23 subcontractor, employer or any person acting as a contractor so  
24 much of accrued payments as may be considered necessary by the  
25 contracting officer to pay to laborers and mechanics employed on



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1 the project the difference between the rates of wages required  
2 by the [~~director of the~~] labor and industrial [~~division~~] bureau  
3 of the [~~labor~~] workforce development department to be paid to  
4 laborers and mechanics on the work and the rates of wages  
5 received by such laborers and mechanics and not refunded to the  
6 contractor, subcontractor, employer or any person acting as a  
7 contractor or their agents.

8 C. The [~~director of the~~] labor and industrial  
9 [~~division~~] bureau of the [~~labor~~] workforce development  
10 department shall have authority to issue rules and regulations  
11 necessary to administer and accomplish the purposes of the  
12 Public Works Minimum Wage Act. "

13 Section 19. Section 13-4-12 NMSA 1978 (being Laws 1965,  
14 Chapter 35, Section 2, as amended) is amended to read:

15 "13-4-12. DEFINITION OF THE TERM "WAGES".--

16 A. As used in Section 13-4-11 NMSA 1978, "wages",  
17 "scale of wages", "wage rates" and "minimum wages" [~~and~~  
18 "~~prevailing wages~~"] include:

19 (1) the basic hourly rate of pay; and

20 (2) the amount of:

21 (a) the rate of contribution irrevocably made  
22 by a contractor, subcontractor, employer or any person acting as  
23 a contractor to a trustee or a third person pursuant to a fund,  
24 plan or program; and

25 (b) the rate of costs to a contractor,

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1 subcontractor, employer or any person acting as a contractor  
2 [~~which~~] that reasonably may be anticipated in providing benefits  
3 to laborers and mechanics pursuant to an enforceable commitment  
4 to carry out a financially responsible plan or program [~~which~~]  
5 that was communicated in writing to the laborers and mechanics  
6 affected for: 1) medical or hospital care; 2) pensions on  
7 retirement or death; 3) compensation for injuries or illness  
8 resulting from occupational activity; or 4) insurance to provide  
9 for any of the foregoing; and for: 5) unemployment benefits; 6)  
10 life insurance; 7) disability and sickness insurance; 8)  
11 accident insurance; 9) vacation and holiday pay; 10) costs of  
12 apprenticeship or other similar programs; or for 11) other bona  
13 fide fringe benefits; but only where the contractor,  
14 subcontractor, employer or any person acting as a contractor is  
15 not required by other federal, state or local law to provide any  
16 of the foregoing or similar benefits.

17 B. The obligation of a contractor, subcontractor,  
18 employer or person acting as a contractor to make payment in  
19 accordance with the prevailing wage determinations of the  
20 [~~director of the~~] labor and industrial [~~division~~] bureau of the  
21 [~~labor~~] workforce development department, insofar as Section  
22 13-4-11 NMSA 1978 or other sections of legislative acts  
23 incorporating Section 13-4-11 NMSA 1978 are concerned, may be  
24 discharged by:

- 25 (1) the making of payments in cash;

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1                   (2) the making of contributions of a type  
2 referred to in Subparagraph (a) of Paragraph (2) of Subsection A  
3 of this section; or

4                   (3) the assumption of an enforceable commitment  
5 to bear the costs of a plan or program of a type referred to in  
6 Subparagraph (b) of Paragraph (2) of Subsection A of this  
7 section or any combination thereof where the aggregate of any  
8 payments or contributions and costs therefor is not less than  
9 the rate of pay described in Section 13-4-11 NMSA 1978 plus the  
10 amount referred to in this section.

11                   ~~[C. The provisions of this section shall not affect~~  
12 ~~existing contracts or contracts resulting from bids outstanding~~  
13 ~~on July 15, 1965]"~~

14                   Section 20. Section 13-4-13 NMSA 1978 (being Laws 1965,  
15 Chapter 35, Section 3, as amended) is amended to read:

16                   "13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF  
17 CONTRACT.--Every contract within the scope of the Public Works  
18 Minimum Wage Act shall contain further provision that in the  
19 event it is found by ~~[the director of]~~ the labor and industrial  
20 ~~[division]~~ bureau of the ~~[labor]~~ workforce development  
21 department that any laborer or mechanic employed on the site of  
22 the project has been or is being paid as a result of a willful  
23 violation a rate of wages less than the rate of wages required,  
24 the contracting agency may, by written notice to the contractor,  
25 subcontractor, employer or person acting as a contractor

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1 terminate their right to proceed with the work or such part of  
2 the work as to which there has been a willful failure to pay the  
3 required wages, and the contracting agency may prosecute the  
4 work to completion by contract or otherwise, and the contractor  
5 or person acting as a contractor and his sureties shall be  
6 liable to the state for any excess costs occasioned thereby.  
7 Any party receiving notice of termination of his project or  
8 subcontract under the provisions of this section may appeal the  
9 finding of the [~~director~~] bureau as provided in the Public Works  
10 Minimum Wage Act. "

11 Section 21. Section 13-4-14 NMSA 1978 (being Laws 1965,  
12 Chapter 35, Section 4, as amended) is amended to read:

13 "13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF  
14 CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

15 A. The [~~director of the~~] labor and industrial  
16 [~~division~~] bureau of the [~~labor~~] workforce development  
17 department shall certify to the contracting agency the names of  
18 persons or firms he has found to have disregarded their  
19 obligations to employees under the Public Works Minimum Wage Act  
20 and the amount of arrears. The contracting agency is authorized  
21 and directed to pay or cause to be paid to the affected laborers  
22 and mechanics, from any accrued payments withheld under the  
23 terms of the contract or designated for the project, any wages  
24 found due such workmen pursuant to the Public Works Minimum Wage  
25 Act. The [~~director~~] bureau shall, after notice to the affected

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1 persons, distribute a list to all departments of the state  
2 giving the names of persons or firms [~~he has~~] found to have  
3 willfully violated the Public Works Minimum Wage Act. No  
4 contract or project shall be awarded to the persons or firms  
5 appearing on this list or to any firm, corporation, partnership  
6 or association in which the persons or firms have an interest  
7 until three years have elapsed from the date of publication of  
8 the list containing the names of the persons or firms. Any  
9 person to be included on the list to be distributed may appeal  
10 the finding of the [~~director~~] bureau as provided in the Public  
11 Works Minimum Wage Act.

12 B. If the accrued payments withheld under the terms of  
13 the contract, as mentioned in Subsection A of this section, are  
14 insufficient to reimburse all the laborers and mechanics with  
15 respect to whom there has been a failure to pay the wages  
16 required pursuant to the Public Works Minimum Wage Act, the  
17 laborers and mechanics shall have the right of action or  
18 intervention or both against the contractor or person acting as  
19 a contractor and his sureties, conferred by law upon such  
20 persons furnishing labor and materials, and, in such proceeding,  
21 it shall be no defense that the laborers and mechanics accepted  
22 or agreed to less than the required rate of wages or voluntarily  
23 made refunds. The [~~director of the~~] labor and industrial  
24 [~~division~~] bureau of the [~~labor~~] workforce development  
25 department shall refer such matters to the district attorney in

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1 the appropriate county, and it is the duty and responsibility of  
2 the district attorney to bring civil suit for wages due and  
3 liquidated damages provided for in Subsection C of this section.

4 C. In the event of any violation of the Public Works  
5 Minimum Wage Act, the contractor, subcontractor, employer or any  
6 person acting as a contractor responsible for the violation  
7 shall be liable to any affected employee for his unpaid wages.  
8 In addition, the contractor, subcontractor, employer or any  
9 person acting as a contractor shall be liable to any affected  
10 employee for liquidated damages in the sum of ten dollars  
11 (\$10.00) for each calendar day on which a contractor,  
12 subcontractor, employer or any person acting as a contractor has  
13 willfully required or permitted an individual laborer or  
14 mechanic to work in violation of the provisions of the Public  
15 Works Minimum Wage Act. "

16 Section 22. Section 13-4-15 NMSA 1978 (being Laws 1963,  
17 Chapter 304, Section 5, as amended) is amended to read:

18 "13-4-15. APPEALS. --

19 A. Any interested person may appeal any determination,  
20 finding or action of the [~~director of the~~] labor and industrial  
21 [~~division~~] bureau of the [~~labor~~] workforce development  
22 department made pursuant to the Public Works Minimum Wage Act to  
23 the labor and industrial commission sitting as the appeals board  
24 by filing notice of the appeal with the [~~director~~] chief of the  
25 labor and industrial bureau within fifteen days after the

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1 determination has been issued or notice of the finding or action  
2 has been given as provided in the Public Works Minimum Wage Act.

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

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

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

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1 evidence. The court may affirm the decision of the board or  
2 remand the case for further proceedings. The court may reserve  
3 or modify the decision because the administrative findings,  
4 inferences, conclusions or decisions are:

5 (1) in violation of constitutional or statutory  
6 provisions;

7 (2) in excess of the statutory authority of the  
8 board;

9 (3) made upon unlawful procedure;

10 (4) affected by other error of law;

11 (5) clearly erroneous in view of the reliable  
12 probative and substantial evidence on the whole record; or

13 (6) arbitrary or capricious or characterized by  
14 abusive discretion or clearly unwarranted exercise of  
15 discretion.

16 An aggrieved party may obtain a review of any final judgment  
17 of the district court made pursuant to the Public Works Minimum  
18 Wage Act by appeal to the ~~[supreme]~~ court of appeals, which  
19 shall be taken as in other civil cases."

20 Section 23. Section 27-1-1 NMSA 1978 (being Laws 1977,  
21 Chapter 252, Section 16) is amended to read:

22 "27-1-1. DEFINITIONS. --As used in Articles 1 and 2 of  
23 Chapter ~~[13 NMSA 1953]~~ 27 NMSA 1978, "department", "department  
24 of public welfare", "state department of public welfare", "New  
25 Mexico department of public welfare", "state board of public



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1 welfare", "board of public welfare", "state board", "state  
2 department", "health and social services department", "human  
3 services department", "department of health and social  
4 services", "health and social services board" and "board" mean  
5 the [~~human services~~] workforce development department. "

6 Section 24. Section 27-1-3 NMSA 1978 (being Laws 1937,  
7 Chapter 18, Section 4, as amended) is amended to read:

8 "27-1-3. ACTIVITIES OF [~~HUMAN SERVICES~~] WORKFORCE  
9 DEVELOPMENT DEPARTMENT. --The [~~human services~~] department shall  
10 be charged with the administration of all the welfare activities  
11 of the state as provided in Chapter 27 NMSA 1978, except as  
12 otherwise provided for by law. The [~~human services~~] department  
13 shall, except as otherwise provided by law:

14 A. administer [~~old age assistance, aid to dependent~~  
15 ~~children, assistance to the needy blind and otherwise~~  
16 ~~handicapped and general relief~~] financial assistance programs,  
17 including aid to dependent children and general assistance;

18 [~~B. administer all aid or services to crippled chil-~~  
19 ~~dren, including the extension and improvement of services for~~  
20 ~~crippled children, insofar as practicable under conditions in~~  
21 ~~this state, provide for locating children who are crippled or~~  
22 ~~who are suffering from conditions which lead to crippling,~~  
23 ~~provide corrective and any other services and care and~~  
24 ~~facilities for diagnosis, hospitalization and after care for~~  
25 ~~children who are crippled or who are suffering from conditions~~

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1 ~~which lead to crippling, and supervise the administration of~~  
2 ~~those services which are not administered directly by the~~  
3 ~~department;~~

4           ~~C.-]~~ B. administer and supervise all child welfare  
5 activities, service to children placed for adoption, service and  
6 care of homeless, dependent and neglected children, service and  
7 care for children in foster family homes or in institutions  
8 because of dependency or delinquency and care and service to any  
9 child who because of physical or mental defect may need such  
10 service;

11           ~~D.-]~~ C. formulate detailed plans, make rules and regu-  
12 lations and take action deemed necessary or desirable to carry  
13 out the provisions of Chapter 27 NMSA 1978 and which is not  
14 inconsistent with the provisions of that chapter;

15           ~~E.-]~~ D. cooperate with the federal government in  
16 matters of mutual concern pertaining to public welfare and  
17 public assistance, including the adoption of such methods of  
18 administration as are found by the federal government to be  
19 necessary for the efficient operation of the plan for public  
20 welfare and assistance;

21           ~~F.-]~~ E. assist other departments, agencies and  
22 institutions of local, state and federal governments when so  
23 requested, cooperate with such agencies when expedient in  
24 performing services in conformity with the purposes of Chapter  
25 27 NMSA 1978 and cooperate with medical, health, nursing and

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1 welfare groups, any state agency charged with the administration  
2 of laws providing for vocational rehabilitation of physically  
3 handicapped persons and organizations within the state;

4 ~~[G.]~~ F. act as the agent of the federal government in  
5 welfare matters of mutual concern in conformity with the  
6 provisions of Chapter 27 NMSA 1978 and in the administration of  
7 any federal funds granted to this state, to aid in furtherance  
8 of ~~[any such]~~ those functions of the state government;

9 ~~[H.]~~ G. establish ~~[in counties or in districts, which  
10 may include two or more counties]~~ local units of administration  
11 ~~[to serve as agents of the department];~~ and

12 ~~[I. at its discretion, establish local boards of  
13 public welfare for such territory as it may see fit and by rule  
14 and regulation prescribe the duties of the local board;~~

15 ~~J. administer such other public welfare functions as  
16 may be assumed by the state after the effective date of this  
17 section;~~

18 ~~K.]~~ H. carry on research and compile statistics  
19 relative to ~~[the entire]~~ public ~~[welfare program throughout the  
20 state]~~ assistance programs, including ~~[all phases of]~~ dependency  
21 ~~[defectiveness, delinquency]~~ and related problems and develop  
22 plans in cooperation with other public and private agencies for  
23 the prevention as well as treatment of conditions giving rise to  
24 the need for public [welfare problems] assistance programs.

25 ~~[L. inspect and require reports from all private~~

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1 ~~institutions, boarding homes and agencies providing assistance,~~  
2 ~~care or other direct services to children who are crippled,~~  
3 ~~neglected, delinquent or dependent, the aged, blind, feeble-~~  
4  ~~minded and other dependent persons.~~

5 ~~Nothing contained in this section shall be construed to~~  
6 ~~authorize the department to establish or prescribe standards or~~  
7 ~~regulations for or otherwise regulate programs or services to~~  
8 ~~children in group homes as defined in Section 9-8-13 NMSA~~  
9 ~~1978.]"~~

10 Section 25. Section 27-1-3.1 NMSA 1978 (being Laws 1980,  
11 Chapter 83, Section 1) is amended to read:

12 "27-1-3.1. ACUTE CARE BED USAGE--FUNDING AUTHORIZATION. --  
13 The [~~human services~~] workforce development department is  
14 authorized to accept and use federal grants or matching funds  
15 for the purpose of reimbursement to certain rural hospitals for  
16 using empty acute care beds for intermediate care and skilled  
17 nursing care, as defined in federal statutes and regulations,  
18 subject to federal approval and the availability of funds. The  
19 department is authorized to use funds from existing  
20 appropriations for matching federal funds for the purposes of  
21 this [~~act~~] section."

22 Section 26. Section 27-1-3.1 NMSA 1978 (being Laws 1980,  
23 Chapter 83, Section 1, as amended and as further amended by  
24 Section 25 of this act) is repealed and a new Section 27-1-3.1  
25 NMSA 1978 is enacted to read:

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1           "27-1-3.1 [NEW MATERIAL] ACUTE CARE BED USAGE--FUNDING  
2 AUTHORIZATION.--The department of health is authorized to accept  
3 and use federal grants or matching funds for the purpose of  
4 reimbursement to certain rural hospitals for using empty acute  
5 care beds for intermediate care and skilled nursing care, as  
6 defined in federal statutes and regulations, subject to federal  
7 approval and the availability of funds. The department of  
8 health is authorized to use funds from existing appropriations  
9 for matching federal funds for the purposes of this act."

10           Section 27. Section 27-2-1 NMSA 1978 (being Laws 1973,  
11 Chapter 376, Section 1) is amended to read:

12           "27-2-1. SHORT TITLE.--Sections [~~1 through 20 of this act~~  
13 ~~and Sections 13-1-9, 13-1-10, 13-1-12, 13-1-13, 13-1-17,~~  
14 ~~13-1-18, 13-1-18.1, 13-1-19, 13-1-20, 13-1-20.1, 13-1-21,~~  
15 ~~13-1-22, 13-1-27, 13-1-27.2, 13-1-27.3, 13-1-27.4, 13-1-28,~~  
16 ~~13-1-28.6, 13-1-29, 13-1-30, 13-1-34, 13-1-35, 13-1-37, 13-1-39,~~  
17 ~~13-1-40, 13-1-41 and 13-1-42 NMSA 1953]~~ 27-2-1 through 27-2-36  
18 NMSA 1978 may be cited as the "Public Assistance Act". "

19           Section 28. Section 27-2-2 NMSA 1978 (being Laws 1973,  
20 Chapter 376, Section 2, as amended) is amended to read:

21           "27-2-2. DEFINITIONS.--As used in the Public Assistance  
22 Act:

23                   [A. ~~"department" means the human services department;~~

24                   B. ~~"board" means the human services department;~~

25                   C.] A. "director" means the secretary of [human

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1 ~~services]~~ workforce development;

2 [D-] B. "local office" means the county or district  
3 office of the ~~[human services]~~ workforce development department;

4 [E-] C. "public welfare" or "public assistance" means  
5 any aid or relief granted to or on behalf of an eligible person  
6 under the Public Assistance Act and regulations issued pursuant  
7 to that act;

8 [F-] D. "applicant" means a person who has applied for  
9 assistance or services under the Public Assistance Act;

10 [G-] E. "recipient" means a person who is receiving  
11 assistance or services under the Public Assistance Act;

12 [H-] F. "federal act" means the federal Social  
13 Security Act, as may be amended from time to time, and  
14 regulations issued pursuant to that act; and

15 [I-] G. "secretary" means the secretary of ~~[human~~  
16 ~~services]~~ workforce development. "

17 Section 29. Section 27-2-5 NMSA 1978 (being Laws 1973,  
18 Chapter 376, Section 5, as amended) is amended to read:

19 "27-2-5. AMOUNT OF GRANT. --

20 A. The amount of an eligible person's maximum grant of  
21 public assistance is determined by deducting the total amount of  
22 his nonexempt income from the applicable standard of need.

23 However, if the amount of federal and state funds available for  
24 public assistance is insufficient to provide the grants for all  
25 eligible persons, the amount of grants to eligible persons may

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1 be reduced as necessary.

2 B. The secretary [~~of human services~~] may set  
3 individual and family maximum and minimum grant levels for each  
4 program "

5 Section 30. Section 27-2-6.1 NMSA 1978 (being Laws 1978,  
6 Chapter 30, Section 1) is amended to read:

7 "27-2-6.1. SUPPLEMENTAL POSTNATAL ASSISTANCE. -- The [~~health~~  
8 ~~and social services~~] department shall establish a program of  
9 supplemental postnatal assistance for those [~~mentally retarded~~]  
10 developmentally disabled persons who during pregnancy received  
11 aid to families with dependent children but whose aid was  
12 revoked upon relinquishment of the newly born child for  
13 adoption. The supplemental postnatal assistance provided for in  
14 this section shall be at the same rate as aid to families with  
15 dependent children, but [~~such~~] supplemental postnatal assistance  
16 shall not exceed a period of sixty days. The [~~health and social~~  
17 ~~services department~~] secretary shall adopt and promulgate rules  
18 and regulations [~~in order~~] to carry out the provisions of this  
19 section. "

20 Section 31. Section 27-2-6.2 NMSA 1978 (being Laws 1988,  
21 Chapter 122, Section 1) is amended to read:

22 "27-2-6.2. PUBLIC ASSISTANCE--EMPLOYMENT AND TRAINING  
23 REQUIREMENTS. --

24 A. In the administration of all [~~food stamp employment~~  
25 ~~and training programs, community work experience programs, work~~

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1 ~~incentive demonstration programs for recipients of aid to~~  
2 ~~families with dependent children and all other~~] work  
3 registration, work incentive or employment and training programs  
4 established or conducted by the [~~human services~~] department,  
5 participation of recipients shall be voluntary except as  
6 prohibited by federal law or when mandatory participation is a  
7 requirement in order to secure federal funding for services  
8 provided.

9 B. Any waiver requests developed and submitted to the  
10 federal government by the [~~human services~~] department for [~~food~~  
11 ~~stamp employment and training programs, community work~~  
12 ~~experience programs, work incentive demonstration programs for~~  
13 ~~recipients of aid to families with dependent children and all~~  
14 ~~other~~] work registration, work incentive or employment,  
15 education and training programs shall include a voluntary  
16 program and may also include a mandatory alternative.

17 C. The [~~human services~~] department shall adopt and  
18 promulgate regulations [~~which~~] that shall be published and made  
19 available for public notice and comment [~~which~~]. The  
20 regulations shall detail the criteria for mandatory  
21 participation and exemptions in accordance with federal law and  
22 regulations for persons in work, education, training, job search  
23 and work experience programs administered by the [~~human~~  
24 ~~services~~] department prior to their implementation.

25 D. The [~~human services~~] department shall not place



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1 persons in any community work experience or similar program  
2 unless:

3 (1) appropriate standards for health, safety and  
4 other conditions applicable to the performance of work are met;

5 (2) the program does not result in displacement  
6 of persons currently employed; and

7 (3) provision is made for transportation, day  
8 care and other costs necessary and directly related to  
9 participation in the program "

10 Section 32. Section 27-2-9.1 NMSA 1978 (being Laws 1979,  
11 Chapter 401, Section 1, as amended) is amended to read:

12 "27-2-9.1. ADMINISTRATION OF SHELTER CARE SUPPLEMENT. --

13 A. A shelter care supplement shall be provided to  
14 those individuals who are recipients of supplemental security  
15 income under Title 16 of the federal Social Security Act and who  
16 reside in shelter care homes licensed pursuant to regulations of  
17 the [~~health and environment~~] department of health.

18 B. The [~~human services~~] workforce development  
19 department is authorized to determine eligibility, compute  
20 payment, make payments and otherwise administer the shelter care  
21 supplement program.

22 C. The amount of the shelter care supplement payment  
23 shall be established by the secretary [~~of human services~~]  
24 subject to the availability of general funds. "

25 Section 33. Section 27-2-12 NMSA 1978 (being Laws 1973,

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1 Chapter 376, Section 16, as amended) is amended to read:

2 "27-2-12. MEDICAL ASSISTANCE PROGRAMS. -- Consistent with the  
3 federal act and subject to the appropriation and availability of  
4 federal and state funds, the medical assistance division of the  
5 [~~human services~~] department may by regulation provide medical  
6 assistance, including the services of licensed doctors of  
7 oriental medicine and licensed chiropractors, to persons  
8 eligible for public assistance programs under the federal act."

9 Section 34. Section 27-2-12 NMSA 1978 (being Laws 1973,  
10 Chapter 376, Section 16, as amended and as further amended by  
11 Section 33 of this act) is repealed and a new Section 27-2-12  
12 NMSA 1978 is enacted to read:

13 "27-2-12. [NEW MATERIAL] MEDICAL ASSISTANCE PROGRAMS. --  
14 Consistent with the federal act and subject to the appropriation  
15 and availability of federal and state funds, the department of  
16 health may by regulation provide medical assistance, including  
17 the services of licensed doctors of oriental medicine and  
18 licensed chiropractors, to persons eligible for public  
19 assistance programs under the federal act."

20 Section 35. Section 27-2-12.3 NMSA 1978 (being Laws 1987,  
21 Chapter 269, Section 1, as amended) is amended to read:

22 "27-2-12.3. MEDICAID REIMBURSEMENT-- EQUAL PAY FOR EQUAL  
23 PHYSICIANS', DENTISTS', OPTOMETRISTS', PODIATRISTS' AND  
24 PSYCHOLOGISTS' SERVICES. -- The [~~human services~~] department shall  
25 establish a rate for the reimbursement of physicians, dentists,

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1 optometrists, podiatrists and psychologists for services  
2 rendered to medicaid patients that provides equal reimbursement  
3 for the same or similar services rendered without respect to the  
4 date on which such physician, dentist, optometrist, podiatrist  
5 or psychologist entered into practice in New Mexico, the date on  
6 which the physician, dentist, optometrist, podiatrist or  
7 psychologist entered into an agreement or contract to provide  
8 such services or the location in which such services are to be  
9 provided in the state; provided, however, that the requirements  
10 of this section shall not apply when the [~~human services~~]  
11 department contracts with entities pursuant to Section 27-2-12.6  
12 NMSA 1978 to negotiate a rate for the reimbursement for services  
13 rendered to medicaid patients in the medicaid managed care  
14 system "

15 Section 36. Section 27-2-12.3 NMSA 1978 (being Laws 1987,  
16 Chapter 269, Section 1, as amended and as further amended by  
17 Section 35 of this act) is repealed and a new Section 27-2-12.3  
18 NMSA 1978 is enacted to read:

19 "27-2-12.3. [NEW MATERIAL] MEDICAID REIMBURSEMENT-- EQUAL  
20 PAY FOR EQUAL PHYSICIANS', DENTISTS', OPTOMETRISTS',  
21 PODIATRISTS' AND PSYCHOLOGISTS' SERVICES.--The department of  
22 health shall establish a rate for the payment of physicians,  
23 dentists, optometrists, podiatrists and psychologists for  
24 services rendered to medicaid patients that provides equal  
25 payment for the same or similar services rendered without

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1 respect to the date on which the physician, dentist,  
2 optometrist, podiatrist or psychologist entered into practice in  
3 New Mexico, the date on which the physician, dentist,  
4 optometrist, podiatrist or psychologist entered into an  
5 agreement or contract to provide the services or the location in  
6 which the services are provided in the state, but the  
7 requirements of this section shall not apply when the department  
8 of health contracts with entities pursuant to Section 27-2-12.6  
9 NMSA 1978 to pay for services rendered to medicaid patients in  
10 the medicaid managed care system."

11 Section 37. Section 27-2-12.4 NMSA 1978 (being Laws 1987,  
12 Chapter 214, Section 1) is amended to read:

13 "27-2-12.4. LONG-TERM CARE FACILITIES--NONCOMPLIANCE WITH  
14 STANDARDS AND CONDITIONS--SANCTIONS.--

15 A. In addition to any other actions required or  
16 permitted by federal law or regulation, the [~~human services~~]  
17 department shall impose a hold on state medicaid payments to a  
18 long-term care facility thirty days after the department of  
19 health [~~and environment department~~] notifies the [~~human~~  
20 ~~services~~] department in writing pursuant to an on-site visit  
21 that the long-term care facility is not in substantial  
22 compliance with the standards or conditions of participation  
23 promulgated by the federal department of health and human  
24 services pursuant to which the facility is a party to a medicaid  
25 provider agreement, unless the substantial noncompliance has

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1 been corrected within that thirty-day period or the facility's  
2 medicaid provider agreement is terminated or not renewed based  
3 in whole or in part on the noncompliance. The written notice  
4 shall cite the specific deficiencies that constitute  
5 noncompliance.

6 B. The [~~human services~~] department shall remove the  
7 payment hold imposed under Subsection A of this section when the  
8 department of health [~~and environment department~~], pursuant to  
9 an on-site visit, certifies in writing to the [~~human services~~]  
10 department that the long-term care facility is in substantial  
11 compliance with the standards or conditions of participation  
12 pursuant to which the facility is a party to a medicaid provider  
13 agreement.

14 C. The [~~human services~~] department shall not reimburse  
15 any long-term care facility during the payment hold period  
16 imposed pursuant to Subsection A of this section for any  
17 medicaid recipient-patients who are new admissions and who are  
18 admitted on or after the day the hold is imposed and prior to  
19 the day the hold is removed.

20 D. If a long-term care facility is certified in  
21 writing to be in noncompliance pursuant to Subsection A of this  
22 section for the second time in any twelve-month period, the  
23 [~~human services~~] department shall cancel or refuse to execute  
24 the long-term care facility's medicaid provider agreement for a  
25 two-month period, unless it can be demonstrated that harm to the

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1 patients would result from this action or that good cause exists  
2 to allow the facility to continue to participate in the medicaid  
3 program. The provisions of this subsection are subject to  
4 appeal procedures set forth in federal regulations for  
5 nonrenewal or termination of a medicaid provider agreement.

6 E. A long-term care facility shall not charge medicaid  
7 recipient-patients, their families or their responsible parties  
8 to recoup any payments not received because of a hold on  
9 medicaid payments imposed pursuant to this section.

10 F. This section [~~shall not be construed to~~] does not  
11 affect any other provisions for medicaid provider agreement  
12 termination, nonrenewal, due process and appeal pursuant to  
13 federal law or regulation.

14 G. As used in this section:

15 (1) "day" means a twenty-four hour period  
16 beginning at midnight and ending one second before midnight;

17 (2) "long-term care facility" means any  
18 intermediate care facility or skilled nursing facility [~~which~~]  
19 that is licensed by the department of health [~~and environment~~  
20 ~~department~~] and [~~which~~] that is medicaid certified;

21 (3) "new admissions" means medicaid recipients  
22 who have never been in the long-term care facility or, if  
23 previously admitted, had been discharged or had voluntarily left  
24 the facility. The term does not include:

25 (a) individuals who were in the long-term

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1 care facility before the effective date of the hold on medicaid  
2 payments and became eligible for medicaid after that date; and

3 (b) individuals who, after a temporary  
4 absence from the facility, are readmitted to beds reserved for  
5 them in accordance with federal regulations; and

6 (4) "substantial compliance" means the condition  
7 of having no cited deficiencies or having only those cited  
8 deficiencies [~~which~~] that:

9 (a) are not inconsistent with any federal  
10 statutory requirement;

11 (b) do not interfere with adequate patient  
12 care;

13 (c) do not represent a hazard to the  
14 patients' health or safety;

15 (d) are capable of correction within a  
16 reasonable period of time; and

17 (e) are ones [~~which~~] that the long-term care  
18 facility is making reasonable plans to correct. "

19 Section 38. Section 27-2-12.4 NMSA 1978 (being Laws 1987,  
20 Chapter 214, Section 1, as amended and as further amended by  
21 Section 37 of this act) is repealed and a new Section 27-2-12.4  
22 NMSA 1978 is enacted to read:

23 "27-2-12.4. [NEW MATERIAL] LONG-TERM CARE FACILITIES--  
24 NONCOMPLIANCE WITH STANDARDS AND CONDITIONS--SANCTIONS.--

25 A. In addition to any other actions required or

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1 permitted by federal law or regulation, the department of health  
2 shall impose a hold on state medicaid payments to a long-term  
3 care facility thirty days after the department of health  
4 notifies the long-term care facility in writing pursuant to an  
5 on-site visit that the long-term care facility is not in  
6 substantial compliance with the standards or conditions of  
7 participation promulgated by the federal department of health  
8 and human services pursuant to which the facility is a party to  
9 a medicaid provider agreement, unless the substantial  
10 noncompliance has been corrected within that thirty-day period  
11 or the facility's medicaid provider agreement is terminated or  
12 not renewed based in whole or in part on the noncompliance. The  
13 written notice shall cite the specific deficiencies that  
14 constitute noncompliance.

15 B. The department of health shall remove the payment  
16 hold imposed under Subsection A of this section when the  
17 department of health pursuant to an on-site visit certifies in  
18 writing that the long-term care facility is in substantial  
19 compliance with the standards or conditions of participation  
20 pursuant to which the facility is a party to a medicaid provider  
21 agreement.

22 C. The department of health shall not reimburse any  
23 long-term care facility during the payment hold period imposed  
24 pursuant to Subsection A of this section for any medicaid  
25 recipient-patients who are new admissions and who are admitted

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1 on or after the day the hold is imposed and prior to the day the  
2 hold is removed.

3 D. If a long-term care facility is certified in  
4 writing to be in noncompliance pursuant to Subsection A of this  
5 section for the second time in any twelve-month period, the  
6 department of health shall cancel or refuse to execute the long-  
7 term care facility's medicaid provider agreement for a two-month  
8 period, unless it can be demonstrated that harm to the patients  
9 would result from this action or that good cause exists to allow  
10 the facility to continue to participate in the medicaid program.  
11 The provisions of this subsection are subject to appeal  
12 procedures set forth in federal regulations for nonrenewal or  
13 termination of a medicaid provider agreement.

14 E. A long-term care facility shall not charge medicaid  
15 recipient-patients, their families or their responsible parties  
16 to recoup any payments not received because of a hold on  
17 medicaid payments imposed pursuant to this section.

18 F. This section shall not be construed to affect any  
19 other provisions for medicaid provider agreement termination,  
20 nonrenewal, due process and appeal pursuant to federal law or  
21 regulation.

22 G. As used in this section:

23 (1) "day" means a twenty-four hour period  
24 beginning at midnight and ending one second before midnight;

25 (2) "long-term care facility" means any

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1 intermediate care facility or skilled nursing facility that is  
2 licensed by the department of health and that is medicaid  
3 certified;

4 (3) "new admissions" means medicaid recipients  
5 who have never been in the long-term care facility or, if  
6 previously admitted, had been discharged or had voluntarily left  
7 the facility. The term does not include:

8 (a) individuals who were in the long-term  
9 care facility before the effective date of the hold on medicaid  
10 payments and became eligible for medicaid after that date; and

11 (b) individuals who, after a temporary  
12 absence from the facility, are readmitted to beds reserved for  
13 them in accordance with federal regulations; and

14 (4) "substantial compliance" means the  
15 condition of having no cited deficiencies or having only those  
16 cited deficiencies that:

17 (a) are not inconsistent with any federal  
18 statutory requirement;

19 (b) do not interfere with adequate  
20 patient care;

21 (c) do not represent a hazard to the  
22 patients' health or safety;

23 (d) are capable of correction within a  
24 reasonable period of time; and

25 (e) are ones that the long-term care

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1 facility is making reasonable plans to correct. "

2 Section 39. Section 27-2-12.5 NMSA 1978 (being Laws 1989,  
3 Chapter 83, Section 1, as amended) is amended to read:

4 "27-2-12.5. MEDICAID-CERTIFIED NURSING FACILITIES--  
5 RETROACTIVE ELIGIBILITY--REFUNDS--PENALTY. --

6 A. Medicaid payment for a medicaid-eligible patient  
7 shall be accepted by a medicaid-certified nursing facility from  
8 the first month of medicaid eligibility, regardless of whether  
9 the eligibility is retroactive. The nursing facility shall  
10 refund to the patient or responsible party all out-of-pocket  
11 money except for required medical-care credits paid to the  
12 nursing facility for that patient's care on and after the date  
13 of medicaid eligibility for services covered by the medicaid  
14 program. Within thirty days after notification by the [~~human~~  
15 ~~services~~] department of the patient's medicaid eligibility, the  
16 nursing facility shall make any necessary refund to the patient  
17 or responsible party required under this section.

18 B. In any cause of action brought against a nursing  
19 facility because of its failure to make a refund to the patient  
20 or responsible party as required under Subsection A of this  
21 section, the patient or responsible party may be awarded triple  
22 the amount of the money not refunded or three hundred dollars  
23 (\$300), whichever is greater, and reasonable [~~attorneys'~~  
24 attorney fees and court costs. "

25 Section 40. Section 27-2-12.5 NMSA 1978 (being Laws 1989,

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1 Chapter 83, Section 1, as amended and as further amended by  
2 Section 39 of this act) is repealed and a new Section 27-2-12.5  
3 NMSA 1978 is enacted to read:

4 "27-2-12.5. [NEW MATERIAL] MEDICAID-CERTIFIED NURSING  
5 FACILITIES-- RETROACTIVE ELIGIBILITY-- REFUNDS-- PENALTY. --

6 A. Medicaid payment for a medicaid-eligible patient  
7 shall be accepted by a medicaid-certified nursing facility from  
8 the first month of medicaid eligibility, regardless of whether  
9 the eligibility is retroactive. The nursing facility shall  
10 refund to the patient or responsible party all out-of-pocket  
11 money except for required medical-care credits paid to the  
12 nursing facility for that patient's care on and after the date  
13 of medicaid eligibility for services covered by the medicaid  
14 program. Within thirty days after notification by the  
15 department of health of the patient's medicaid eligibility, the  
16 nursing facility shall make any necessary refund to the patient  
17 or responsible party required under this section.

18 B. In any cause of action brought against a nursing  
19 facility because of its failure to make a refund to the patient  
20 or responsible party as required under Subsection A of this  
21 section, the patient or responsible party may be awarded triple  
22 the amount of the money not refunded or three hundred dollars  
23 (\$300), whichever is greater, and reasonable attorney fees and  
24 court costs."

25 Section 41. Section 27-2-12.6 NMSA 1978 (being Laws 1994,

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1 Chapter 62, Section 22, as amended) is repealed and a new  
2 Section 27-2-12.6 NMSA 1978 is enacted to read:

3 "27-2-12.6. [NEW MATERIAL] MEDICAID PAYMENTS--MANAGED  
4 CARE. --

5 A. The department of health shall provide for a  
6 statewide, managed care system to provide cost-efficient,  
7 preventive, primary and acute care for medicaid recipients.

8 B. The managed care system shall ensure:

9 (1) access to medically necessary services,  
10 particularly for medicaid recipients with chronic health  
11 problems;

12 (2) to the extent practicable, maintenance of  
13 the rural primary care delivery infrastructure;

14 (3) that the department of health's approach is  
15 consistent with national and state health care reform  
16 principles; and

17 (4) to the maximum extent possible that  
18 medicaid-eligible individuals are not identified as such except  
19 as necessary for billing purposes.

20 C. The department of health may exclude nursing  
21 homes, intermediate care facilities for the mentally retarded,  
22 medicaid in-home and community-based waiver services and  
23 residential and community-based mental health services for  
24 children with serious emotional disorders from the provisions of  
25 this section. "

Underscored material = new  
[bracketed material] = delete

1           Section 42. Section 27-2-16 NMSA 1978 (being Laws 1974,  
2 Chapter 31, Section 1, as amended) is amended to read:

3           "27-2-16. COMPLIANCE WITH FEDERAL LAW - REIMBURSEMENT FOR  
4 DRUG PRODUCTS. --

5           A. Subject to the availability of state funds, the  
6 [~~human services~~] department may provide assistance to aged,  
7 blind or disabled individuals in the amounts consistent with  
8 federal law to enable the state to be eligible for medicaid  
9 funding. Individuals shall be determined to be aged, blind or  
10 disabled according to regulations of the [~~human services~~]  
11 department.

12           B. If drug product selection is permitted by Section  
13 26-3-3 NMSA 1978, reimbursement by the medicaid program shall be  
14 limited to the wholesale cost of the [~~lesser~~] less expensive  
15 therapeutic equivalent drug generally available in New Mexico  
16 plus a reasonable dispensing fee of at least three dollars  
17 sixty-five cents (\$3.65). "

18           Section 43. Section 27-2-16 NMSA 1978 (being Laws 1974,  
19 Chapter 31, Section 1, as amended and as further amended by  
20 Section 42 of this act) is repealed and a new Section 27-2-16  
21 NMSA 1978 is enacted to read:

22           "27-2-16. [NEW MATERIAL] COMPLIANCE WITH FEDERAL LAW -  
23 REIMBURSEMENT FOR DRUG PRODUCTS. --

24           A. Subject to the availability of state funds, the  
25 department of health may provide assistance to aged, blind or

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1 disabled individuals in the amounts consistent with federal law  
2 to enable the state to be eligible for medicaid funding.

3 Individuals shall be determined to be aged, blind or disabled  
4 according to regulations of the department of health.

5 B. If drug product selection is permitted by Section  
6 26-3-3 NMSA 1978, reimbursement by the medicaid program shall be  
7 limited to the wholesale cost of the less expensive therapeutic  
8 equivalent drug generally available in New Mexico plus a  
9 reasonable dispensing fee of at least three dollars sixty-five  
10 cents (\$3.65). "

11 Section 44. Section 27-2-23 NMSA 1978 (being Laws 1969,  
12 Chapter 232, Section 1) is amended to read:

13 "27-2-23. THIRD PARTY LIABILITY. --

14 A. The [~~health and social services~~] department shall  
15 make reasonable efforts to ascertain any legal liability of  
16 third parties who are or may be liable to pay all or part of the  
17 medical cost of injury, disease or disability of an applicant  
18 for or recipient of medical assistance under Chapter 27 NMSA  
19 1978.

20 B. When the department makes medical assistance  
21 payments [~~in~~] on behalf of a recipient, the department is  
22 subrogated to any right of the recipient against a third party  
23 for recovery of medical expenses to the extent that the  
24 department has made payment. "

25 Section 45. Section 27-2-23 NMSA 1978 (being Laws 1969,

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[bracketed material] = delete

1 Chapter 232, Section 1, as amended by Section 44 of this act) is  
2 repealed and a new Section 27-2-23 NMSA 1978 is enacted to read:

3 "27-2-23. [NEW MATERIAL] THIRD-PARTY LIABILITY. --

4 A. The department of health shall make reasonable  
5 efforts to ascertain any legal liability of third parties who  
6 are or may be liable to pay all or part of the medical cost of  
7 injury, disease or disability of an applicant or recipient of  
8 medical assistance.

9 B. When the department of health makes medical  
10 assistance payments on behalf of a recipient, the department of  
11 health is subrogated to any right of the recipient against a  
12 third party for recovery of medical expenses to the extent that  
13 the department of health has made payment."

14 Section 46. Section 27-2-25 NMSA 1978 (being Laws 1937,  
15 Chapter 18, Section 11j, as amended) is amended to read:

16 "27-2-25. FUNERAL EXPENSES. --

17 A. On the death of:

18 (1) a recipient of financial assistance under  
19 Section [~~13-17-9 or Section 13-17-10 NMSA 1953~~] 27-2-6 or 27-2-7  
20 NMSA 1978 or under the federal supplemental security income  
21 program; or

22 (2) an individual living in a nursing home or  
23 an intermediate care facility, the payment for whose care is  
24 made in whole or in part pursuant to Title 19 of the federal  
25 act;

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1 funeral expenses up to two hundred dollars (\$200) shall be paid  
2 by the [~~health and social services~~] department if the deceased's  
3 available resources, as defined by regulation of the [~~board~~]  
4 department, are insufficient to pay the funeral expenses, the  
5 persons legally responsible for the support of the deceased are  
6 unable to pay the funeral expenses and no other person will  
7 undertake to pay [~~said~~] those expenses.

8 B. No payment shall be made by the department when  
9 resources available from all sources to pay the funeral expenses  
10 total six hundred dollars (\$600) or more. When the resources  
11 are less than six hundred dollars (\$600), the department shall  
12 pay the difference between six hundred dollars (\$600) and the  
13 resources, or two hundred dollars (\$200), whichever is less."

14 Section 47. Section 27-2-28 NMSA 1978 (being Laws 1981,  
15 Chapter 90, Section 2, as amended) is amended to read:

16 "27-2-28. LIABILITY FOR REPAYMENT OF PUBLIC  
17 ASSISTANCE. --

18 A. A noncustodial parent is liable to the [~~human~~  
19 ~~services~~] department in the amount of the public assistance  
20 lawfully and properly furnished to the children, and the spouse  
21 or former spouse with whom such children are living, to whom the  
22 noncustodial parent owes a duty of support; except that if a  
23 support order has been entered, liability for the time period  
24 covered by the support order shall not exceed the amount of  
25 support provided for in the order.

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1           B. Amounts of support due and owing for periods  
2 prior to the granting of public assistance shall be paid to and  
3 retained by the [~~human services~~] department to the extent that  
4 the amount of assistance granted exceeds the amount of the  
5 monthly support obligation.

6           C. Amounts of support collected that are in excess  
7 of the amounts specified in Subsections A and B of this section  
8 shall be paid by the [~~human services~~] department to the  
9 custodian of the child.

10           D. No agreement between any custodian of a child and  
11 a parent of that child, either relieving the parent of any duty  
12 of child or spousal support or responsibility or purporting to  
13 settle past, present or future support obligations, either as a  
14 settlement or prepayment, shall act to reduce or terminate any  
15 rights of the [~~human services~~] department to recover from that  
16 parent for support provided, unless the [~~human services~~]  
17 department has consented to the agreement in writing.

18           E. The noncustodial parent shall be given credit for  
19 any support actually provided, including housing, clothing, food  
20 or funds paid prior to the entry of any order for support. The  
21 noncustodial parent has the burden on the issue of any payment.

22           F. An application for public assistance by any  
23 person constitutes an assignment by operation of law of any  
24 support rights the person is entitled to from any other person,  
25 whether the support rights are owed to the applicant or to any

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1 family member for whom the applicant is applying for or  
2 receiving assistance. The assignment includes all support  
3 rights that have accrued at the time of application for public  
4 assistance and continues as an assignment of all support rights  
5 the applicant is entitled to for as long as the applicant  
6 receives public assistance.

7 G. By operation of law, an assignment to the [~~human~~  
8 ~~services~~] department of any and all rights of an applicant for  
9 or recipient of medical assistance under the medicaid program in  
10 New Mexico or supplemental security income through the social  
11 security administration:

12 (1) is deemed to be made of:

13 (a) any payment for medical care from any  
14 person, firm or corporation, including an insurance carrier; and

15 (b) any recovery for personal injury,  
16 whether by judgment or contract for compromise or settlement;

17 (2) shall be effective to the extent of the  
18 amount of medical assistance actually paid by the department  
19 under the medicaid program; and

20 (3) shall be effective as to the rights of any  
21 other individuals who are eligible for medical assistance and  
22 whose rights can legally be assigned by the applicant or  
23 recipient.

24 H. An applicant or recipient is required to  
25 cooperate fully with the [~~human services~~] department in its

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1 efforts to secure the assignment and to execute and deliver any  
2 instruments and papers deemed necessary to complete the  
3 assignment by [~~that~~] the department. "

4 Section 48. Section 27-2-28 NMSA 1978 (being Laws 1981,  
5 Chapter 90, Section 2, as amended and as further amended by  
6 Section 47 of this act) is repealed and a new Section 27-2-28  
7 NMSA 1978 is enacted to read:

8 "27-2-28. [NEW MATERIAL] LIABILITY FOR REPAYMENT OF  
9 PUBLIC ASSISTANCE. --

10 A. A noncustodial parent is liable to the department  
11 of health and the workforce development department in the amount  
12 of the public assistance lawfully and properly furnished to the  
13 children, and the spouse or former spouse with whom such  
14 children are living, to whom the noncustodial parent owes a duty  
15 of support; except that if a support order has been entered,  
16 liability for the time period covered by the support order shall  
17 not exceed the amount of support provided for in the order.

18 B. Amounts of support due and owing for periods  
19 prior to the granting of public assistance shall be paid to and  
20 retained by the department of health or the workforce  
21 development department to the extent that the amount of  
22 assistance granted by such department exceeds the amount of the  
23 monthly support obligation.

24 C. Amounts of support collected that are in excess  
25 of the amounts specified in Subsections A and B of this section

1 shall be paid by the workforce development department or  
2 department of health to the custodian of the child.

3 D. No agreement between any custodian of a child and  
4 a parent of that child, either relieving the parent of any duty  
5 of child or spousal support or responsibility or purporting to  
6 settle past, present or future support obligations, either as a  
7 settlement or prepayment, shall act to reduce or terminate any  
8 rights of the workforce development department or department of  
9 health to recover from that parent for support provided unless  
10 the workforce development department or department of health has  
11 consented to the agreement in writing.

12 E. The noncustodial parent shall be given credit for  
13 any support actually provided, including housing, clothing, food  
14 or funds paid prior to the entry of any order for support. The  
15 noncustodial parent has the burden on the issue of any payment.

16 F. An application for public assistance by any  
17 person constitutes an assignment by operation of law of any  
18 support rights the person is entitled to from any other person,  
19 whether the support rights are owed to the applicant or to any  
20 family member for whom the applicant is applying for or  
21 receiving assistance. The assignment includes all support  
22 rights that have accrued at the time of application for public  
23 assistance and continues as an assignment of all support rights  
24 the applicant is entitled to for as long as the applicant  
25 receives public assistance.

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1                   G. By operation of law, an assignment to the  
2 department of health of any and all rights of an applicant for  
3 or recipient of medical assistance under the medicaid program in  
4 New Mexico or supplemental security income through the social  
5 security administration:

6                   (1) is deemed to be made of:

7                   (a) any payment for medical care from any  
8 person, firm or corporation, including an insurance carrier; and

9                   (b) any recovery for personal injury,  
10 whether by judgment or contract for compromise or settlement;

11                   (2) shall be effective to the extent of the  
12 amount of medical assistance actually paid by the department of  
13 health under the medicaid program; and

14                   (3) shall be effective as to the rights of any  
15 other individuals who are eligible for medical assistance and  
16 whose rights can legally be assigned by the applicant or  
17 recipient.

18                   H. An applicant or recipient is required to  
19 cooperate fully with the department of health in its efforts to  
20 secure the assignment and to execute and deliver any instruments  
21 and papers deemed necessary to complete the assignment by that  
22 department. "

23                   Section 49. Section 27-2-39 NMSA 1978 (being Laws 1980,  
24 Chapter 25, Section 3) is amended to read:

25                   "27-2-39. DEFINITIONS. -- As used in the AFDC Recipient

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1 Work Incentive Act:

2 A. "AFDC" means aid to families with dependent  
3 children, pursuant to the provisions of Section 27-2-6 NMSA  
4 1978;

5 B. "AFDC recipient" means a person who receives AFDC  
6 payments;

7 C. "caregiver" means a person eighteen years of age  
8 or older who is compensated for the direct care, supervision and  
9 guidance of children for less than a daily twenty-four hour  
10 period;

11 D. "child [~~day-care~~] daycare facility" means a child  
12 [~~day-care~~] daycare center or child [~~day-care~~] daycare home;

13 E. "department" means the [~~human services~~] workforce  
14 development department; and

15 F. "gainful employment" means working for  
16 remuneration for others, either full time or part time, or  
17 employment in one's own business or partnership. "

18 Section 50. Section 27-2-43 NMSA 1978 (being Laws 1990,  
19 Chapter 93, Section 3) is amended to read:

20 "27-2-43. DEFINITIONS. --As used in the Indigent  
21 Catastrophic Illness Hospital Funding Act:

22 A. "department" means the [~~human services~~] workforce  
23 development department;

24 B. "fund" means the indigent catastrophic illness  
25 hospital fund;

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1           C. "hospital" means any general or special hospital  
2 that is licensed by the department of health [~~and environment~~  
3 ~~department~~] and that has annual gross charges for medicare,  
4 medicaid and indigent patients greater than ten percent of the  
5 hospital's total annual gross charges; and

6           D. "medically indigent patient" means an individual  
7 who is a New Mexico resident who incurs hospital charges, who is  
8 not eligible for medicaid or medicare and whose family or  
9 household income does not exceed two hundred fifty percent of  
10 the federal poverty level."

11           Section 51. Section 27-2-43 NMSA 1978 (being Laws 1990,  
12 Chapter 93, Section 3, as amended by Section 50 of this act) is  
13 repealed and a new Section 27-2-43 NMSA 1978 is enacted to read:

14           "27-2-43. [NEW MATERIAL] DEFINITIONS. --As used in the  
15 Indigent Catastrophic Illness Hospital Funding Act:

16           A. "department" means the department of health;

17           B. "fund" means the indigent catastrophic illness  
18 hospital fund;

19           C. "hospital" means any general or special hospital  
20 that is licensed by the department of health and that has annual  
21 gross charges for medicare, medicaid and indigent patients  
22 greater than ten percent of the hospital's total annual gross  
23 charges; and

24           D. "medically indigent patient" means an individual  
25 who is a New Mexico resident who incurs hospital charges, who is



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[bracketed material] = delete

1 not eligible for medicaid or medicare and whose family or  
2 household income does not exceed two hundred fifty percent of  
3 the federal poverty level. "

4 Section 52. Section 27-2A-3 NMSA 1978 (being Laws 1994,  
5 Chapter 87, Section 3) is amended to read:

6 "27-2A-3. DEFINITIONS. --As used in the Medicaid Estate  
7 Recovery Act:

8 A. "department" means the [~~human services~~] workforce  
9 development department;

10 B. "estate" means real and personal property and  
11 other assets of the individual subject to probate or  
12 administration pursuant to the provisions of the Uniform Probate  
13 Code; and

14 C. "medical assistance" means amounts paid by the  
15 department as medical assistance pursuant to Title [~~XIX~~] 19 of  
16 the Social Security Act. "

17 Section 53. Section 27-2A-3 NMSA 1978 (being Laws 1994,  
18 Chapter 87, Section 3, as amended by Section 52 of this act) is  
19 repealed and a new Section 27-2A-3 NMSA 1978 is enacted to read:

20 "27-2A-3. DEFINITIONS. --

21 As used in the Medicaid Estate Recovery Act:

22 A. "department" means the department of health;

23 B. "estate" means real and personal property and  
24 other assets of the individual subject to probate or  
25 administration pursuant to the provisions of the Uniform Probate

Underscored material = new  
[bracketed material] = delete

1 Code; and

2 C. "medical assistance" means amounts paid by the  
3 department as medical assistance pursuant to Title 19 of the  
4 Social Security Act. "

5 Section 54. Section 27-3-2 NMSA 1978 (being Laws 1973,  
6 Chapter 256, Section 2, as amended) is amended to read:

7 "27-3-2. DEFINITIONS. -- As used in the Public Assistance  
8 Appeals Act:

9 A. "department" means the income support division  
10 of the workforce development department or the medical  
11 assistance division [~~or the social services division~~] of the  
12 [~~human services~~] workforce development department of health;

13 B. "board" means the income support division or the  
14 medical assistance division [~~or the social services division~~] of  
15 the [~~human services~~] workforce development department; and

16 C. "director" means the director of the income  
17 support division or the director of the medical assistance  
18 division [~~or the social services division~~] of the [~~human~~  
19 ~~services~~] workforce development department. "

20 Section 55. Section 27-3-2 NMSA 1978 (being Laws 1973,  
21 Chapter 256, Section 2, as amended and as further amended by  
22 Section 54 of this act) is repealed and a new Section 27-3-2  
23 NMSA 1978 is enacted to read:

24 "27-3-2. [NEW MATERIAL] DEFINITIONS. -- As used in the  
25 Public Assistance Appeals Act:

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1           A. "department" means the income support division  
2 of the workforce development department or the department of  
3 health in reference to the medical assistance program;

4           B. "board" means the income support division of the  
5 workforce development department or the department of health in  
6 reference to the medical assistance program; and

7           C. "director" means the director of the income  
8 support division of the workforce development department or the  
9 secretary of health. "

10           Section 56. Section 27-4-2 NMSA 1978 (being Laws 1973,  
11 Chapter 311, Section 2, as amended) is amended to read:

12           "27-4-2. DEFINITIONS. -- As used in the Special Medical  
13 Needs Act:

14           A. "department" or "division" means the income  
15 support division of the [~~human services~~] workforce development  
16 department;

17           B. "board" means the [~~income support~~] division [~~of~~  
18 ~~the human services department~~];

19           C. "aged person" means one who has attained the age  
20 of sixty-five years and does not have a spouse financially able,  
21 according to regulations of the [~~board~~] division, to furnish  
22 support;

23           D. "disabled person" means one who has attained the  
24 age of eighteen years and is determined to be permanently and  
25 totally disabled, according to regulations of the [~~board~~]

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[bracketed material] = delete

1 division; and

2 E. "blind person" means one who is determined to be  
3 blind according to regulations of the [~~board~~] division."

4 Section 57. Section 27-5-3 NMSA 1978 (being Laws 1965,  
5 Chapter 234, Section 3, as amended) is amended to read:

6 "27-5-3. PUBLIC ASSISTANCE PROVISIONS. --

7 A. A hospital shall not be paid from the [~~county~~  
8 ~~indigent hospital claims~~] fund under the Indigent Hospital and  
9 County Health Care Act for any costs of an indigent patient for  
10 services that have been determined by the [~~human services~~]  
11 department to be eligible for medicaid reimbursement from [~~that~~]  
12 the department. However, nothing in the Indigent Hospital and  
13 County Health Care Act shall be construed to prevent the board  
14 from transferring money from the [~~county indigent hospital~~  
15 ~~claims~~] fund to the sole community provider fund or the county-  
16 supported medicaid fund for support of the state medicaid  
17 program.

18 B. No action for collection of claims under the  
19 Indigent Hospital and County Health Care Act shall be allowed  
20 against an indigent patient who is medicaid eligible for  
21 medicaid covered services, nor shall action be allowed against  
22 the person who is legally responsible for the care of the  
23 indigent patient during the time that person is medicaid  
24 eligible."

25 Section 58. Section 27-5-3 NMSA 1978 (being Laws 1965,

Underscored material = new  
[bracketed material] = delete

1 Chapter 234, Section 3, as amended and as further amended by  
2 Section 57 of this act) is repealed and a new Section 27-5-3  
3 NMSA 1978 is enacted to read:

4 "27-5-3. [NEW MATERIAL] PUBLIC ASSISTANCE PROVISIONS. --

5 A. A hospital shall not be paid from the fund  
6 pursuant to the Indigent Hospital and County Health Care Act for  
7 any costs of an indigent patient for services that have been  
8 determined by the department of health to be eligible for  
9 medicaid reimbursement from that department. However, nothing  
10 in the Indigent Hospital and County Health Care Act prevents the  
11 board from transferring money from the fund to the sole  
12 community provider fund or the county-supported medicaid fund  
13 for support of the state medicaid program.

14 B. No action for collection of claims under the  
15 Indigent Hospital and County Health Care Act shall be allowed  
16 against an indigent patient who is medicaid eligible for  
17 medicaid covered services, nor shall action be allowed against  
18 the person who is legally responsible for the care of the  
19 indigent patient during the time that person is medicaid  
20 eligible. "

21 Section 59. Section 27-5-4 NMSA 1978 (being Laws 1965,  
22 Chapter 234, Section 4, as amended) is amended to read:

23 "27-5-4. DEFINITIONS. -- As used in the Indigent Hospital  
24 and County Health Care Act:

25 A. "ambulance provider" or "ambulance service" means

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1 a specialized carrier based within the state authorized under  
2 provisions and subject to limitations as provided in individual  
3 carrier certificates issued by the state corporation commission  
4 to transport persons alive, dead or dying en route by means of  
5 ambulance service. The rates and charges established by state  
6 corporation commission tariff shall govern as to allowable cost.  
7 Also included are air ambulance services approved by the board.  
8 The air ambulance service charges shall be filed and approved  
9 pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section  
10 27-5-11 NMSA 1978;

11 B. "board" means [~~the~~] a county indigent hospital  
12 and county health care board;

13 C. "indigent patient" means a person to whom an  
14 ambulance service, a hospital or a health care provider has  
15 provided medical care or ambulance transportation and who can  
16 normally support himself and his dependents on present income  
17 and liquid assets available to him but, taking into  
18 consideration this income and those assets and his requirement  
19 for other necessities of life for himself and his dependents, is  
20 unable to pay the cost of the ambulance transportation or  
21 medical care administered or both. If provided by resolution of  
22 [~~the~~] a board, it shall not include any person whose annual  
23 income together with his spouse's annual income totals an amount  
24 that is fifty percent greater than the per capita personal  
25 income for New Mexico as shown for the most recent year

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1 available in the survey of current business published by the  
2 United States department of commerce. Every board that has a  
3 balance remaining in the fund at the end of a given fiscal year  
4 shall consider and may adopt at the first meeting of the  
5 succeeding fiscal year a resolution increasing the standard for  
6 indigency. The term "indigent patient" includes a minor who has  
7 received ambulance transportation or medical care or both and  
8 whose parent or the person having custody of that minor would  
9 qualify as an indigent patient if transported by ambulance or  
10 admitted to a hospital for care or treated by a health care  
11 provider or all three;

12 D. "hospital" means any general or limited hospital  
13 licensed by the department of health, whether nonprofit or owned  
14 by a political subdivision, and may include by resolution of  
15 [the] a board the following health facilities if licensed or, in  
16 the case of out-of-state hospitals, approved, by the department  
17 of health:

- 18 (1) for-profit hospitals;  
19 (2) state-owned hospitals; or  
20 (3) licensed out-of-state hospitals where  
21 treatment provided is necessary for the proper care of an  
22 indigent patient when that care is not available in an in-state  
23 hospital;

24 E. "cost" means all allowable ambulance  
25 transportation or medical care costs, including the costs of

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1 prenatal care, to the extent determined by resolution of [~~the~~] a  
2 board, for an indigent patient. Allowable costs shall be  
3 determined in accordance with a uniform system of accounting and  
4 cost analysis as determined by regulation of [~~the~~] a board,  
5 which includes cost of ancillary services but shall not include  
6 the cost of servicing long-term indebtedness of a hospital,  
7 health care provider or ambulance service;

8 F. "fund" means [~~the~~] a county indigent hospital  
9 claims fund;

10 G. "medicaid eligible" means a person who is  
11 eligible for medical assistance from the department;

12 H. "county" means any county except a class A county  
13 with a county hospital operated and maintained pursuant to a  
14 lease with a state educational institution named in Article 12,  
15 Section 11 of the constitution of New Mexico;

16 I. "department" means the [~~human services~~] workforce  
17 development department;

18 J. "sole community provider hospital" means a  
19 hospital that is a sole community provider hospital under the  
20 provisions of the federal medicare guidelines established in 42  
21 C. F. R. 412.92 pursuant to Title 18 of the federal Social  
22 Security Act;

23 K. "drug rehabilitation center" means an agency of  
24 local government, a state agency, a private nonprofit entity or  
25 combination thereof that operates drug abuse rehabilitation



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1 programs that meet the standards and requirements pursuant to  
2 the Drug Abuse Act;

3 L. "alcohol rehabilitation center" means an agency  
4 of local government, a state agency, a private nonprofit entity  
5 or combination thereof that operates alcohol abuse  
6 rehabilitation programs that meet the standards set by the  
7 department of health pursuant to the Alcoholism and Alcohol  
8 Abuse Prevention, Screening and Treatment Act;

9 M "mental health center" means a not-for-profit  
10 center that provides outpatient mental health services that meet  
11 the standards set by the department of health pursuant to the  
12 Community Mental Health Services Act; and

13 N. "health care provider" means:

- 14 (1) a nursing home;
- 15 (2) an in-state home health [~~agencies~~] agency;
- 16 (3) an in-state licensed hospice;
- 17 (4) a ~~community~~-based health program operated  
18 by a political subdivision of the state or other nonprofit  
19 health organization that provides prenatal care delivered by New  
20 Mexico licensed, certified or registered health care  
21 practitioners;
- 22 (5) a ~~community~~-based health program operated  
23 by a political subdivision of the state or other nonprofit  
24 health care organization that provides primary care delivered by  
25 New Mexico licensed, certified or registered health care

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1 practitioners;

2 (6) a drug rehabilitation center;

3 (7) an alcohol rehabilitation center; or

4 (8) a mental health center."

5 Section 60. Section 27-5-4 NMSA 1978 (being Laws 1965,  
6 Chapter 234, Section 4, as amended and as further amended by  
7 Section 59 of this act) is repealed and a new Section 27-5-4  
8 NMSA 1978 is enacted to read:

9 "27-5-4. [NEW MATERIAL] DEFINITIONS.--As used in the  
10 Indigent Hospital and County Health Care Act:

11 A. "ambulance provider" or "ambulance service" means  
12 a specialized carrier based within the state authorized under  
13 provisions and subject to limitations as provided in individual  
14 carrier certificates issued by the state corporation commission  
15 to transport persons alive, dead or dying en route by means of  
16 ambulance service. The rates and charges established by state  
17 corporation commission tariff shall govern as to allowable cost.  
18 Also included are air ambulance services approved by the board.  
19 The air ambulance service charges shall be filed and approved  
20 pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section  
21 27-5-11 NMSA 1978;

22 B. "board" means a county indigent hospital and  
23 county health care board;

24 C. "indigent patient" means a person to whom an  
25 ambulance service, a hospital or a health care provider has

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1 provided medical care or ambulance transportation and who can  
2 normally support himself and his dependents on present income  
3 and liquid assets available to him but, taking into  
4 consideration this income and those assets and his requirement  
5 for other necessities of life for himself and his dependents, is  
6 unable to pay the cost of the ambulance transportation or  
7 medical care administered or both. If provided by resolution of  
8 the board, it shall not include any person whose annual income  
9 together with his spouse's annual income totals an amount that  
10 is fifty percent greater than the per capita personal income for  
11 New Mexico as shown for the most recent year available in the  
12 survey of current business published by the United States  
13 department of commerce. Every board that has a balance  
14 remaining in the fund at the end of a given fiscal year shall  
15 consider and may adopt at the first meeting of the succeeding  
16 fiscal year a resolution increasing the standard for indigency.  
17 The term "indigent patient" includes a minor who has received  
18 ambulance transportation or medical care or both and whose  
19 parent or the person having custody of that minor would qualify  
20 as an indigent patient if transported by ambulance or admitted  
21 to a hospital for care or treated by a health care provider or  
22 all three;

23 D. "hospital" means any general or limited hospital  
24 licensed by the department, whether nonprofit or owned by a  
25 political subdivision, and may include by resolution of the

1 board the following health facilities if licensed, or in the  
2 case of out-of-state hospitals, approved, by the department:

- 3 (1) for-profit hospitals;  
4 (2) state-owned hospitals; or  
5 (3) licensed out-of-state hospitals where  
6 treatment provided is necessary for the proper care of an  
7 indigent patient when that care is not available in an in-state  
8 hospital;

9 E. "cost" means all allowable ambulance  
10 transportation or medical care costs, including the costs of  
11 prenatal care, to the extent determined by resolution of the  
12 board, for an indigent patient. Allowable costs shall be  
13 determined in accordance with a uniform system of accounting and  
14 cost analysis as determined by regulation of the board, which  
15 includes cost of ancillary services, but shall not include the  
16 cost of servicing long-term indebtedness of a hospital, health  
17 care provider or ambulance service;

18 F. "fund" means a county indigent hospital claims  
19 fund;

20 G. "medicaid eligible" means a person who is  
21 eligible for medical assistance from the department;

22 H. "county" means any county except a class A county  
23 with a county hospital operated and maintained pursuant to a  
24 lease with a state educational institution named in Article 12,  
25 Section 11 of the constitution of New Mexico;

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1 I. "department" means the department of health;

2 J. "sole community provider hospital" means a  
3 hospital that is a sole community provider hospital under the  
4 provisions of the federal medicare guidelines established in 42  
5 C.F.R. 412.92 pursuant to Title 18 of the federal Social  
6 Security Act;

7 K. "drug rehabilitation center" means an agency of  
8 local government, a state agency, a private nonprofit entity or  
9 combination thereof that operates drug abuse rehabilitation  
10 programs that meet the standards and requirements pursuant to  
11 the Drug Abuse Act;

12 L. "alcohol rehabilitation center" means an agency  
13 of local government, a state agency, a private nonprofit entity  
14 or combination thereof that operates alcohol abuse  
15 rehabilitation programs that meet the standards set by the  
16 department of health pursuant to the Alcoholism and Alcohol  
17 Abuse Prevention, Screening and Treatment Act;

18 M "mental health center" means a not-for-profit  
19 center that provides outpatient mental health services that meet  
20 the standards set by the department pursuant to the Community  
21 Mental Health Services Act; and

22 N. "health care provider" means:

- 23 (1) a nursing home;
- 24 (2) an in-state home health agency;
- 25 (3) an in-state licensed hospice;

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1 (4) a community-based health program operated  
2 by a political subdivision of the state or other nonprofit  
3 health organization that provides prenatal care delivered by New  
4 Mexico licensed, certified or registered health care  
5 practitioners;

6 (5) a community-based health program operated  
7 by a political subdivision of the state or other nonprofit  
8 health care organization that provides primary care delivered by  
9 New Mexico licensed, certified or registered health care  
10 practitioners;

11 (6) a drug rehabilitation center;

12 (7) an alcohol rehabilitation center; or

13 (8) a mental health center. "

14 Section 61. Section 27-5-6.1 NMSA 1978 (being Laws 1993,  
15 Chapter 321, Section 18) is amended to read:

16 "27-5-6.1. SOLE COMMUNITY PROVIDER FUND CREATED. --

17 A. The "sole community provider fund" is created in  
18 the state treasury. The sole community provider fund, which  
19 shall be administered by the [~~human services~~] department, shall  
20 consist of funds provided by counties to match federal funds for  
21 medicaid sole community provider hospital payments. Money in  
22 the fund shall be invested by the state treasurer as other state  
23 funds are invested. Any unexpended or unencumbered balance  
24 remaining in the fund at the end of any fiscal year shall not  
25 revert.

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1           B. Money in the sole community provider fund is  
2 appropriated to the [~~human services~~] department to make sole  
3 community provider hospital payments pursuant to the state  
4 medicaid program. No sole community provider hospital payments  
5 or money in the sole community provider fund shall be used to  
6 supplant any general fund support for the state medicaid  
7 program.

8           C. Money in the sole community provider fund shall  
9 be remitted back to the individual counties from which it came  
10 if federal medicaid matching funds are not received for medicaid  
11 sole community provider hospital payments. "

12           Section 62. Section 27-5-12.2 NMSA 1978 (being Laws 1993,  
13 Chapter 321, Section 15) is amended to read:

14           "27-5-12.2. DUTIES OF THE COUNTY--SOLE COMMUNITY PROVIDER  
15 HOSPITAL PAYMENTS.--Every county in New Mexico that authorizes  
16 payment for services to a sole community provider hospital  
17 shall:

18           A. determine eligibility for benefits and determine  
19 an amount payable on each claim for services to indigent  
20 patients from sole community provider hospitals;

21           B. notify the sole community provider hospital of  
22 its decision on each request for payment while not actually  
23 reimbursing the hospital for the services that are reimbursed  
24 with federal funds under the state medicaid program;

25           C. confirm the amount of the sole community provider

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1 hospital payments authorized for each hospital for the past  
2 fiscal year by September 30 of the current fiscal year;

3 D. negotiate agreements with each sole community  
4 provider hospital providing services for county residents on the  
5 anticipated amount of the payments for the following fiscal  
6 year; and

7 E. provide the [~~human services~~] department by  
8 January 15 of each year with the budgeted amount of sole  
9 community provider hospital payments, by hospital, for the  
10 following fiscal year. "

11 Section 63. Section 27-6-2 NMSA 1978 (being Laws 1977,  
12 Chapter 252, Section 23) is amended to read:

13 "27-6-2. DEFINITION.--As used in the Utility Supplement  
14 Act, [~~"health and social services department" or~~] "department"  
15 [~~mean~~] means the income support division of the [~~human services~~]  
16 workforce development department. "

17 Section 64. Section 27-6-4 NMSA 1978 (being Laws 1975,  
18 Chapter 300, Section 3) is amended to read:

19 "27-6-4. ADMINISTRATION OF UTILITY SUPPLEMENT ACT.--The  
20 [~~health and social services~~] department is [~~hereby~~] authorized  
21 to determine eligibility, compute grants, make payments as  
22 provided in the Utility Supplement Act and otherwise administer  
23 that act. "

24 Section 65. Section 27-6-5 NMSA 1978 (being Laws 1975,  
25 Chapter 300, Section 4) is amended to read:



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1           "27-6-5. PERSONS ELIGIBLE FOR UTILITY ASSISTANCE.

2           A. A utility supplement pursuant to the Utility  
3 Supplement Act shall be provided to or on behalf of those  
4 individuals who are identified:

5                   (1) [~~those individuals who are identified~~] to  
6 the [~~health and social services~~] department by the federal  
7 bureau of supplemental security income as recipients of  
8 supplemental security income under Title [~~XVI~~] 16 of the Social  
9 Security Act and who are not living in nursing homes or  
10 intermediate care facilities; and

11                   (2) [~~those individuals who are identified~~] by  
12 the [~~health and social services~~] department as recipients of aid  
13 to families with dependent children under Section [~~13-17-9 NMSA~~  
14 ~~1953~~] 27-2-6 NMSA 1978, unless the individuals are living in  
15 circumstances [~~which~~] that do not require them to pay, either  
16 directly or indirectly, utility costs.

17           B. No more than one utility supplement per household  
18 may be paid under the Utility Supplement Act [~~provided,~~  
19 ~~however~~], but if supplemental security income recipients [~~and~~]  
20 or recipients of aid to families with dependent children are  
21 living in boarding home facilities, they shall be paid on an  
22 individual basis. "

23           Section 66. Section 27-6-6 NMSA 1978 (being Laws 1975,  
24 Chapter 300, Section 5) is amended to read:

25           "27-6-6. TIME OF PAYMENTS. --

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1           ~~[A. The initial payment under the Utility Supplement~~  
2 ~~Act shall be made by the health and social services department~~  
3 ~~between December 1, 1975 and December 15, 1975 to those eligible~~  
4 ~~under the Utility Supplement Act as of December 1, 1975. The~~  
5 ~~initial payment shall be the equivalent of six months of~~  
6 ~~benefits under the Utility Supplement Act. In no case shall the~~  
7 ~~initial payment be greater than fifty-nine dollars (\$59.00).~~

8           ~~B. Beginning with the month of January, 1976 and~~  
9 ~~monthly thereafter] Payments shall be made monthly to those~~  
10 ~~eligible for benefits under the Utility Supplement Act."~~

11           Section 67. Section 27-6-7 NMSA 1978 (being Laws 1975,  
12 Chapter 300, Section 6) is amended to read:

13           "27-6-7. AMOUNT OF PAYMENT. --The amount of the utility  
14 supplement payment under the Utility Supplement Act shall be  
15 calculated by the [~~health and social services~~] department so  
16 that the entire amount of state and federal funds available to  
17 it under the Utility Supplement Act shall be expended."

18           Section 68. Section 27-6-8 NMSA 1978 (being Laws 1975,  
19 Chapter 300, Section 7, as amended) is amended to read:

20           "27-6-8. ADJUSTMENTS TO MEET RATE INCREASES. --

21           A. The [~~income support division of the human~~  
22 ~~services~~] department shall annually review the rate schedules of  
23 gas and electric companies in this state provided by the New  
24 Mexico public utility commission and, if necessary, shall  
25 recommend to the legislature adjustments in the amount of state

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1 utility supplements to reflect any increases or decreases in gas  
2 or electricity rates, or both.

3 B. The [~~income support division~~] department shall  
4 conduct its first rate review during the month of December 1975  
5 and shall conduct a review during December annually thereafter."

6 Section 69. Section 27-6A-3 NMSA 1978 (being Laws 1993,  
7 Chapter 206, Section 3) is amended to read:

8 "27-6A-3. DEFINITIONS. -- As used in the Low Income Water,  
9 Sewer and Solid Waste Service Assistance Act:

10 A. "department" means the [~~human services~~] workforce  
11 development department; and

12 B. "utility" means any individual, firm,  
13 partnership, company, district, including but not limited to  
14 solid waste district, water and sanitation district and special  
15 district, cooperative, association, public or private  
16 corporation, lessee, trustee or receiver appointed by any court,  
17 municipality and municipal utility as defined in the Municipal  
18 Code, incorporated county or county that may or does own,  
19 operate, lease or control any plant, property or facility for:

20 (1) the supply, storage, distribution or  
21 furnishing of water to or for the public;

22 (2) the supply and furnishing of sanitary sewer  
23 service to or for the public; or

24 (3) the supply and furnishing of collection,  
25 transportation, treatment or disposal of solid waste to or for

Underscored material = new  
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1 the public. "Utility" does not include a public utility subject  
2 to the jurisdiction of the New Mexico public ~~[service]~~ utility  
3 commission. "

4 Section 70. Section 27-8-3 NMSA 1978 (being Laws 1983,  
5 Chapter 139, Section 3) is amended to read:

6 "27-8-3. DEFINITIONS. -- As used in the Community Action  
7 Act:

8 A. "poverty level" means the official poverty level  
9 established by the federal director of the office of management  
10 and budget and revised periodically by the federal secretary of  
11 health and human services; and

12 B. "secretary" means the secretary of ~~[human~~  
13 ~~services]~~ workforce development. "

14 Section 71. Section 27-8-9 NMSA 1978 (being Laws 1983,  
15 Chapter 139, Section 9) is amended to read:

16 "27-8-9. FINANCIAL ASSISTANCE--LIMITATIONS. -- The  
17 secretary, consistent with federal law, shall make grants of not  
18 less than ninety percent of the annual allocation of funds  
19 available under the community services block grant to community  
20 action agencies defined in Subsection A of Section ~~[5-of-the~~  
21 ~~Community Action Act]~~ 27-8-5 NMSA 1978. The ~~[human-services]~~  
22 workforce development department is authorized to implement, by  
23 regulation or contract, a limitation on the amount of community  
24 services block grant funds allocated to administrative costs. "

25 Section 72. Section 27-9-1 NMSA 1978 (being Laws 1983,

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1 Chapter 323, Section 1) is amended to read:

2 "27-9-1. PROGRAM - DEMONSTRATIONS. -- The [~~human services~~]  
3 workforce development department, in cooperation with the  
4 department of health [~~and environment department~~], is authorized  
5 to administer demonstration programs [~~which~~] that provide in-  
6 home and coordinated community care services to the frail  
7 elderly and to disabled individuals who would otherwise require  
8 institutionalization. The programs authorized by this section  
9 shall serve both those eligible and not eligible for federal  
10 medical assistance programs. "

11 Section 73. Section 27-9-2 NMSA 1978 (being Laws 1983,  
12 Chapter 323, Section 2) is amended to read:

13 "27-9-2. IMPLEMENTATION. -- The secretary of [~~human~~  
14 ~~services~~] workforce development shall, by regulation, specify  
15 the areas in which the programs shall operate, specify the  
16 services to be provided, establish eligibility criteria of  
17 persons to be served and provide for cost sharing, where  
18 possible, with individuals and participating communities. "

19 Section 74. Section 28-1-2 NMSA 1978 (being Laws 1969,  
20 Chapter 196, Section 2, as amended) is amended to read:

21 "28-1-2. DEFINITIONS. -- As used in the Human Rights Act:

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

Underscored material = new  
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1           B. "employer" means any person employing four or  
2 more persons and any person acting for an employer;

3           C. "commission" means the human rights commission;

4           D. [~~director~~] "chief" means the [~~director~~] chief  
5 of the human rights [~~division~~] bureau of the [~~labor~~] workforce  
6 development department;

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

9           F. "labor organization" means any organization  
10 [~~which~~] that exists for the purpose in whole or in part of  
11 collective bargaining or of dealing with employers concerning  
12 grievances, terms or conditions of employment or of other mutual  
13 aid or protection in connection with employment;

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

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

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

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[bracketed material] = delete

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

5 K. "secretary" means the secretary of [~~labor~~]  
6 workforce development;

7 L. "unlawful discriminatory practices" means those  
8 unlawful practices and acts specified in Section 28-1-7 NMSA  
9 1978;

10 M "physical or mental handicap" means a physical or  
11 mental impairment that substantially limits one or more of an  
12 individual's major life activities. An individual is also  
13 considered to be physically or mentally handicapped if he has a  
14 record of a physical or mental handicap or is regarded as having  
15 a physical or mental handicap;

16 N. "major life activities" means functions such as  
17 caring for one's self, performing manual tasks, walking, seeing,  
18 hearing, speaking, breathing, learning and working; [~~and~~]

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

21 P. "bureau" means the human rights bureau of the  
22 workforce development department. "

23 Section 75. Section 28-1-4 NMSA 1978 (being Laws 1987,  
24 Chapter 342, Section 18) is amended to read:

25 "28-1-4. POWERS AND DUTIES. --

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A. The commission may:

(1) hear complaints and issue orders, including  
cease and desist orders concerning alleged unlawful  
discriminatory practice; and

(2) hold hearings, subpoena witnesses and  
compel their attendance, administer oaths, take the testimony of  
any person under oath, order depositions and require the  
production for examination of any books, records,  
correspondence, documents and other evidence relating to any  
matter under investigation or in question before the commission.  
Contumacy or refusal to obey a subpoena issued pursuant to this  
section constitutes contempt punishable by the district court of  
the judicial district in which the witness may be found. No  
individual shall be excused from attending and testifying or  
from producing evidence in obedience to a subpoena issued  
pursuant to this section on the grounds that the testimony or  
evidence required of him may tend to incriminate him or subject  
him to a penalty or a forfeiture. However, no individual shall  
be prosecuted or subjected to any penalty or forfeiture  
concerning any matter for which he is compelled to testify or  
give evidence after having claimed his right against self-  
incrimination. Nevertheless, the individual so testifying shall  
not be exempt from prosecution and punishment for perjury  
committed while testifying.

B. The ~~[division]~~ bureau may:



Underscored material = new  
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1 (1) receive and investigate complaints of  
2 alleged unlawful discriminatory practice;

3 (2) seek to eliminate discrimination through  
4 conciliation and persuasion by voluntary conferences with  
5 interested parties;

6 (3) recommend application by the [~~director~~]  
7 chief to a district court in the county where the violating  
8 party resides for specific performance of any conciliation  
9 agreement or for enforcement of any order issued by the  
10 commission;

11 (4) endeavor to eliminate prejudice and to  
12 further good will. The [~~division~~] bureau, in cooperation with  
13 the state department of public education and local boards of  
14 education, shall encourage an educational program for all  
15 residents of the state, calculated to eliminate prejudice, its  
16 harmful effects and its incompatibility with principles of fair  
17 play, equality and justice;

18 (5) encourage voluntary advisory groups to  
19 study problems of discrimination in all fields, to foster,  
20 through community efforts, good will and cooperation in this  
21 state and to make recommendations to the secretary for the  
22 development of policies and procedures [~~which~~] that the  
23 secretary may recommend to appropriate state agencies;

24 (6) seek and enlist the cooperation and  
25 contributions and grants of individuals and foundations,

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1 private, charitable, religious, labor, civic and benevolent  
2 organizations and the federal government for the purposes of  
3 this section;

4 (7) issue publications and release the results  
5 of investigation and research [~~which~~] that in the secretary's  
6 judgment will tend to promote good will and prevent or eliminate  
7 discrimination; and

8 (8) submit annually a written report of all its  
9 activities and recommendations to the secretary, the governor  
10 and the legislature."

11 Section 76. Section 28-1-10 NMSA 1978 (being Laws 1969,  
12 Chapter 196, Section 9, as amended) is amended to read:

13 "28-1-10. GRIEVANCE PROCEDURE. --

14 A. Any person claiming to be aggrieved by an  
15 unlawful discriminatory practice and any member of the  
16 commission who has reason to believe that discrimination has  
17 occurred may file with the [~~human rights division of the labor~~  
18 ~~department~~] bureau a written complaint that shall state the name  
19 and address of the person alleged to have engaged in the  
20 discriminatory practice, all information relating to the  
21 discriminatory practice and any other information that may be  
22 required by the commission. All complaints shall be filed with  
23 the [~~division~~] bureau within one hundred eighty days after the  
24 alleged act was committed.

25 B. The [~~director~~] chief shall advise the respondent

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1 that a complaint has been filed against him and shall furnish  
2 him with a copy of the complaint. The ~~[director]~~ chief shall  
3 promptly investigate the alleged act. If the ~~[director]~~ chief  
4 determines that the complaint lacks probable cause, he shall  
5 dismiss the complaint and notify the complainant and respondent  
6 of the dismissal. The complaint shall be dismissed subject to  
7 appeal as in the case of other orders of the commission.

8 C. If the ~~[director]~~ chief determines that probable  
9 cause exists for the complaint, he shall attempt to achieve a  
10 satisfactory adjustment of the complaint through persuasion and  
11 conciliation. The ~~[director]~~ chief and bureau staff shall  
12 neither disclose what has transpired during the attempted  
13 conciliation nor divulge information obtained during any hearing  
14 before the commission or a commissioner prior to final action  
15 relating to the complaint. Any officer or employee of the  
16 ~~[labor]~~ workforce development department who makes public in any  
17 manner whatever any information in violation of this subsection  
18 is guilty of a misdemeanor and upon conviction shall be fined  
19 not more than one thousand dollars (\$1,000) or imprisoned not  
20 more than one year.

21 D. Any person who has filed a complaint with the  
22 ~~[human rights division]~~ bureau may request and shall receive an  
23 order of nondetermination from the ~~[director]~~ chief one hundred  
24 eighty days after the ~~[division's]~~ bureau's receipt of the  
25 complaint. The order of nondetermination may be appealed

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1 pursuant to the provisions of Section 28-1-13 NMSA 1978.

2 E. In the case of a complaint filed by or on behalf  
3 of a person who has an urgent medical condition and has notified  
4 the [~~director~~] chief in writing of the test results, the  
5 [~~director~~] chief shall make the determination whether probable  
6 cause exists for the complaint and shall attempt any  
7 conciliation efforts within ninety days of the filing of the  
8 written complaint or notification, whichever occurs last.

9 F. If conciliation fails or if, in the opinion of  
10 the [~~director~~] chief, informal conference cannot result in  
11 conciliation and the complainant has not requested a waiver of  
12 right to hearing pursuant to the provisions of Subsection J of  
13 this section, the commission shall issue a written complaint in  
14 its own name against the respondent, except that in the case of  
15 a complaint filed by or on behalf of a person who has an urgent  
16 medical condition, who has notified the [~~director~~] chief in  
17 writing of the test results and who so elects, the [~~director~~]  
18 chief shall issue an order of nondetermination, which may be  
19 appealed pursuant to the provisions of Section 28-1-13 NMSA  
20 1978. The complaint shall set forth the alleged discriminatory  
21 practice, the secretary's regulation or the section of the Human  
22 Rights Act alleged to have been violated and the relief  
23 requested. The complaint shall require the respondent to answer  
24 the allegations of the complaint at a hearing before the  
25 commission or hearing officer and shall specify the date, time

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1 and place of the hearing. The hearing date shall not be more  
2 than fifteen or less than ten days after service of the  
3 complaint. The complaint shall be served on the respondent  
4 personally or by registered mail, return receipt requested. The  
5 hearing shall be held in the county where the respondent is  
6 doing business or the alleged discriminatory practice occurred.

7 G. Within one year of the filing of a complaint by a  
8 person aggrieved, the commission or ~~[its director]~~ the chief  
9 shall:

10 (1) dismiss the complaint for lack of probable  
11 cause;

12 (2) achieve satisfactory adjustment of the  
13 complaint as evidenced by order of the commission; or

14 (3) file a formal complaint on behalf of the  
15 commission.

16 H. Upon the commission's petition, the district  
17 court of the county where the respondent is doing business or  
18 the alleged discriminatory practice occurred may grant  
19 injunctive relief pending hearing by the commission or pending  
20 judicial review of an order of the commission so as to preserve  
21 the status quo or to ensure that the commission's order as  
22 issued will be effective. The commission shall not be required  
23 to post a bond.

24 I. For purposes of this section, "urgent medical  
25 condition" means any medical condition as defined by an

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1 appropriate medical authority through documentation or by direct  
2 witness of a clearly visible disablement and ~~[which]~~ that poses  
3 a serious threat to the life of the person with the medical  
4 condition.

5 J. The complainant may seek a trial de novo in the  
6 district court in lieu of a hearing before the commission,  
7 provided the complainant requests from the ~~[director]~~ chief, in  
8 writing, a waiver of complainant's right to hearing within sixty  
9 days of service of written notice of a probable cause  
10 determination by the ~~[director]~~ chief. The ~~[director]~~ chief  
11 shall approve the waiver request and shall serve notice of the  
12 waiver upon the complainant and respondent. The complainant may  
13 request a trial de novo pursuant to Section 28-1-13 NMSA 1978  
14 within thirty days from the date of service of the waiver.  
15 Issuance of the notice shall be deemed a final order of the  
16 commission for the purpose of appeal pursuant to Section 28-1-13  
17 NMSA 1978. "

18 Section 77. Section 28-1-11 NMSA 1978 (being Laws 1969,  
19 Chapter 196, Section 10, as amended) is amended to read:

20 "28-1-11. HEARING PROCEDURES. --

21 A. The respondent to a complaint made pursuant to  
22 Section 28-1-10 NMSA 1978 may file a written answer to the  
23 complaint, appear at the hearing, give testimony and be  
24 represented by counsel and may obtain from the commission  
25 subpoenas for any person or for the production of any evidence

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1 pertinent to the proceeding. The complainant shall be present  
2 at the hearing and may be represented by counsel. Each party  
3 shall have the right to amend his complaint or answer.

4 B. A panel of three members of the commission  
5 designated by the chairman shall sit, and a decision agreed upon  
6 by two members of the panel shall be the decision of the  
7 commission. However, no commissioner who has filed a complaint  
8 may sit on the panel hearing his complaint.

9 Hearings also may be conducted by a hearing officer employed by  
10 the [~~human rights division of the labor department~~] bureau or,  
11 if the hearing officer is unavailable, one member of the  
12 commission may be designated by the chairman to act as a hearing  
13 officer. A hearing officer shall have the same powers and  
14 duties as a commissioner as set forth in Paragraph (2) of  
15 Subsection A of Section 28-1-4 NMSA 1978.

16 C. The complainant or his representative shall  
17 present to the commission or the hearing officer the case  
18 supporting the complaint. No evidence concerning prior attempts  
19 at conciliation shall be received. The [~~director~~] chief shall  
20 not participate in the hearing, except as a witness.

21 D. The commission and the hearing officer shall not  
22 be bound by the formal rules of evidence governing courts of law  
23 or equity but shall permit reasonable direct examination and  
24 cross-examination and the submission of briefs. Testimony at  
25 the hearing shall be taken under oath and recorded by tape or

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1 otherwise. Upon the request of any party, testimony shall be  
2 transcribed; provided that all costs of transcribing shall be  
3 paid by the party so requesting. Each commissioner and hearing  
4 officer may administer oaths.

5 E. Upon the conclusion of a hearing conducted by a  
6 hearing officer, the hearing officer shall prepare a written  
7 report setting forth proposed findings of fact and conclusions  
8 of law and recommending the action to be taken by the  
9 commission. The hearing officer shall submit the report to a  
10 review panel consisting of no more than three members of the  
11 commission designated by the chairman. No commissioner may sit  
12 on the panel reviewing the hearing officer's report issued in  
13 connection with a complaint filed by the commissioner. A  
14 decision by a majority of the members of the review panel shall  
15 be the decision of the commission. If the commission finds from  
16 the evidence presented at any hearing held pursuant to this  
17 section that the respondent has engaged in a discriminatory  
18 practice, it shall make written findings of fact, conclusions of  
19 law and its decision based upon the findings of fact and  
20 conclusions of law. The commission may adopt, modify or reject  
21 the proposed findings of fact and conclusions of law and the  
22 action recommended by the hearing officer. Within five days  
23 after any order is rendered by the commission following a  
24 hearing, the commission shall serve upon each party of record  
25 and his attorney, if any, a written copy of the order by



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1 certified mail to the party's address of record. All parties  
2 shall be deemed to have been served on the tenth day following  
3 the mailing. As part of its order, the commission may require  
4 the respondent to pay actual damages to the complainant and to  
5 pay reasonable ~~[attorneys']~~ attorney fees, if the complainant  
6 was represented by private counsel, and to take such affirmative  
7 action as the commission considers necessary, including a  
8 requirement for reports of the manner of compliance.

9 F. If the commission finds from the evidence that  
10 the respondent has not engaged in a discriminatory practice, it  
11 shall make written findings of fact and serve the complainant  
12 and respondent with a copy of the findings of fact and with an  
13 order dismissing the complaint."

14 Section 78. Section 28-1-13 NMSA 1978 (being Laws 1969,  
15 Chapter 196, Section 12, as amended) is amended to read:

16 "28-1-13. APPEAL. --

17 A. Any person aggrieved by an order of the  
18 commission may obtain a trial de novo in the district court of  
19 the county where the discriminatory practice occurred or where  
20 the respondent does business by filing a notice of appeal within  
21 thirty days from the date of service of the commission's order.  
22 A copy of the notice of appeal shall be served personally or by  
23 certified mail, return receipt requested, at their last known  
24 address on all parties who appeared before the commission and  
25 shall also be served at the ~~[division]~~ bureau office in Santa

1 Fe. No order of the commission shall be superseded or stayed  
2 during the appeal unless the district court so directs after  
3 notice to the commission and a hearing.

4 B. If testimony at the hearing was transcribed, the  
5 [division] bureau shall, upon receipt of the notice of appeal,  
6 file so much of the transcript of the record as the parties  
7 requesting the transcript designate as necessary for the appeal  
8 with the district court.

9 C. Upon appeal, either party may request a jury.  
10 The jurisdiction of the district court is exclusive and its  
11 judgment is final, subject to further appeal to the [supreme]  
12 court of appeals.

13 D. In any action or proceeding under this section if  
14 the complainant prevails, the court in its discretion may allow  
15 actual damages and reasonable [attorney's] attorney fees, and  
16 the state shall be liable the same as a private person."

17 Section 79. Section 50-4-21 NMSA 1978 (being Laws 1955,  
18 Chapter 200, Section 2, as amended) is amended to read:

19 "50-4-21. DEFINITIONS. --As used in the Minimum Wage Act:

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

21 B. "employer" [includes-any] means individual,  
22 partnership, association, corporation, business trust, legal  
23 representative or [any] organized group of persons employing one  
24 or more employees at any one time, acting directly or indirectly  
25 in the interest of an employer in relation to any employee, but

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1 shall not include the United States, the state or any political  
2 subdivision thereof; ~~[and]~~

3 C. "employee" ~~[includes any]~~ means an individual  
4 employed by ~~[any]~~ an employer, but ~~[shall]~~ does not include:

5 (1) ~~[any]~~ an individual employed in domestic  
6 service in or about a private home;

7 (2) ~~[any]~~ an individual employed in a bona fide  
8 executive, administrative or professional capacity and foremen,  
9 superintendents and supervisors;

10 (3) ~~[any]~~ an individual employed by the United  
11 States or by the state or any political subdivision thereof;

12 (4) ~~[any]~~ an individual engaged in the  
13 activities of an educational, charitable, religious or nonprofit  
14 organization where the employer-employee relationship does not,  
15 in fact, exist or where the services rendered to such  
16 organizations are on a voluntary basis ~~[The employer-employee  
17 relationship shall not be deemed to exist with respect to any];~~

18 (5) an individual being served for purposes of  
19 rehabilitation by a charitable or nonprofit organization,  
20 notwithstanding the payment to the individual of a stipend based  
21 upon the value of the work performed by the individual;

22 ~~[(5) salesmen or employees]~~ (6) a salesperson  
23 or employee compensated upon piecework, flat rate schedules or  
24 commission basis;

25 ~~[(6) students]~~ (7) a student regularly

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1 enrolled in primary or secondary schools working after school  
2 hours or on vacation;

3 [~~(7)~~] (8) a registered [~~apprentices and~~  
4 ~~learners~~] apprentice or learner otherwise provided by law;

5 [~~(8) persons~~] (9) a person eighteen years of  
6 age or under who [~~are~~] is not [~~students~~] a student in a primary,  
7 secondary, vocational or training school;

8 [~~(9) persons~~] (10) a person eighteen years of  
9 age or under who [~~are~~] is not [~~graduates~~] a graduate of a  
10 secondary school;

11 [~~(10) persons~~] (11) a person employed by  
12 ambulance services;

13 [~~(11)~~] (12) a G. I. bill [~~trainees~~] trainee  
14 while under training;

15 [~~(12)~~] (13) a seasonal [~~employees~~] employee of  
16 [~~any~~] an employer obtaining and holding a valid certificate  
17 issued annually by the [~~state~~] chief of the labor [~~commissioner~~]  
18 and industrial bureau of the workforce development department.

19 The certificate shall state the job designations and total  
20 number of employees to be exempted. In approving or  
21 disapproving an application for a certificate of exemption, the  
22 [~~commissioner~~] bureau chief shall consider the following:

23 (a) whether [~~such~~] the employment [~~shall~~]  
24 will be at an educational, charitable or religious youth camp or  
25 retreat;

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1 (b) [~~that-such~~] whether the employment  
2 will be of a temporary nature;

3 (c) [~~that~~] whether the individual will be  
4 furnished his room and board in connection with [~~such~~] the  
5 employment, or if the camp or retreat is a day camp or retreat,  
6 the individual will be furnished board in connection with [~~such~~]  
7 the employment;

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

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

12 (f) any other factors that the  
13 [~~commissioner~~] bureau chief deems necessary to consider;

14 [~~(13)-any~~] (14) an employee employed in  
15 agriculture:

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

20 (b) if [~~such~~] the employee is the parent,  
21 spouse, child or other member of his employer's immediate  
22 family; for the purpose of this [~~subsection~~] subparagraph,  
23 employer shall include the principal stockholder of a family  
24 corporation;

25 (c) if [~~such~~] the employee: 1) is

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1 employed as a hand-harvest laborer and is paid on a piece-rate  
2 basis in an operation [~~which~~] that has been, and is customarily  
3 and generally recognized as having been, paid on a piece-rate  
4 basis in the region of employment; 2) commutes daily from his  
5 permanent residence to the farm on which he is so employed; and  
6 3) has been employed in agriculture less than thirteen weeks  
7 during the preceding calendar year;

8 (d) if [~~such~~] the employee, other than an  
9 employee described in Subparagraph (c) of this paragraph: 1) is  
10 sixteen years of age or under and is employed as a hand-harvest  
11 laborer, is paid on a piece-rate basis in an operation [~~which~~]  
12 that has been, and is generally recognized as having been, paid  
13 on a piece-rate basis in the region of employment; 2) is  
14 employed on the same farm as his parent or person standing in  
15 the place of his parent; and 3) is paid at the same piece-rate  
16 as employees over age sixteen are paid on the same farm; or

17 (e) if [~~such~~] the employee is principally  
18 engaged in the range production of livestock; or

19 [~~(14) employees~~] (15) an employee of a  
20 charitable, religious or nonprofit [~~organizations~~] organization  
21 who [~~reside~~] resides on the premises of a group [~~homes~~] home  
22 operated by [~~such~~] the charitable, religious or nonprofit  
23 [~~organizations~~] organization for mentally retarded or  
24 emotionally or developmentally disabled persons; and

25 D. "secretary means the secretary of workforce

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1 development. "

2 Section 80. Section 50-4-23 NMSA 1978 (being Laws 1967,  
3 Chapter 242, Section 1) is amended to read:

4 "50-4-23. HANDICAPPED PERSONS--MINIMUM WAGE-- [~~LABOR~~  
5 ~~COMMISSIONER~~] SECRETARY POWERS AND DUTIES. --

6 A. The [~~state labor commissioner~~] secretary, to the  
7 extent necessary in order to prevent curtailment of  
8 opportunities for employment, shall, by regulation, provide for  
9 the employment under special certificates of individuals,  
10 including individuals employed in agriculture, whose earning or  
11 productive capacity is impaired by physical or mental deficiency  
12 or injury, at wages [~~which~~] that are lower than the minimum wage  
13 applicable under Section [~~59-3-22 New Mexico Statutes Annotated,~~  
14 ~~1953 Compilation~~] 50-4-22 NMSA 1978, but not less than fifty  
15 percent of [~~such~~] that wage.

16 B. The [~~state labor commissioner~~] secretary,  
17 pursuant to his regulations and upon certification of any state  
18 agency administering or supervising the administration of  
19 vocational rehabilitation services, may issue special  
20 certificates [~~which~~] that allow the holder [~~thereof~~] to work at  
21 wages [~~which~~] that are less than those required by Subsection A  
22 of this section and [~~which~~] that are related to the workers'  
23 productivity, for the employment of:

24 (1) handicapped workers engaged in work [~~which~~]  
25 that is incidental to training or evaluation programs; and

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1 (2) multihandicapped individuals and other  
2 individuals whose earning capacity is so severely impaired that  
3 they are unable to engage in competitive employment.

4 C. The [~~state labor commissioner~~] secretary may, by  
5 regulation or order, provide for the employment of handicapped  
6 individuals in work activities centers under special  
7 certificates at wages [~~which~~] that are less than the minimums  
8 applicable under Section [~~59-2-22 New Mexico Statutes Annotated,~~  
9 ~~1953 Compilation~~] 50-4-22 NMSA 1978, or less than that  
10 prescribed in Subsection A of this section, and [~~which~~] that  
11 constitute equitable compensation for [~~such~~] the individuals.  
12 As used in this subsection, "work activities centers" means  
13 centers planned and designed exclusively to provide therapeutic  
14 activities for handicapped persons whose physical or mental  
15 impairment is so severe as to make their productive capacity  
16 inconsequential.

17 D. The state agency administering or supervising the  
18 administration of vocational rehabilitation may issue a  
19 temporary certificate for a period not to exceed ninety days  
20 pursuant to Subsections A, B and C of this section and may  
21 request an extension of the certification by the [~~state labor~~  
22 ~~commissioner~~] secretary when it is determined that the severity  
23 of disability of an individual or circumstances warrants an  
24 extension of the certification."

25 Section 81. Section 50-4-26 NMSA 1978 (being Laws 1955,



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1 Chapter 200, Section 5, as amended) is amended to read:

2 "50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES. --

3 [~~A.—Penalties:~~

4 (1)] A. Any employer who violates any of the  
5 foregoing provisions shall be deemed guilty of a misdemeanor and  
6 shall be punished by a fine of not less than twenty-five dollars  
7 [~~(\$25)~~] (\$25.00) or more than three hundred dollars (\$300) or by  
8 imprisonment for not less than ten nor more than ninety days or  
9 by both such fine and imprisonment.

10 [~~(2)~~] B. It [~~shall be~~] is the duty of the [~~state~~]  
11 labor [~~commissioner~~] and industrial bureau of the workforce  
12 development department to enforce and prosecute violations of  
13 the Minimum Wage Act. The [~~labor commissioner~~] bureau is hereby  
14 empowered to institute in the name of the state [~~of New Mexico~~]  
15 an action in the district court of the county wherein the  
16 employer who has failed to comply with the Minimum Wage Act  
17 resides or has his principal office or place of business, for  
18 the purpose of prosecuting violations. It shall be the duty of  
19 the district attorney for the district wherein any violation  
20 hereof occurs to aid and assist the [~~labor commissioner~~] bureau  
21 in the prosecution thereof.

22 [~~B.—Employees' remedies:~~

23 (1)] C. Any employer who violates any provision of  
24 Section [~~59-3-22 New Mexico Statutes Annotated, 1953~~  
25 ~~Compilation~~] 50-4-22 NMSA 1978 shall be liable to the employees

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1 affected in the amount of their unpaid minimum wages, as the  
2 case may be, and in an additional equal amount as liquidated  
3 damages.

4 [~~(2)~~] D. Action to recover [~~such~~] the liability may  
5 be maintained in any court of competent jurisdiction by any one  
6 or more employees for and in behalf of himself or themselves and  
7 other employees similarly situated, or such employee or  
8 employees may designate an agent or representative to maintain  
9 such action before and in behalf of all employees similarly  
10 situated.

11 E. The court in any action brought under [~~Paragraph~~  
12 ~~(2)~~] Subsection D of this section shall, in addition to any  
13 judgment awarded to the plaintiff or plaintiffs, allow costs of  
14 the action and reasonable [~~attorneys'~~] attorney fees to be paid  
15 by the defendant. In any proceedings brought pursuant to the  
16 provisions of this section, the employee shall not be required  
17 to pay any filing fee or other court costs necessarily incurred  
18 in such proceedings. "

19 Section 82. Section 50-4-27 NMSA 1978 (being Laws 1967,  
20 Chapter 188, Section 5) is amended to read:

21 "50-4-27. AUTHORITY OF [~~LABOR COMMISSIONER~~] SECRETARY OF  
22 WORKFORCE DEVELOPMENT TO ADOPT AND PROMULGATE RULES AND  
23 REGULATIONS- - HEARING ON RULES AND REGULATIONS- - NOTICE- -  
24 PUBLICATION. - - The [~~state labor commissioner shall have~~  
25 secretary has the authority to adopt and promulgate [~~and issue~~]

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1 rules and regulations necessary to administer and accomplish the  
2 purposes of the Minimum Wage Act. Such rules and regulations  
3 shall be [~~adopted~~] adopted after notice and public hearing. A  
4 copy of the notice of hearing together with a copy of the  
5 proposed regulations shall be filed with the librarian of the  
6 supreme court library at least twenty days prior to the hearing.  
7 In addition, a copy of the notice of hearing shall be sent to  
8 all known interested persons. Any interested person shall have  
9 the right to appear and present evidence. Rules and regulations  
10 adopted pursuant to this section shall be filed in accordance  
11 with the State Rules Act."

12 Section 83. Section 50-5-12 NMSA 1978 (being Laws 1931,  
13 Chapter 109, Section 3) is amended to read:

14 "50-5-12. DUTY OF LABOR AND INDUSTRIAL BUREAU. -- It [~~shall~~  
15 ~~be~~] is the duty of the labor [~~commissioner~~] and industrial  
16 bureau of the workforce development department to [~~see~~] ensure  
17 that the provisions of [~~this Act~~] Sections 50-5-10 through  
18 50-5-12 NMSA 1978 are enforced."

19 Section 84. Section 50-6-7 NMSA 1978 (being Laws 1925,  
20 Chapter 79, Section 8, as amended) is amended to read:

21 "50-6-7. LABOR PERMIT CERTIFICATES--ISSUANCE--AUTHORIZED  
22 OFFICIALS--APPLICATION--CONTENTS--PROOF--COPIES--MAXIMUM TERM--

23 A. Permit certificates shall be issued only by the  
24 school superintendents, school principals, designated issuing  
25 school officers or [~~the director of~~] the labor and industrial

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1     ~~[division]~~ bureau of the ~~[labor]~~ workforce development  
2     department ~~[or the director's designee]~~.

3             B. No permit certificate shall be issued to any  
4     child until satisfactory proof has been furnished that the work  
5     in which the child is to engage is not dangerous to the child  
6     ~~[nor]~~ and not injurious to his health or morals.

7             C. The application for the certificate ~~[must]~~ shall  
8     show that the child is in good physical health and that the work  
9     to be performed would not result in injury to the health, morals  
10    or mental development of the child. Satisfactory proof of the  
11    age of the child at the date of the application shall be  
12    furnished. In the case of children over the age of fourteen  
13    years and under the age of sixteen years, any application for  
14    the employment of children at any gainful occupation during the  
15    session hours of the school of the district in which the child  
16    resides shall set forth, in addition to the foregoing, the  
17    necessity to the family or the dependents of the child or for  
18    his own support of the income to be derived from the employment  
19    or labor.

20            D. Whenever the person authorized to issue the labor  
21    permit is satisfied that the provisions of this section have  
22    been complied with, he shall issue to the child a labor permit,  
23    keeping one copy on file and sending one copy of this permit to  
24    the labor and industrial ~~[commission]~~ bureau of the workforce  
25    development department.

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1 E. No permit certificate shall be in force without  
2 renewal for a longer period than one year from the date of  
3 issuance. "

4 Section 85. Section 50-6-10 NMSA 1978 (being Laws 1925,  
5 Chapter 79, Section 11, as amended) is amended to read:

6 "50-6-10. INSPECTION OF CERTIFICATES, RECORDS AND  
7 PREMISES BY LABOR AND INDUSTRIAL [~~COMMISSION~~] BUREAU. -- All  
8 employment certificates and records and the premises where  
9 children are employed are subject to inspection by  
10 representatives of the labor and industrial [~~commission~~] bureau  
11 of the workforce development department. The [~~commission~~]  
12 bureau may, for cause, cancel any labor permit with the concur-  
13 rence of the officer issuing the permit but, in case they  
14 disagree, the district court may cancel the permit on complaint  
15 setting forth the grounds therefor under the provisions of  
16 Sections [~~59-6-1 through 59-6-15 NMSA 1953~~] 50-6-1 through 50-6-  
17 16 NMSA 1978. "

18 Section 86. Section 50-6-14 NMSA 1978 (being Laws 1925,  
19 Chapter 79, Section 15, as amended) is amended to read:

20 "50-6-14. STATE CHILD LABOR INSPECTOR--APPOINTMENT--  
21 DIRECTION--QUALIFICATIONS. --There shall be a "state child labor  
22 inspector", appointed by [~~and subject to~~] the [~~labor~~  
23 ~~commissioner~~] secretary of workforce development. The inspector  
24 [~~must~~] shall be qualified by special training and experience for  
25 this work [~~and must pass a satisfactory examination given by the~~

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1 ~~labor commissioner for this purpose].~~ This position shall be  
2 covered by and subject to the provisions of the Personnel Act."

3 Section 87. Section 50-7-3 NMSA 1978 (being Laws 1957,  
4 Chapter 219, Section 3, as amended) is amended to read:

5 "50-7-3. APPRENTICESHIP COUNCIL. -- An "apprenticeship  
6 council", hereinafter referred to as the "council", shall be  
7 appointed by the [~~director of the labor and industrial division~~  
8 ~~of the department of labor]~~ secretary of workforce development  
9 without regard to any other provisions of law regarding the  
10 appointment and compensation of employees of the state. It  
11 shall consist of three persons known to represent employers,  
12 three persons known to represent labor organizations, three  
13 public representatives and shall include, as ex-officio members  
14 without vote, the [~~director]~~ chief of the labor and industrial  
15 [~~division]~~ bureau and the state supervisor of trade and  
16 industrial education. Persons appointed to the council [~~must~~]  
17 shall be familiar with apprenticeable occupations. The terms of  
18 office of the members of the council first appointed shall  
19 expire as designated by the [~~director]~~ secretary at the time of  
20 making the appointment: one representative each of employers,  
21 labor organizations and the public being appointed for one year;  
22 one representative each of employers, labor organizations and  
23 the public being appointed for two years and one representative  
24 each of employers, labor organizations and the public being  
25 appointed for three years. Thereafter, each member shall be

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1 appointed for a term of three years. Any member appointed to  
2 fill a vacancy occurring prior to the expiration of the term of  
3 his predecessor shall be appointed for the remainder of that  
4 term. Members of the council not otherwise compensated by  
5 public money shall be reimbursed for their official duties in  
6 accordance with the Per Diem and Mileage Act for attendance at  
7 not in excess of twelve meetings per year."

8 Section 88. Section 50-7-4.1 NMSA 1978 (being Laws 1979,  
9 Chapter 204, Section 12, as amended) is amended to read:

10 "50-7-4.1. ADMINISTRATION. -- The ~~[commissioner of labor]~~  
11 secretary of workforce development shall appoint a director of  
12 apprenticeship to be responsible for effectuating the policies  
13 set forth in Section 50-7-1 NMSA 1978, to carry out the policies  
14 approved by the apprenticeship council and otherwise to execute  
15 the provisions of Chapter 50, Article 7 NMSA 1978. Such  
16 appointment shall be subject to confirmation by a majority vote  
17 of the council. The ~~[commissioner of labor]~~ secretary shall  
18 appoint the director and such additional personnel as may be  
19 necessary, subject to such laws and practices as are applicable  
20 to appointment, service and compensation of employees of the  
21 state. Under the general direction of the ~~[commissioner of~~  
22 ~~labor]~~ secretary, the director in furtherance of the duties  
23 specified shall:

24 A. encourage the voluntary participation of  
25 employers and employees in the furtherance of the objectives of

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1 Chapter 50, Article 7 NMSA 1978;

2 B. devise necessary procedures and records;

3 C. prepare statistical reports regarding  
4 apprenticeship;

5 D. issue information related to apprenticeship; and

6 E. perform such other duties as are necessary to  
7 carry out the intent of Chapter 50, Article 7 NMSA 1978. "

8 Section 89. Section 50-8-2 NMSA 1978 (being Laws 1934  
9 (S.S.), Chapter 15, Section 2, as amended) is amended to read:

10 "50-8-2. AGENCY OF STATE FOR PURPOSE OF FEDERAL ACT. --The  
11 employment security division of the workforce development  
12 department is hereby designated and constituted the agency of  
13 the state of New Mexico for the purpose of [~~such~~] the federal  
14 act, with full power to establish such public employment offices  
15 throughout the state of New Mexico as it may deem necessary to  
16 fully carry out the purposes, to employ such agents, clerks and  
17 employees as are necessary therefor, with full power to  
18 cooperate with all authorities of the United States having  
19 powers or duties under [~~said~~] that act of congress and to do and  
20 perform all things necessary to secure to this state the  
21 benefits of [~~said~~] the federal act in the promotion and  
22 maintenance of a system of public employment offices. All funds  
23 made available to this state under [~~said~~] that act of congress  
24 shall, upon receipt thereof, be paid into the general fund of  
25 the state treasury and are hereby appropriated therefrom to be

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1 expended by the department as provided by the act of congress  
2 and by [~~this act~~] Section 50-8-1 NMSA 1978 and this section. "

3 Section 90. Section 50-9-3 NMSA 1978 (being Laws 1972,  
4 Chapter 63, Section 3, as amended) is amended to read:

5 "50-9-3. DEFINITIONS. --As used in the Occupational Health  
6 and Safety Act:

7 A. "person" means any individual, partnership, firm,  
8 public or private corporation, association, trust, estate,  
9 political subdivision or agency or any other legal entity or  
10 their legal representatives, agents or assigns;

11 B. "employee" means an individual who is employed by  
12 an employer, but does not include a domestic employee or a  
13 volunteer nonsalaried firefighter;

14 C. "employer" means any person who has one or more  
15 employees, but does not include the United States;

16 D. "board" means the [~~environmental improvement~~  
17 ~~board;~~] secretary of workforce development;

18 E. "department" means the workforce development  
19 department [~~of environment~~];

20 F. "place of employment" means any place, area or  
21 environment in or about which an employee is required or  
22 permitted to work;

23 G. "commission" means the occupational health and  
24 safety review commission established [~~under~~] pursuant to  
25 provisions of the Occupational Health and Safety Act;

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1           H. "chemical" means any element, chemical compound  
2 or mixture of elements or compounds;

3           I. "hazardous chemical" means any chemical or  
4 combination of chemicals that has been labeled hazardous by the  
5 chemical manufacturer, importer or distributor in accordance  
6 with regulations promulgated by the federal Occupational Safety  
7 and Health Act of 1970;

8           J. "label" means any written, printed or graphic  
9 material displayed on or affixed to containers of chemicals  
10 [~~which~~] that identifies the chemical as hazardous;

11           K. "material safety data sheet" means written or  
12 printed material concerning a hazardous chemical that contains  
13 information on the identity listed on the label, the chemical  
14 and common names of the hazardous ingredients, the physical and  
15 health hazards, the primary route of entry, the exposure limits,  
16 any generally applicable control measures, any emergency or  
17 first aid procedures, the date of preparation and the name,  
18 address and telephone number of the chemical manufacturer,  
19 importer, employer or other responsible party preparing or  
20 distributing the material safety data sheet;

21           L. "mobile work site" means any place of employment  
22 in standard industrial classification codes 13, oil and gas  
23 extraction, and 15 through 17, construction, where work is  
24 performed in a different location than the principal office in a  
25 fixed location used by the employer; and

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1 M "secretary" means the secretary of [~~environment~~]  
2 workforce development. "

3 Section 91. Section 50-9-5.1 NMSA 1978 (being Laws 1987,  
4 Chapter 178, Section 3) is amended to read:

5 "50-9-5.1. EMPLOYER DUTIES--HAZARDOUS CHEMICALS. --

6 A. All incoming containers labeled as hazardous  
7 shall be subject to this section. The employer shall not remove  
8 or deface any label [~~which~~] that indicates on an incoming  
9 container that a chemical is hazardous, unless the container is  
10 immediately marked with the required information.

11 B. Each employer shall obtain and maintain material  
12 safety data sheets for each chemical used in his place of  
13 employment and labeled as hazardous. Each employer shall ensure  
14 that the information on material safety data sheets for  
15 hazardous chemicals is readily accessible to employees during  
16 each work shift. The [~~board~~] secretary shall adopt and  
17 promulgate regulations [~~which~~] that assure reasonable compliance  
18 with this provision at mobile work sites. If a material safety  
19 data sheet has not been supplied from the manufacturer, importer  
20 or distributor of the hazardous chemical, the employer shall  
21 obtain the material safety data sheet by writing the  
22 manufacturer, importer or distributor and requesting that he  
23 send the material safety data sheet immediately.

24 C. Each employer shall maintain a current inventory  
25 of all chemicals that have been labeled as hazardous in his

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1 place of employment.

2 D. Each employer shall develop and implement a  
3 written hazard communication program for his place of employment  
4 [~~which~~] that describes how the criteria specified for labels and  
5 other forms of warning, material safety data sheets and employee  
6 information and training will be met and [~~which~~] that also  
7 includes the following:

8 (1) a list of the hazardous chemicals known to  
9 be present, using an identity that is referenced on the  
10 appropriate material safety data sheet. The list may be  
11 compiled for the place of employment as a whole or for  
12 individual work areas;

13 (2) the methods the employer will use to inform  
14 employees of the hazards of nonroutine tasks, for example, the  
15 cleaning of reactor vessels and the hazards associated with  
16 chemicals contained in unlabeled pipes in their work areas; and

17 (3) the methods the employer will use to inform  
18 any contract employers whose employees work in the employer's  
19 place of business of the hazardous chemicals their employees may  
20 be exposed to while performing their work and any suggestions  
21 for appropriate protective measures.

22 The employer may rely on an existing hazard communication  
23 program to comply with these requirements provided that it meets  
24 the provisions of this subsection. The employer shall make the  
25 written hazard communication program available upon request to

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1 employees, their designated representatives and the occupational  
2 health and safety bureau of the [~~environmental improvement~~  
3 ~~division of the health and environment~~] department.

4 E. Each employer shall provide employees with  
5 information and training on hazardous chemicals they use or may  
6 become exposed to during the course of employment.

7 F. The requirements of Subsection E of this section  
8 shall not apply to any hazardous chemical received by an  
9 employer in a sealed package or container and subsequently sold  
10 or transferred if the seal is maintained.

11 G. Nothing in this section shall supersede any other  
12 requirements in the Occupational Health and Safety Act."

13 Section 92. Section 50-9-6 NMSA 1978 (being Laws 1972,  
14 Chapter 63, Section 6, as amended) is amended to read:

15 "50-9-6. TRAINING--ASSISTANCE--CONSULTATION--RESEARCH.--

16 A. The department shall provide for the  
17 establishment and supervision of programs for the education and  
18 training of employers and employees in the recognition,  
19 avoidance and prevention of unsafe working conditions in  
20 employment and places of employment and consult with, advise and  
21 assist employers and employees about effective means of  
22 preventing occupational injuries and illnesses.

23 B. Upon an employer's request, the department shall  
24 provide an on-site consultation inspection of conditions and  
25 practices of the employer's [~~work place~~] workplace without

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1 issuing citations or proposing penalties for violations noted,  
2 provided that imminent danger situations found during the on-  
3 site consultative visit [~~must~~] shall be pointed out to the  
4 employer. In the event the imminent danger is pointed out by  
5 the department consultant but immediate steps are not taken by  
6 the employer to eliminate [~~such~~] the danger, the emergency  
7 procedures provided in Section 50-9-14 NMSA 1978 shall be  
8 pursued by the department to assure timely abatement of the  
9 imminent danger situation.

10 C. The secretary is responsible for programs  
11 involving research in occupational health and safety, for  
12 surveys and recommendations for occupational health and safety  
13 programs and for promotional, educational and advisory  
14 activities in occupational health and safety.

15 D. The [~~board or the~~] secretary may appoint special  
16 committees composed of technicians or professionals specializing  
17 in occupational health or safety to assist in carrying out the  
18 objectives of the Occupational Health and Safety Act. Members  
19 of such committees shall be reimbursed as provided in the Per  
20 Diem and Mileage Act. "

21 Section 93. Section 50-9-7 NMSA 1978 (being Laws 1972,  
22 Chapter 63, Section 7, as amended) is amended to read:

23 "50-9-7. DUTIES AND POWERS OF THE [~~BOARD~~] SECRETARY. --

24 A. The [~~board~~] secretary shall adopt and promulgate  
25 regulations that are and will continue to be at least as

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1 effective as standards promulgated pursuant to the federal  
2 Occupational Safety and Health Act of 1970 to prevent or abate  
3 detriment to the health and safety of employees. In adopting,  
4 amending and repealing [~~its~~] his regulations, the [~~board~~]  
5 secretary shall provide an opportunity for representatives of  
6 employers and employees affected by the regulations to be heard  
7 and shall give weight it deems appropriate to all relevant facts  
8 and circumstances presented at the public hearing, including but  
9 not limited to:

10 (1) character and degree of injury to or  
11 interference with the health and safety of employees proposed to  
12 be abated or prevented by the regulation;

13 (2) technical practicability and economic  
14 reasonableness of the regulation and the existence of  
15 alternatives to the prevention or abatement of detriment to the  
16 health and safety of employees proposed by the regulation; and

17 (3) the public interest, including the social  
18 and economic effects of work-related accidents, injuries and  
19 illnesses.

20 B. In promulgating regulations dealing with toxic  
21 materials or harmful physical agents, the [~~board~~] secretary  
22 shall provide regulations that most adequately assure to the  
23 extent feasible, on the basis of the best available technology,  
24 that no employee will suffer material impairment of health or  
25 functional capacity even if the employee has regular exposure to

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1 the hazard dealt with by the regulations for a period of his  
2 working life. Whenever practicable, the regulation promulgated  
3 shall be expressed in terms of objective criteria and of the  
4 performance desired.

5 C. The regulation shall prescribe the use of labels  
6 or other appropriate forms of warning as are necessary to  
7 [~~insure~~] ensure that employees are apprised of all hazards to  
8 which they are exposed, relevant symptoms and appropriate  
9 emergency treatment and proper conditions and precautions of  
10 safe use or exposure. Where appropriate, the standard shall  
11 also prescribe suitable protective equipment and control or  
12 technological procedures to be used in connection with the  
13 hazards and shall provide for monitoring or measuring employee  
14 exposure at such locations and intervals and in such manner as  
15 may be necessary for the protection of employees. In addition,  
16 where appropriate, any such standard shall prescribe the type  
17 and frequency of medical examinations or other tests [~~which~~]  
18 that shall be made available, by the employer or at his cost, to  
19 employees exposed to the hazards in order to most effectively  
20 determine whether the health of the employees is adversely  
21 affected by the exposure. Cost of medical examinations for  
22 research as ordered by the secretary shall be paid for by the  
23 department. Results of examinations shall be made available to  
24 the secretary, to the employer and, upon the request of the  
25 employee, to the employee's physician. The [~~board~~] secretary

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1 may make appropriate modifications in the foregoing requirements  
2 relating to the use of labels or other forms of warning,  
3 monitoring or measuring and medical examinations as may be  
4 warranted by experience, information or medical or technological  
5 developments acquired subsequent to the promulgation of the  
6 relevant standard. "

7 Section 94. Section 50-9-10 NMSA 1978 (being Laws 1972,  
8 Chapter 63, Section 9, as amended) is amended to read:

9 "50-9-10. RIGHT OF ENTRY AND INSPECTION--COMPLAINTS--  
10 CONSULTATION--NOTIFICATION.--

11 A. In order to carry out the purposes of the  
12 Occupational Health and Safety Act, the department's authorized  
13 representatives, upon presenting appropriate credentials to the  
14 owner, operator or agent in charge, are authorized to and may:

15 (1) enter and inspect any place of employment  
16 at reasonable times and without delay; and

17 (2) question privately the employer and  
18 employees and to inspect and investigate during regular working  
19 hours and at other reasonable times and within reasonable limits  
20 and in a reasonable manner, the place of employment and all  
21 pertinent conditions, structures, machines, apparatus, devices,  
22 equipment and materials therein. The department's  
23 representative is not authorized to question privately the  
24 employer or employees until the [board] secretary has adopted  
25 regulations protecting the rights of [such] the employer and

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1 employees.

2 B. Any employee or representative of employees may  
3 file a written complaint with the department concerning any  
4 alleged violation of a regulation or any hazardous condition. A  
5 copy of the complaint shall be provided to the employer at the  
6 time of the inspection. However, upon the request of the  
7 complainant, the complainant's name shall not appear on the  
8 copy. The department shall investigate the complaint and notify  
9 the complainant and employer in writing of the results of the  
10 investigation and any action to be taken. If no action is  
11 contemplated, the department shall notify the complainant and  
12 include in the notice the reasons therefor. The department  
13 shall provide for the informal review of decisions not to take  
14 compliance action at the request of the complainant. The review  
15 shall not be by those who investigated the complaint.

16 C. In order to aid inspections, a representative of  
17 the employer and a representative authorized by employees shall  
18 be given an opportunity to accompany the department inspector  
19 during the physical inspection of the [~~work place~~] workplace.  
20 If there is no authorized employee representative, the  
21 department inspector shall consult with a reasonable number of  
22 employees.

23 D. Prior to or during any inspection of a [~~work~~  
24 ~~place~~] workplace, any employees or representative of employees  
25 employed in [~~such work place~~] the workplace may notify the

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1 department or the department inspector in writing of any  
2 violation of the Occupational Health and Safety Act [~~which~~] that  
3 they have reason to believe exists in [~~such work place~~] the  
4 workplace. The department shall establish procedures for  
5 informal review of the decision made by the inspector, and, if  
6 no citation is issued with respect to the alleged violation, it  
7 shall furnish the employee requesting [~~such~~] the review a  
8 written statement of the reasons for the department's final  
9 disposition of the case.

10 E. If an inspection reveals that employees are  
11 exposed to toxic materials or harmful physical agents at levels  
12 in excess of those prescribed by regulations of the [~~board~~]  
13 secretary, the department shall provide the employees with  
14 access to the results of the inspection. The employer shall  
15 promptly notify the employees who are being exposed to the  
16 agents or materials in excess of the applicable regulations and  
17 inform them of the corrective action being taken or that review  
18 has been requested in accordance with Section 50-9-17 NMSA 1978.

19 F. It is unlawful for any person to give advance  
20 notice of any inspection to be conducted under the Occupational  
21 Health and Safety Act without the written approval of the  
22 secretary or the secretary's authorized representative.

23 G. The [~~board~~] secretary shall adopt regulations to  
24 implement this section."

25 Section 95. Section 50-9-11 NMSA 1978 (being Laws 1972,

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1 Chapter 63, Section 10, as amended) is amended to read:

2 "50-9-11. REPORTS AND ~~[RECORD-KEEPING]~~ RECORDKEEPING BY  
3 EMPLOYERS. --

4 A. An employer shall keep such records and make such  
5 reports to the department as the ~~[board]~~ secretary, by  
6 regulation, may require to carry out the purposes of the  
7 Occupational Health and Safety Act. ~~[Such]~~ The regulation  
8 regarding records and reports shall be at least as effective as  
9 and consistent with the occupational safety and health record  
10 and report requirements of the United States department of  
11 labor. These records and reports shall be obtained with a  
12 minimum burden upon employers, especially those operating small  
13 businesses. Unnecessary duplication of efforts in obtaining  
14 information shall be reduced to the maximum extent feasible.

15 B. Employers shall maintain accurate records of  
16 employee exposures to potentially toxic material or harmful  
17 physical agents ~~[which]~~ that are required to be monitored or  
18 measured as the ~~[board]~~ secretary may prescribe by regulations.  
19 Employees and their representatives shall be given an  
20 opportunity to observe ~~[such]~~ the monitoring and measuring.  
21 Employees and former employees shall be granted access to their  
22 own records as will indicate their own exposure to toxic  
23 material or harmful agents. Each employer shall promptly notify  
24 any employee who has been or is being exposed to toxic materials  
25 or harmful physical agents in concentrations or levels that

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1 exceed those prescribed by an applicable regulation adopted  
2 pursuant to the Occupational Health and Safety Act and shall  
3 inform any employee who is being thus exposed of the corrective  
4 action being taken. Employers shall retain the records of  
5 exposure of employees to specific toxic material and harmful  
6 agents for periods of time to be specified in regulations."

7 Section 96. Section 50-9-12 NMSA 1978 (being Laws 1972,  
8 Chapter 63, Section 11, as amended) is amended to read:

9 "50-9-12. ADOPTION OF REGULATIONS--NOTICE AND HEARING.--

10 A. Any person may recommend or propose regulations  
11 to the [board] secretary for [~~promulgation~~] adoption. The  
12 [board] secretary shall determine whether to hold a hearing  
13 within sixty days of submission of a proposed regulation.

14 B. No regulations shall be adopted, amended or  
15 repealed until after a public hearing by the [board] secretary  
16 or a hearing officer designated by him. Notice of the hearing  
17 shall be given at least thirty days prior to the hearing date  
18 and shall state the subject, time and place of the hearing and  
19 the manner in which interested persons may secure copies of any  
20 regulations proposed to be adopted, amended or repealed. The  
21 notice shall be published in a newspaper of general circulation  
22 in the state. Reasonable effort shall be made to give notice to  
23 all persons who have made a written request to the [board]  
24 secretary for advance notice of hearings. At the hearing, the  
25 [board] secretary shall allow all interested persons reasonable

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1 opportunity to submit data, views or arguments orally or in  
2 writing. Any person heard or represented at the hearing shall  
3 be given written notice of the action by the [board] secretary.  
4 The [board] secretary may designate a hearing officer to take  
5 evidence in the hearing and present the evidence to [~~the board~~]  
6 him. A record shall be made of each hearing.

7 C. Notwithstanding the provisions of Subsection B of  
8 this section, the secretary may adopt an emergency regulation to  
9 take immediate effect upon its filing under the State Rules Act  
10 if the secretary determines:

11 (1) that employees are exposed to grave danger  
12 from exposure to substances or agents determined to be toxic or  
13 physically harmful or from new hazards; and

14 (2) that the emergency regulation is necessary  
15 to protect employees from the danger.

16 D. The emergency regulation shall be effective until  
17 superseded by a final regulation promulgated in accordance with  
18 the procedures prescribed in Subsection B of this section. The  
19 final regulation shall be promulgated within one hundred twenty  
20 days of the date of promulgation of the relevant emergency  
21 regulation.

22 E. If the emergency regulation is promulgated in  
23 response to an emergency temporary standard issued pursuant to  
24 the federal Occupational Safety and Health Act of 1970, [~~then~~  
25 ~~such~~] the emergency regulation shall only be enforceable to the

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1 same extent as the federal emergency temporary standard.

2 F. If the federal emergency temporary standard is  
3 superseded by a federal permanent standard, ~~[then]~~ the state  
4 emergency regulation shall remain in effect for an additional  
5 one hundred twenty days after promulgation of the superseding  
6 standard. During this additional one hundred twenty days, the  
7 ~~[board]~~ secretary shall promulgate a regulation in accordance  
8 with the procedures prescribed in Subsection B of this section."

9 Section 97. Section 50-9-13 NMSA 1978 (being Laws 1972,  
10 Chapter 63, Section 12, as amended) is amended to read:

11 "50-9-13. ADOPTING STANDARDS BY REFERENCE. -- In the event  
12 the ~~[board]~~ secretary wishes to adopt regulations that are  
13 identical with standards approved by an agency of the federal  
14 government, ~~[the board]~~ he may, after notice and hearing, ~~[may]~~  
15 adopt the regulations by reference to the standards without  
16 setting forth the provisions of the standards. "

17 Section 98. Section 50-9-15 NMSA 1978 (being Laws 1972,  
18 Chapter 63, Section 14, as amended) is amended to read:

19 "50-9-15. VALIDITY OF REGULATION-- VARIANCE  
20 DETERMINATION-- JUDICIAL REVIEW. --

21 A. Any person who is or may be affected by a  
22 regulation adopted by the ~~[board]~~ secretary may appeal to the  
23 court of appeals for further relief. All appeals shall be upon  
24 the record made at the hearing and shall be ~~[taken to]~~ filed in  
25 the court of appeals within thirty days after filing of the

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1 regulation under the State Rules Act. The [~~board~~] secretary  
2 shall be [~~made~~] a party to the action.

3 B. A variance petitioner may appeal to the court of  
4 appeals from an order of the department denying the variance.  
5 All appeals shall be upon the record made at the hearing and  
6 shall be taken to the court of appeals within thirty days from  
7 the date the order is made. The department shall be [~~made~~] a  
8 party to the action.

9 C. Upon appeal, the court of appeals shall set aside  
10 a regulation or order only if found to be:

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

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

15 (3) otherwise not in accordance with law. "

16 Section 99. Section 50-9-22 NMSA 1978 (being Laws 1972,  
17 Chapter 63, Section 21, as amended) is amended to read:

18 "50-9-22. PREEMPTION. --

19 A. Nothing in the Occupational Health and Safety Act  
20 shall affect the jurisdiction of any state agency or any  
21 political subdivision performing like functions or exercising  
22 like responsibilities with regard to occupational health and  
23 safety matters except as provided in Subsection B or C of this  
24 section.

25 B. Whenever the [~~board~~] secretary prescribes or



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1 adopts a regulation under the procedures provided in the  
2 Occupational Health and Safety Act, the regulation shall, when a  
3 copy thereof is filed with the clerk of the political  
4 subdivision to which it applies, establish a minimum requirement  
5 concerning the matters covered by the regulation and shall be  
6 construed in connection with any local requirement relative to  
7 the same matter. The regulation of the [~~board~~] secretary amends  
8 or modifies any requirement of the local standard [~~which~~] that  
9 does not meet the regulation.

10 C. The Occupational Health and Safety Act and  
11 regulations promulgated under it, and not the acts and  
12 regulations enforced by the state mine inspector, shall apply to  
13 places of employment subject to the jurisdiction of the United  
14 States department of labor acting under the provisions of the  
15 Occupational Safety and Health Act of 1970 [~~(84 Stat. 1590)~~], as  
16 amended.

17 D. Compliance with a regulation of the [~~board~~]  
18 secretary does not relieve any person from the obligation to  
19 comply with a stricter state agency or political subdivision  
20 health or safety requirement, but the state agency or political  
21 subdivision shall be responsible for the enforcement of the  
22 health and safety requirements established by that state agency  
23 or local authority."

24 Section 100. Section 51-1-2 NMSA 1978 (being Laws 1979,  
25 Chapter 280, Section 11, as amended) is amended to read:

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Underscored material = new  
[bracketed material] = delete

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

3 A. "department" means the [~~labor~~] workforce  
4 development department;

5 B. "division" means the employment security division  
6 of the [~~labor~~] department; and

7 C. "secretary" means the secretary of [~~labor~~]  
8 workforce development."

9 Section 101. Section 51-1-4 NMSA 1978 (being Laws 1969,  
10 Chapter 213, Section 1, as amended) is amended to read:

11 "51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT  
12 GENERALLY. --

13 A. All benefits provided herein are payable from the  
14 unemployment compensation fund. All benefits shall be paid in  
15 accordance with such regulations as the secretary may prescribe  
16 through employment offices or other agencies as the secretary  
17 may by general rule approve.

18 B. Weekly benefits shall be as follows:

19 (1) an individual's "weekly benefit amount" is  
20 an amount equal to one twenty-sixth of the total wages for  
21 insured work paid to him in that quarter of his base period in  
22 which total wages were highest. No benefit as so computed may  
23 be less than ten percent or more than fifty percent of the  
24 state's average weekly wage for all insured work. The state's  
25 average weekly wage shall be computed from all wages reported to

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[bracketed material] = delete

1 the ~~[department]~~ division from employing units in accordance  
2 with regulations of the secretary for the period ending June 30  
3 of each calendar year divided by the total number of covered  
4 employees divided by fifty-two, effective for the benefit years  
5 commencing on or after the first Sunday of the following  
6 calendar year. Any such individual is not eligible to receive  
7 benefits unless his total base-period wages equal at least one  
8 and one-fourth times the wages for insured work in that quarter  
9 of his base period in which such wages are highest;

10 (2) each eligible individual who is unemployed  
11 in any week during which he is in a continued claims status  
12 shall be paid, with respect to such week, a benefit in an amount  
13 equal to his weekly benefit amount, less that part of the wages,  
14 if any, or earnings from self-employment, payable to him with  
15 respect to such week ~~[which]~~ that is in excess of one-fifth of  
16 his weekly benefit amount. For purposes of this subsection  
17 only, "wages" includes all remuneration for services actually  
18 performed in any week for which benefits are claimed, vacation  
19 pay for any period for which the individual has a definite  
20 return-to-work date, wages in lieu of notice and back pay for  
21 loss of employment but does not include payments through a court  
22 for time spent in jury service;

23 (3) notwithstanding any other provision of this  
24 section, each eligible individual who, pursuant to a plan  
25 financed in whole or in part by a base-period employer of such

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1 individual, is receiving a governmental or other pension,  
2 retirement pay, annuity or any other similar periodic payment  
3 that is based on the previous work of such individual and who is  
4 unemployed with respect to any week ending subsequent to April  
5 9, 1981 shall be paid with respect to such week, in accordance  
6 with regulations prescribed by the secretary, compensation equal  
7 to his weekly benefit amount reduced, but not below zero, by the  
8 prorated amount of such pension, retirement pay, annuity or  
9 other similar periodic payment that exceeds the percentage  
10 contributed to the plan by the eligible individual. The maximum  
11 benefit amount payable to such eligible individual shall be an  
12 amount not more than twenty-six times his reduced weekly benefit  
13 amount. If payments referred to in this section are being  
14 received by any individual under the federal Social Security  
15 Act, the division shall take into account the individual's  
16 contribution and make no reduction in the weekly benefit amount;

17 (4) in the case of a lump-sum payment of a  
18 pension, retirement or retired pay, annuity or other similar  
19 payment by a base-period employer that is based on the previous  
20 work of such individual, such payment shall be allocated, in  
21 accordance with regulations prescribed by the secretary, and  
22 shall reduce the amount of unemployment compensation paid, but  
23 not below zero, in accordance with Paragraph (3) of this  
24 subsection; and

25 (5) the retroactive payment of a pension,

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1 retirement or retired pay, annuity or any other similar periodic  
2 payment as provided in Paragraphs (3) and (4) of this subsection  
3 attributable to weeks during which an individual has claimed or  
4 has been paid unemployment compensation shall be allocated to  
5 such weeks and shall reduce the amount of unemployment  
6 compensation for such weeks, but not below zero, by an amount  
7 equal to the prorated amount of such pension. Any overpayment  
8 of unemployment compensation benefits resulting from the  
9 application of the provisions of this paragraph shall be  
10 recovered from the claimant in accordance with the provisions of  
11 Section 51-1-38 NMSA 1978.

12 C. Any otherwise eligible individual is entitled  
13 during any benefit year to a total amount of benefits equal to  
14 whichever is the lesser of twenty-six times his weekly benefit  
15 amount or sixty percent of his wages for insured work paid  
16 during his base period.

17 D. Any benefit as determined in Subsection B or C of  
18 this section, if not a multiple of one dollar (\$1.00), shall be  
19 rounded to the next lower multiple of one dollar (\$1.00).

20 E. The secretary may prescribe regulations to  
21 provide for the payment of benefits that are due and payable to  
22 the legal representative, dependents, relatives or next of kin  
23 of claimants since deceased. These regulations need not conform  
24 with the laws governing successions, and the payment shall be  
25 deemed a valid payment to the same extent as if made under a

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1 formal administration of the succession of the claimant.

2 F. The division, on its own initiative, may  
3 reconsider a monetary determination whenever it is determined  
4 that an error in computation or identity has occurred or that  
5 wages of the claimant pertinent to such determination but not  
6 considered have been newly discovered or that the benefits have  
7 been allowed or denied on the basis of misrepresentation of  
8 fact, but no redetermination shall be made after one year from  
9 the date of the original monetary determination. Notice of a  
10 redetermination shall be given to all interested parties and  
11 shall be subject to an appeal in the same manner as the original  
12 determination. In the event that an appeal involving an  
13 original monetary determination is pending at the time a  
14 redetermination is issued, the appeal, unless withdrawn, shall  
15 be treated as an appeal from such redetermination. "

16 Section 102. Section 51-1-34 NMSA 1978 (being Laws 1936  
17 (S.S.), Chapter 1, Section 13, as amended) is amended to read:

18 "51-1-34. ADMINISTRATION FUNDS. --

19 A. There is created a special fund to be held in the  
20 custody of the state treasurer and known as the "unemployment  
21 compensation administration fund".

22 (1) All money paid into the fund is available  
23 to the secretary. All money in the fund shall be expended  
24 solely for the purposes and in the amount found necessary by the  
25 secretary of labor of the United States [of America] for the

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1 administration of the Unemployment Compensation Law. Except as  
2 provided in Subsection B of this section, the fund shall consist  
3 of money appropriated by the state, and all money received from  
4 the federal government or any of its agencies, including the  
5 department of labor of the United States [~~of America~~], the  
6 railroad retirement board or from any other source for such  
7 purpose. Money received from the railroad retirement board as  
8 compensation for services or facilities supplied to the board  
9 shall be paid into the fund. All money in the fund shall be  
10 deposited, administered and disbursed in accordance with the  
11 Unemployment Compensation Law and regulations, except that money  
12 in the fund shall not be commingled with other state funds but  
13 shall be maintained in a separate account on the books of the  
14 depository. Any balance in the fund shall not lapse at any time  
15 but shall be continuously available for expenditure consistent  
16 with the Unemployment Compensation Law. Such money is subject  
17 to the general laws applicable to the deposit of public money in  
18 New Mexico, and collateral pledged shall be maintained in a  
19 separate custody account.

20 (2) If Section 303(a)(5) of Title 3 of the  
21 Social Security Act and Section 3304(a)(4) of the Internal  
22 Revenue Code are amended to permit a state agency to use, in  
23 financing administrative expenditures incurred in carrying out  
24 its employment security functions, some part of the money  
25 collected, or to be collected, under the Unemployment

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1 Compensation Law, in partial or complete substitution for grants  
2 under Title 3, then the Unemployment Compensation Law shall be  
3 modified by proclamation and by general rules in the manner and  
4 to the extent and within the limits necessary to permit such use  
5 under the Unemployment Compensation Law, and the modification is  
6 effective on the same date as the use is permissible under  
7 federal amendments.

8 B. There is created a special fund to be held in the  
9 custody of the state treasurer and known as the "employment  
10 security [~~department~~] division fund".

11 (1) The fund is separate from the unemployment  
12 compensation administration fund.

13 (2) All money paid into the employment security  
14 [~~department~~] division fund may be expended only pursuant to an  
15 appropriation by the legislature or specific provision of law.  
16 The [~~department~~] division shall submit its annual budget for  
17 expenditures from the fund in accordance with the rules and  
18 regulations established by the department of finance and  
19 administration governing the submission of budgets by state  
20 agencies. All balances in the fund at the end of the fiscal  
21 year [~~which~~] that have not been appropriated for expenditure  
22 shall remain in the fund and be invested by the state treasurer  
23 until appropriated by the legislature. The money in the fund,  
24 except for refunds of interest and penalties erroneously  
25 collected, and except for fiscal-year balances, shall be

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1 expended solely for the purposes and in the amount found  
2 necessary for the payment of the costs of administration not  
3 chargeable against federal grants or other funds received for  
4 the unemployment compensation administration fund. Nothing in  
5 this section shall prevent the unencumbered money of the fund  
6 from being used as a revolving fund to cover necessary and  
7 proper expenditures for which federal funds have been duly  
8 requested but not yet received, subject to the charging of such  
9 expenditures against such funds when received. Money shall not  
10 be expended or made available for expenditure in any manner  
11 [~~which~~] that would permit its substitution for, or cause a  
12 corresponding reduction in, federal funds [~~which~~] that would be  
13 available, in the absence of such money, to finance expenditures  
14 for the administration of the Unemployment Compensation Law.  
15 The fund shall consist of all interest collected on delinquent  
16 contributions and all penalties provided by the Unemployment  
17 Compensation Law and all other money received for the fund from  
18 any other source. All money in the fund shall be deposited,  
19 administered and disbursed in accordance with this section,  
20 except that money in the fund shall not be commingled with other  
21 state funds but shall be maintained in a separate account on the  
22 books of the depository and is subject to the general laws  
23 applicable to the deposit of public money in New Mexico, and  
24 collateral pledged shall be maintained in a separate custody  
25 account.

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1           C. The state treasurer is liable on his official  
2 bond for the faithful performance of his duties in connection  
3 with the funds created by Subsections A and B of this section,  
4 in addition to the liability upon all other bonds. "

5           Section 103. Section 51-1-36 NMSA 1978 (being Laws 1936  
6 (S.S.), Chapter 1, Section 14, as amended) is amended to read:

7           "51-1-36. COLLECTION OF CONTRIBUTIONS. --

8           A. Contributions unpaid on the date on which they  
9 are due and payable shall bear interest at the rate of one  
10 percent per month from and after such date until payment is  
11 received by the division. Interest collected pursuant to this  
12 subsection shall be paid into the employment security  
13 [~~department~~] division fund.

14           B. If, after due notice, any employer defaults in  
15 any payment of contributions or interest thereon, the amount due  
16 shall be collected by civil action in the name of the division,  
17 and the employer adjudged in default shall pay the costs of such  
18 action. Civil actions brought under this section to collect  
19 contributions or interest thereon from an employer shall be  
20 heard by the court at the earliest possible date and shall be  
21 entitled to preference on the calendar of the court over all  
22 other civil actions except petitions for judicial review under  
23 this act and worker's compensation cases arising under Sections  
24 52-1-1 through 52-2-13 NMSA 1978 or in the discretion of the  
25 secretary. If any contribution or any portion thereof or any

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1 interest or penalty imposed by the Unemployment Compensation Law  
2 is not paid within thirty days after the same becomes due, the  
3 secretary shall, after due notice and opportunity to be heard in  
4 accordance with regulations, issue a warrant under its official  
5 seal, directed to the sheriff of any county of the state  
6 commanding him to levy upon and sell the real and personal  
7 property of the person owning the same, found within his county,  
8 of the payment of the amount due and an added amount of ten  
9 percent of the contribution in addition to any other penalties  
10 imposed and costs of executing the warrant, and to return such  
11 warrant to the secretary and pay to him the money collected by  
12 virtue thereof, by the time to be therein specified, not more  
13 than thirty days from the date of the warrant. In the event the  
14 division does not know the amount of contribution due, and the  
15 employer from whom the same is due refuses or fails to make  
16 reports showing what he or it claims for the amount of  
17 contributions [~~which~~] that it believes to be due, and the  
18 division files the warrant for the estimated amount, mailing  
19 notice to the employer stating that it is estimating the amount  
20 of contribution due and giving the estimated amount in the  
21 notice, the warrant and estimated amount shown therein shall  
22 have the same effect as any other warrant issued under this  
23 subsection. If the employer does not make a showing to the  
24 satisfaction of the secretary that the estimated amount is  
25 incorrect within thirty days after the warrant is filed with the

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1 county clerk, then the estimated amount shown in the warrant  
2 shall be and become the amount of the contribution due for the  
3 period stated in the warrant. The sheriff to whom any warrant,  
4 issued under this section, is directed shall, within five days  
5 after receipt of the same, file with the county clerk of his  
6 county a copy thereof, for which the clerk shall make no charge,  
7 and thereupon the county clerk shall record the same upon his  
8 records and the day when such copy is filed. Thereupon the  
9 amount of the warrant so filed and entered shall become a lien  
10 upon all property, real and personal, of the person against whom  
11 it is issued, including choses in action, except negotiable  
12 instruments not past due; provided, however, that such lien  
13 shall be inferior to all other valid liens, encumbrances,  
14 mortgages, judgments and assessments [~~which~~] that are filed or  
15 placed of record prior to the filing of such warrant. The  
16 sheriff or a representative of the division thereupon shall levy  
17 upon any property of the taxpayer, including negotiable  
18 instruments, and the property so levied on shall be sold in all  
19 respects with the like effect, and in the same manner as is  
20 prescribed by law with respect to executions against property  
21 upon judgments of a court of record, and the remedies of  
22 garnishment shall apply. Whenever any property or right to  
23 property upon which levy has been made is not sufficient to  
24 satisfy the claim for which levy is made, the sheriff or a  
25 representative of the division may thereafter, and as often as

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1 may be necessary, proceed to levy in like manner upon any other  
2 property or rights to property subject to levy of the person  
3 against whom the claim exists, until the amount due from him is  
4 fully paid. The sheriff shall be entitled to the general fees  
5 for his services in executing the warrant as now allowed by law  
6 for like services, to be collected in the same manner as now  
7 provided by law for like services. All costs of executing  
8 warrants including mileage of the sheriff serving and executing  
9 the same and all other costs in connection with the levy,  
10 including advertising or publication costs upon the sale of any  
11 property levied upon, shall be collected by the ~~[department]~~  
12 division from the employer from whom contribution is due.

13 C. In the event of any distribution of an employer's  
14 assets pursuant to an order of any court under the laws of this  
15 state, including any receivership, assignment for benefit of  
16 creditors, adjudicated insolvency, composition or similar  
17 proceeding, contributions then or thereafter due shall be paid  
18 in full prior to all other claims except taxes and claims for  
19 remuneration of not more than two hundred fifty dollars (\$250)  
20 to each claimant, earned within six months of the commencement  
21 of the proceeding. In the event of an employer's adjudication  
22 in bankruptcy, judicially confirmed extension proposal, or  
23 composition, under the federal Bankruptcy Code ~~[11 U.S.C. Sec.~~  
24 ~~401 et seq.]~~, contributions then or thereafter due shall be  
25 entitled to such priority as is provided in the ~~[Federal]~~

Underscored material = new  
[bracketed material] = delete

1 ~~Bankruptcy Code U.S.C. Title]~~ 11 USCA Sec. 507.

2 D. If not later than four years after the date on  
3 which any contributions or interest thereon are paid an  
4 employing unit that has paid such contributions or interest  
5 thereon [~~shall make~~] makes application for an adjustment thereof  
6 in connection with subsequent contribution payments, or for a  
7 refund thereof because such adjustment cannot be made, and the  
8 secretary [~~shall determine~~] determines that such contributions  
9 or interest or any portion thereof was erroneously collected,  
10 the secretary shall allow such employing unit to make an  
11 adjustment thereof, without interest, in connection with  
12 subsequent contribution payments by him, or if such adjustment  
13 cannot be made, the secretary shall refund the amount, without  
14 interest, from the fund to which the amount was deposited. For  
15 like cause and within the same period, adjustment or refund may  
16 be so made on the secretary's own initiative.

17 E. Any person, group of individuals, partnership or  
18 employing unit, that acquires the organization, trade or  
19 business or substantially all the assets thereof from an  
20 employer shall notify the division in writing by registered mail  
21 not later than five days prior to the acquisition. Unless such  
22 notice is given, such acquisition shall be void as against the  
23 division, if, at the time of the acquisition, any contributions  
24 are due and unpaid by the previous employer, and the secretary  
25 shall have the right to proceed against such employer either in

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1 personam or in rem and the assets so acquired shall be subject  
2 to attachment for such debt. "

3 Section 104. Section 51-1-37.1 NMSA 1978 (being Laws  
4 1982, Chapter 41, Section 4, as amended) is amended to read:

5 "51-1-37.1. CHILD SUPPORT OBLIGATIONS. --

6 A. An individual filing a claim to establish a  
7 benefit year for unemployment compensation shall, at the time of  
8 filing the claim, disclose whether or not the individual owes  
9 child support obligations. If the individual is eligible for  
10 unemployment compensation benefits and owes child support  
11 obligations, the employment security [~~department~~] division shall  
12 notify the [~~human services department~~] child support enforcement  
13 division of the workforce development department of the name of  
14 the applicant and the amount of benefits for which the claimant  
15 is eligible.

16 B. The employment security [~~department~~] division of  
17 the workforce development department shall deduct and withhold  
18 from any unemployment compensation otherwise payable to an  
19 individual who owes child support obligations:

20 (1) the amount specified by the individual to  
21 be deducted and withheld, if an amount is not specified under  
22 Paragraph (2) or (3) of this subsection;

23 (2) the amount specified in an agreement  
24 between the individual and the child support enforcement  
25 [~~bureau~~] division of the [~~human services~~] workforce development

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1 department, pursuant to Section 454(20)(B)(i) of the Social  
2 Security Act, a copy of which has been provided to the  
3 employment security [~~department~~] division by the child support  
4 enforcement [~~bureau~~] division; or

5 (3) any amount otherwise required to be so  
6 deducted and withheld from such unemployment compensation  
7 pursuant to a writ of garnishment or other legal process for  
8 enforcement of judgments issued by any court of competent  
9 jurisdiction in any state, territory or possession of the United  
10 States or any foreign country with which the United States has  
11 an agreement to honor such process directed to the department  
12 for the purpose of enforcing an individual's obligation to  
13 provide child support.

14 C. Any amount withheld from the benefits due a  
15 claimant shall be considered as payment of unemployment  
16 compensation benefits to the claimant and paid by the individual  
17 in satisfaction of his child support obligations.

18 D. The amount of child support obligations withheld  
19 by the employment security [~~department~~] division pursuant to  
20 this section shall be paid to the [~~human services department~~]  
21 child support enforcement division of the workforce development  
22 department.

23 E. "Unemployment compensation benefits" means  
24 compensation payable under the Unemployment Compensation Law and  
25 any compensation payable by or through the employment security



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1 [department] division pursuant to an agreement under any federal  
2 law providing for compensation, assistance or allowance with  
3 respect to unemployment.

4 F. "Child support obligations" includes only  
5 obligations [~~which~~] that are being enforced pursuant to a plan  
6 described in Section 454 of the Social Security Act [~~which~~] that  
7 has been approved by the United States secretary of health and  
8 human services under Part D of Title IV of the Social Security  
9 Act.

10 G. The [~~human services department~~] child support  
11 enforcement division of the workforce development department  
12 shall reimburse the employment security [~~department~~] division  
13 for the administrative costs incurred by the employment security  
14 [~~department which~~] division that are attributable to the child  
15 support obligations being enforced by the [~~human services~~  
16 ~~department~~] child support enforcement division. If the [~~human~~  
17 ~~services department~~] child support enforcement division and the  
18 employment security [~~department~~] division fail to agree on the  
19 amount of such administrative costs, the state budget division  
20 of the department of finance and administration shall prescribe  
21 the amount of administrative costs to be reimbursed. "

22 Section 105. Section 51-1-42 NMSA 1978 (being Laws 1936  
23 (S.S), Chapter 1, Section 19, as amended) is amended to read:

24 "51-1-42. DEFINITIONS. -- As used in the Unemployment  
25 Compensation Law:

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[bracketed material] = delete

1           A. "base period" means the first four of the last  
2 five completed calendar quarters immediately preceding the first  
3 day of an individual's benefit year;

4           B. "benefits" means the cash unemployment  
5 compensation payments payable to an eligible individual pursuant  
6 to Section 51-1-4 NMSA 1978 with respect to his weeks of  
7 unemployment;

8           C. "contributions" means the money payments required  
9 by Section 51-1-9 NMSA 1978 to be made into the [~~unemployment~~  
10 ~~compensation~~] fund by an employer on account of having  
11 individuals performing services for him;

12           D. "employing unit" means any individual or type of  
13 organization, including any partnership, association,  
14 cooperative, trust, estate, joint-stock company, agricultural  
15 enterprise, insurance company or corporation, whether domestic  
16 or foreign, or the receiver, trustee in bankruptcy, trustee or  
17 successor thereof, household, fraternity or club, the legal  
18 representative of a deceased person or any state or local  
19 government entity to the extent required by law to be covered as  
20 an employer, which has in its employ one or more individuals  
21 performing services for it within this state. All individuals  
22 performing services for any employing unit [~~which~~] that  
23 maintains two or more separate establishments within this state  
24 shall be deemed to be employed by a single employing unit for  
25 all the purposes of the Unemployment Compensation Law.

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[bracketed material] = delete

1 Individuals performing services for contractors, subcontractors  
2 or agents [~~which~~] that are performing work or services for an  
3 employing unit, as described in this subsection, which is within  
4 the scope of the employing unit's usual trade, occupation,  
5 profession or business, shall be deemed to be in the employ of  
6 the employing unit for all purposes of the Unemployment  
7 Compensation Law unless such contractor, subcontractor or agent  
8 is itself an employer within the provision of Subsection E of  
9 this section;

10 E. "employer" includes:

11 (1) any employing unit [~~which~~] that:

12 (a) unless otherwise provided in this  
13 section, paid for service in employment as defined in Subsection  
14 F of this section wages of four hundred fifty dollars (\$450) or  
15 more in any calendar quarter in either the current or preceding  
16 calendar year or had in employment, as defined in Subsection F  
17 of this section, for some portion of a day in each of twenty  
18 different calendar weeks during either the current or the  
19 preceding calendar year, and irrespective of whether the same  
20 individual was in employment in each such day, at least one  
21 individual;

22 (b) for the purposes of Subparagraph (a)  
23 of this paragraph, if any week includes both December 31 and  
24 January 1, the days of that week up to January 1 shall be deemed  
25 one calendar week and the days beginning January 1, another such

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1 week; and

2 (c) for purposes of defining an  
3 "employer" under Subparagraph (a) of this paragraph, the wages  
4 or remuneration paid to individuals performing services in  
5 employment in agricultural labor or domestic services as  
6 provided in Paragraphs (6) and (7) of Subsection F of this  
7 section shall not be taken into account; except that any  
8 employing unit determined to be an employer of agricultural  
9 labor under Paragraph (6) of Subsection F of this section shall  
10 be an employer under Subparagraph (a) of this paragraph so long  
11 as the employing unit is paying wages or remuneration for  
12 services other than agricultural services;

13 (2) any individual or type of organization that  
14 acquired the trade or business or substantially all of the  
15 assets thereof, of an employing unit ~~[which]~~ that at the time of  
16 such acquisition was an employer subject to the Unemployment  
17 Compensation Law; provided that where such an acquisition takes  
18 place, the secretary may postpone activating the separate  
19 account pursuant to Subsection A of Section 51-1-11 NMSA 1978  
20 until such time as the successor employer has employment as  
21 defined in Subsection F of this section;

22 (3) any employing unit ~~[which]~~ that acquired  
23 all or part of the organization, trade, business or assets of  
24 another employing unit and ~~[which]~~ that, if treated as a single  
25 unit with such other employing unit or part thereof, would be an

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[bracketed material] = delete

1 employer under Paragraph (1) of this subsection;

2 (4) any employing unit not an employer by  
3 reason of any other paragraph of this subsection:

4 (a) for which, within either the current  
5 or preceding calendar year, service is or was performed with  
6 respect to which such employing unit is liable for any federal  
7 tax against which credit may be taken for contributions required  
8 to be paid into a state unemployment fund; or

9 (b) which, as a condition for approval of  
10 the Unemployment Compensation Law for full tax credit against  
11 the tax imposed by the Federal Unemployment Tax Act, is  
12 required, pursuant to such act, to be an "employer" under the  
13 Unemployment Compensation Law;

14 (5) any employing unit [~~which~~] that, having  
15 become an employer under Paragraph (1), (2), (3) or (4) of this  
16 subsection, has not, under Section 51-1-18 NMSA 1978, ceased to  
17 be an employer subject to the Unemployment Compensation Law;

18 (6) for the effective period of its election  
19 pursuant to Section 51-1-18 NMSA 1978, any other employing unit  
20 [~~which~~] that has elected to become fully subject to the  
21 Unemployment Compensation Law; and

22 (7) any employing unit for which any services  
23 performed in its employ are deemed to be performed in this state  
24 pursuant to an election under an arrangement entered into in  
25 accordance with Subsection A of Section 51-1-50 NMSA 1978;

Underscored material = new  
[bracketed material] = delete

1 F. "employment" means:

2 (1) any service, including service in  
3 interstate commerce, performed for wages or under any contract  
4 of hire, written or oral, express or implied;

5 (2) and includes an individual's entire  
6 service, performed within or both within and without this state  
7 if:

8 (a) the service is primarily localized in  
9 this state with services performed outside the state being only  
10 incidental thereto; or

11 (b) the service is not localized in any  
12 state, but some of the service is performed in this state and:  
13 1) the base of operations or, if there is no base of operations,  
14 [~~then~~] the place from which such service is directed or  
15 controlled, is in this state; or 2) the base of operations or  
16 place from which such service is directed or controlled is not  
17 in any state in which some part of the service is performed, but  
18 the individual's residence is in this state;

19 (3) services performed within this state but  
20 not covered under Paragraph (2) of this subsection if  
21 contributions or payments in lieu of contributions are not  
22 required and paid with respect to such services under an  
23 unemployment compensation law of any other state, the federal  
24 government or Canada;

25 (4) services covered by an election pursuant to

Underscored material = new  
[bracketed material] = delete

1 Section 51-1-18 NMSA 1978 and services covered by an election  
2 duly approved by the secretary in accordance with an arrangement  
3 pursuant to [~~Paragraph (1) of~~] Subsection A of Section 51-1-50  
4 NMSA 1978 shall be deemed to be employment during the effective  
5 period of such election;

6 (5) services performed by an individual for an  
7 employer for wages or other remuneration unless and until it is  
8 established by a preponderance of evidence that:

9 (a) such individual has been and will  
10 continue to be free from control or direction over the  
11 performance of such services both under his contract of service  
12 and in fact;

13 (b) such service is either outside the  
14 usual course of business for which such service is performed or  
15 that such service is performed outside of all the places of  
16 business of the enterprise for which such service is performed;  
17 and

18 (c) such individual is customarily  
19 engaged in an independently established trade, occupation,  
20 profession or business of the same nature as that involved in  
21 the contract of service;

22 (6) service performed after December 31, 1977  
23 by an individual in agricultural labor as defined in Subsection  
24 Q of this section if:

25 (a) such service is performed for an

Underscored material = new  
[bracketed material] = delete

1 employing unit [~~which~~] that: 1) paid remuneration in cash of  
2 twenty thousand dollars (\$20,000) or more to individuals in such  
3 employment during any calendar quarter in either the current or  
4 the preceding calendar year; or 2) employed in agricultural  
5 labor ten or more individuals for some portion of a day in each  
6 of twenty different calendar weeks in either the current or  
7 preceding calendar year, whether or not such weeks were  
8 consecutive, and regardless of whether such individuals were  
9 employed at the same time;

10 (b) such service is not performed before  
11 January 1, 1980 by an individual who is an alien admitted to the  
12 United States to perform service in agricultural labor pursuant  
13 to Sections 214(c) and 101(15)(H) of the Immigration and  
14 Nationality Act; and

15 (c) for purposes of this paragraph, any  
16 individual who is a member of a crew furnished by a crew leader  
17 to perform service in agricultural labor for a farm operator or  
18 other person shall be treated as an employee of such crew  
19 leader: 1) if such crew leader meets the requirements of a crew  
20 leader as defined in Subsection L of this section; or 2)  
21 substantially all the members of such crew operate or maintain  
22 mechanized agricultural equipment [~~which~~] that is provided by  
23 the crew leader; and 3) the individuals performing such services  
24 are not, by written agreement or in fact, within the meaning of  
25 Paragraph (5) of this subsection, performing services in



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1 employment for the farm operator or other person;

2 (7) service performed after December 31, 1977  
3 by an individual in domestic service in a private home, local  
4 college club or local chapter of a college fraternity or  
5 sorority for a person or organization that paid cash  
6 remuneration of one thousand dollars (\$1,000) in any calendar  
7 quarter in the current or preceding calendar year to individuals  
8 performing such services;

9 (8) service performed after December 31, 1971  
10 by an individual in the employ of a religious, charitable,  
11 educational or other organization but only if the following  
12 conditions are met:

13 (a) the service is excluded from  
14 "employment" as defined in the Federal Unemployment Tax Act  
15 solely by reason of Section 3306(c)(8) of that act; and

16 (b) the organization meets the  
17 requirements of "employer" as provided in Subparagraph (a) of  
18 Paragraph (1) of Subsection E of this section;

19 (9) service of an individual who is a citizen  
20 of the United States, performed outside the United States,  
21 except in Canada, after December 31, 1971 in the employ of an  
22 American employer (other than service which is deemed  
23 "employment" under the provisions of Paragraph (2) of this  
24 subsection or the parallel provisions of another state's law),  
25 if:

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[bracketed material] = delete

1 (a) the employer's principal place of  
2 business in the United States is located in this state;

3 (b) the employer has no place of business  
4 in the United States, but: 1) the employer is an individual who  
5 is a resident of this state; 2) the employer is a corporation  
6 [which] that is organized under the laws of this state; or 3)  
7 the employer is a partnership or a trust and the number of the  
8 partners or trustees who are residents of this state is greater  
9 than the number who are residents of any one other state; or

10 (c) none of the criteria of Subparagraphs  
11 (a) and (b) of this paragraph are met, but the employer has  
12 elected coverage in this state or, the employer having failed to  
13 elect coverage in any state, the individual has filed a claim  
14 for benefits, based on such service, under the law of this  
15 state.

16 "American employer" for purposes of this paragraph [~~(9) of~~  
17 ~~this subsection~~] means a person who is: 1) an individual who is  
18 a resident of the United States; 2) a partnership if two-thirds  
19 or more of the partners are residents of the United States; 3) a  
20 trust if all of the trustees are residents of the United States;  
21 or 4) a corporation organized under the laws of the United  
22 States or of any state. For the purposes of this paragraph [~~(9)~~  
23 ~~of this subsection~~], "United States" includes the United States,  
24 the District of Columbia, the commonwealth of Puerto Rico and  
25 the Virgin Islands;

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1                   (10) notwithstanding any other provisions of  
2 this subsection, service with respect to which a tax is required  
3 to be paid under any federal law imposing a tax against which  
4 credit may be taken for contributions required to be paid into a  
5 state unemployment fund or which as a condition for full tax  
6 credit against the tax imposed by the Federal Unemployment Tax  
7 Act is required to be covered under the Unemployment  
8 Compensation Law;

9                   (11) "employment" shall not include:

10                   (a) service performed in the employ of:

11                   1) a church or convention or association of churches; or 2) an  
12 organization ~~[which]~~ that is operated primarily for religious  
13 purposes and ~~[which]~~ that is operated, supervised, controlled or  
14 principally supported by a church or convention or association  
15 of churches;

16                   (b) service performed by a duly ordained,  
17 commissioned or licensed minister of a church in the exercise of  
18 his ministry or by a member of a religious order in the exercise  
19 of duties required by such order;

20                   (c) service performed by an individual in  
21 the employ of his son, daughter or spouse, and service performed  
22 by a child under the age of majority in the employ of his father  
23 or mother;

24                   (d) service performed in the employ of  
25 the United States government or an instrumentality of the United

Underscored material = new  
[bracketed material] = delete

1 States immune under the constitution of the United States from  
2 the contributions imposed by the Unemployment Compensation Law  
3 except that to the extent that the congress of the United States  
4 shall permit states to require any instrumentalities of the  
5 United States to make payments into an unemployment fund under a  
6 state unemployment compensation act, all of the provisions of  
7 the Unemployment Compensation Law shall be applicable to such  
8 instrumentalities, and to service performed for such  
9 instrumentalities in the same manner, to the same extent and on  
10 the same terms as to all other employers, employing units,  
11 individuals and services; provided, that if this state shall not  
12 be certified for any year by the secretary of labor of the  
13 United States under Section 3304 of the federal Internal Revenue  
14 Code (26 U. S. C. Section 3304), the payments required of such  
15 instrumentalities with respect to such year shall be refunded by  
16 the department from the fund in the same manner and within the  
17 same period as is provided in Subsection D of Section 51-1-36  
18 NMSA 1978 with respect to contributions erroneously collected;

19 (e) service performed in a facility  
20 conducted for the purpose of carrying out a program of  
21 rehabilitation for individuals whose earning capacity is  
22 impaired by age or physical or mental deficiency or injury or  
23 providing remunerative work for individuals who because of their  
24 impaired physical or mental capacity cannot be readily absorbed  
25 in the competitive labor market, by an individual receiving such

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[bracketed material] = delete

1 rehabilitation or remunerative work;

2 (f) service with respect to which  
3 unemployment compensation is payable under an unemployment  
4 compensation system established by an act of congress;

5 (g) service performed in the employ of a  
6 foreign government, including service as a consular or other  
7 officer or employee or a nondiplomatic representative;

8 (h) service performed by an individual  
9 for a person as an insurance agent or as an insurance solicitor,  
10 if all such service performed by such individual for such person  
11 is performed for remuneration solely by way of commission;

12 (i) service performed by an individual  
13 under the age of eighteen in the delivery or distribution of  
14 newspapers or shopping news, not including delivery or  
15 distribution to any point for subsequent delivery or  
16 distribution;

17 (j) service covered by an election duly  
18 approved by the agency charged with the administration of any  
19 other state or federal unemployment compensation law, in  
20 accordance with an arrangement pursuant to [~~Paragraph (1) of~~]  
21 Subsection A of Section 51-1-50 NMSA 1978 during the effective  
22 period of such election;

23 (k) service performed, as part of an  
24 unemployment work-relief or work-training program assisted or  
25 financed in whole or part by any federal agency or an agency of

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[bracketed material] = delete

1 a state or political subdivision thereof, by an individual  
2 receiving such work relief or work training;

3 (l) service performed by an individual  
4 who is enrolled at a nonprofit or public educational institution  
5 [~~which~~] that normally maintains a regular faculty and curriculum  
6 and normally has a regularly organized body of students in  
7 attendance at the place where its educational activities are  
8 carried on as a student in a full-time program, taken for credit  
9 at such institution, [~~which~~] that combines academic instruction  
10 with work experience, if the service is an integral part of such  
11 program, and the institution has so certified to the employer,  
12 except that this subparagraph shall not apply to service  
13 performed in a program established for or on behalf of an  
14 employer or group of employers;

15 (m) service performed in the employ of a  
16 hospital, if the service is performed by a patient of the  
17 hospital, or services performed by an inmate of a custodial or  
18 penal institution for a governmental entity or nonprofit  
19 organization;

20 (n) service performed by real estate  
21 salesmen for others when the services are performed for  
22 remuneration solely by way of commission;

23 (o) service performed in the employ of a  
24 school, college or university if such service is performed by a  
25 student who is enrolled and is regularly attending classes at

Underscored material = new  
[bracketed material] = delete

1 such school, college or university;

2 (p) service performed by an individual  
3 for a fixed or contract fee officiating at a sporting event  
4 [~~which~~] that is conducted by or under the auspices of a  
5 nonprofit or governmental entity if that person is not otherwise  
6 an employee of the entity conducting the sporting event; or

7 (q) service performed for a private for-  
8 profit person or entity by an individual as a landman if  
9 substantially all remuneration paid in cash or otherwise for the  
10 performance of the services is directly related to the  
11 completion by the individual of the specific tasks contracted  
12 for rather than to the number of hours worked by the individual.  
13 For the purposes of this subparagraph, "landman" means a land  
14 professional who has been engaged primarily in: 1) negotiating  
15 for the acquisition or divestiture of mineral rights; 2)  
16 negotiating business agreements that provide for the exploration  
17 for or development of minerals; 3) determining ownership of  
18 minerals through the research of public and private records; and  
19 4) reviewing the status of title, curing title defects and  
20 otherwise reducing title risk associated with ownership of  
21 minerals; managing rights or obligations derived from ownership  
22 of interests and minerals; or utilizing or pooling of interest  
23 in minerals; and

24 (12) for the purposes of this subsection, if  
25 the services performed during one-half or more of any pay period

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[bracketed material] = delete

1 by an individual for the person employing him constitute  
2 employment, all the services of such individual for such period  
3 shall be deemed to be employment, but, if the services performed  
4 during more than one-half of any such pay period by an  
5 individual for the person employing him do not constitute  
6 employment, then none of the services of such individual for  
7 such period shall be deemed to be employment. As used in this  
8 paragraph, the term "pay period" means a period, of not more  
9 than thirty-one consecutive days, for which a payment of  
10 remuneration is ordinarily made to the individual by the person  
11 employing him. This paragraph shall not be applicable with  
12 respect to services performed in a pay period by an individual  
13 for the person employing him where any of such service is  
14 excepted by Subparagraph (f) of Paragraph (11) of this  
15 subsection;

16 G. "employment office" means a free public  
17 employment office, or branch thereof, operated by this state or  
18 maintained as a part of a state-controlled system of public  
19 employment offices;

20 H. "fund" means the unemployment compensation fund  
21 established by the Unemployment Compensation Law to which all  
22 contributions and payments in lieu of contributions required  
23 under the Unemployment Compensation Law and from which all  
24 benefits provided under the Unemployment Compensation Law shall  
25 be paid;



Underscored material = new  
[bracketed material] = delete

1 I. "unemployment" means, with respect to an  
2 individual, any week during which he performs no services and  
3 with respect to which no wages are payable to him and during  
4 which he is not engaged in self-employment or receives an award  
5 of back pay for loss of employment. The secretary shall  
6 prescribe by regulation what constitutes part-time and  
7 intermittent employment, partial employment and the conditions  
8 under which individuals engaged in such employment are eligible  
9 for partial unemployment benefits;

10 J. "state", when used in reference to any state  
11 other than New Mexico, includes, in addition to the states of  
12 the United States, the District of Columbia, the commonwealth of  
13 Puerto Rico and the Virgin Islands;

14 K. "unemployment compensation administration fund"  
15 means the fund established by Subsection A of Section 51-1-34  
16 NMSA 1978 from which administrative expenses under the  
17 Unemployment Compensation Law shall be paid. "Employment  
18 security [~~department~~] division fund" means the fund established  
19 by Subsection B of Section 51-1-34 NMSA 1978 from which certain  
20 administrative expenses under the Unemployment Compensation Law  
21 shall be paid;

22 L. "crew leader" means a person who:  
23 (1) holds a valid certificate of registration  
24 as a crew leader or farm labor contractor under the Migrant and  
25 Seasonal Agricultural Worker Protection Act;

1 (2) furnishes individuals to perform services  
2 in agricultural labor for any other person;

3 (3) pays, either on his own behalf or on behalf  
4 of such other person, the individuals so furnished by him for  
5 service in agricultural labor; and

6 (4) has not entered into a written agreement  
7 with the other person for whom he furnishes individuals in  
8 agricultural labor that such individuals will be the employees  
9 of the other person;

10 M "week" means such period of seven consecutive  
11 days, as the secretary may by regulation prescribe. The  
12 secretary may by regulation prescribe that a week shall be  
13 deemed to be "in", "within" or "during" that benefit year  
14 [~~which~~] that includes the greater part of such week;

15 N. "calendar quarter" means the period of three  
16 consecutive calendar months ending on March 31, June 30,  
17 September 30 or December 31;

18 O. "insured work" means services performed for  
19 employers who are covered under the Unemployment Compensation  
20 Law;

21 P. "benefit year" with respect to any individual  
22 means the one-year period beginning with the first day of the  
23 first week of unemployment with respect to which the individual  
24 first files a claim for benefits in accordance with Subsection A  
25 of Section 51-1-8 NMSA 1978 and thereafter the one-year period

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1 beginning with the first day of the first week of unemployment  
2 with respect to which the individual next files such a claim for  
3 benefits after the termination of his last preceding benefit  
4 year; provided that at the time of filing such a claim the  
5 individual has been paid the wages for insured work required  
6 under Paragraph (5) of Subsection A of Section 51-1-5 NMSA 1978;

7 Q. "agricultural labor" includes all services  
8 performed:

9 (1) on a farm, in the employ of any person, in  
10 connection with cultivating the soil or in connection with  
11 raising or harvesting any agricultural or horticultural  
12 commodity, including the raising, shearing, feeding, caring for,  
13 training and management of livestock, bees, poultry and fur-  
14 bearing animals and wildlife;

15 (2) in the employ of the owner or tenant or  
16 other operator of a farm, in connection with the operation,  
17 management, conservation or maintenance of such farm and its  
18 tools and equipment, if the major part of such service is  
19 performed on a farm;

20 (3) in connection with the operation or  
21 maintenance of ditches, canals, reservoirs or waterways used  
22 exclusively for supplying and storing water for farming purposes  
23 when such ditches, canals, reservoirs or waterways are owned and  
24 operated by the farmers using the water stored or carried  
25 therein; and

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[bracketed material] = delete

1 (4) in handling, planting, drying, packing,  
2 packaging, processing, freezing, grading, storing or delivery to  
3 storage or to market or to a carrier for transportation to  
4 market any agricultural or horticultural commodity but only if  
5 such service is performed as an incident to ordinary farming  
6 operations. The provisions of this paragraph shall not be  
7 deemed to be applicable with respect to service performed in  
8 connection with commercial canning or commercial freezing or in  
9 connection with any agricultural or horticultural commodity  
10 after its delivery to a terminal market for distribution for  
11 consumption.

12 As used in this subsection, the term "farm" includes  
13 stock, dairy, poultry, fruit, fur-bearing animal and truck  
14 farms, plantations, ranches, nurseries, greenhouses, ranges and  
15 orchards;

16 R. "payments in lieu of contributions" means the  
17 money payments made into the fund by an employer pursuant to the  
18 provisions of Subsection A of Section 51-1-13 NMSA 1978;

19 S. "department" means the [~~labor~~] workforce  
20 development department; and

21 T. "wages" means all remuneration for services,  
22 including commissions and bonuses and the cash value of all  
23 remuneration in any medium other than cash. The reasonable cash  
24 value of remuneration in any medium other than cash shall be  
25 established and determined in accordance with regulations

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[bracketed material] = delete

1 prescribed by the secretary; provided that the term "wages"  
2 shall not include:

3 (1) subsequent to December 31, 1977, that part  
4 of the remuneration in excess of the base wage as determined by  
5 the secretary for each calendar year. The base wage upon which  
6 contribution shall be paid during any calendar year shall be  
7 sixty-five percent of the state's average annual earnings  
8 computed by the department by dividing total wages reported to  
9 the department by contributing employers for the second  
10 preceding calendar year before the calendar year the computed  
11 base wage becomes effective by the average annual employment  
12 reported by contributing employers for the same period rounded  
13 to the next higher multiple of one hundred dollars (\$100);  
14 provided that the base wage so computed for any calendar year  
15 shall not be less than seven thousand dollars (\$7,000). Wages  
16 paid by an employer to an individual in his employ during any  
17 calendar year in excess of the base wage in effect for that  
18 calendar year shall be reported to the department but shall be  
19 exempt from the payment of contributions unless such wages paid  
20 in excess of the base wage become subject to tax under a federal  
21 law imposing a tax against which credit may be taken for  
22 contributions required to be paid into a state unemployment  
23 fund;

24 (2) the amount of any payment with respect to  
25 services performed after June 30, 1941 to or on behalf of an

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1 individual in its employ under a plan or system established by  
2 an employing unit [~~which~~] that makes provision for individuals  
3 in its employ generally or for a class or classes of such  
4 individuals, including any amount paid by an employing unit for  
5 insurance or annuities, or into a fund, to provide for any such  
6 payment, on account of:

7 (a) retirement if such payments are made  
8 by an employer to or on behalf of any employee under a  
9 simplified employee pension plan that provides for payments by  
10 an employer in addition to the salary or other remuneration  
11 normally payable to such employee or class of such employees and  
12 does not include any payments [~~which~~] that represent deferred  
13 compensation or other reduction of an employee's normal taxable  
14 wages or remuneration or any payments made to a third party on  
15 behalf of an employee as part of an agreement of deferred  
16 remuneration;

17 (b) sickness or accident disability if  
18 such payments are received under a workers' compensation or  
19 occupational disease disablement law;

20 (c) medical and hospitalization expenses  
21 in connection with sickness or accident disability; or

22 (d) death; provided the individual in its  
23 employ has not the option to receive, instead of provision for  
24 such death benefit, any part of such payment, or, if such death  
25 benefit is insured, any part of the premiums or contributions to

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[bracketed material] = delete

1 premiums paid by his employing unit and has not the right under  
2 the provisions of the plan or system or policy of insurance  
3 providing for such death benefit to assign such benefit, or to  
4 receive a cash consideration in lieu of such benefit either upon  
5 his withdrawal from the plan or system providing for such  
6 benefit or upon termination of such plan or system or policy of  
7 insurance or of his service with such employing unit;

8 (3) remuneration for agricultural labor paid in  
9 any medium other than cash;

10 (4) any payment made to, or on behalf of, an  
11 employee or an employee's beneficiary under a cafeteria plan  
12 within the meaning of Section 125 of the federal Internal  
13 Revenue Code of 1986;

14 (5) any payment made, or benefit furnished to  
15 or for the benefit of an employee if at the time of such payment  
16 or such furnishing it is reasonable to believe that the employee  
17 will be able to exclude such payment or benefit from income  
18 under Section 129 of the federal Internal Revenue Code of 1986;  
19 or

20 (6) any payment made by an employer to a  
21 survivor or the estate of a former employee after the calendar  
22 year in which such employee died. [~~The provisions of this~~  
23 ~~section shall become effective July 1, 1993.~~]"

24 Section 106. TEMPORARY PROVISION--TRANSFER OF  
25 APPROPRIATIONS, EQUIPMENT, SUPPLIES, RECORDS, PERSONNEL, MONEY

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1 AND CONTRACTS. --

2 A. On July 1, 1997, all appropriations, equipment,  
3 supplies, records, personnel and money of the labor department,  
4 the human services department, the youth conservation corps unit  
5 of the energy, minerals and natural resources department, the  
6 americorps unit of the children, youth and families department  
7 and the occupational health and safety bureau of the department  
8 of environment are transferred to the workforce development  
9 department. For the remainder of fiscal year 1998, the budgets  
10 of the labor department, the human services department, the  
11 youth conservation corps unit of the energy, minerals and  
12 natural resources department, the americorps unit of the  
13 children, youth and families department and the occupational  
14 health and safety bureau of the department of environment shall  
15 be the budgets of the workforce development department, subject  
16 to such transfers as may be required by the secretary of  
17 workforce development. All federal program grants and fund  
18 allocations or other payments made to the labor department, the  
19 human services department, the youth conservation corps unit of  
20 the energy, minerals and natural resources department, the  
21 americorps unit of the children, youth and families department  
22 and the occupational health and safety bureau of the department  
23 of environment shall be transferred to the workforce development  
24 department pursuant to the Workforce Development Department Act  
25 and shall not be commingled with other funds of the department

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1 or be used for any purpose except for the administration of the  
2 program for which such funds were granted.

3 B. All existing contracts and agreements in effect  
4 as to the labor department, the human services department, the  
5 youth conservation corp unit of the energy, minerals and natural  
6 resources department, the americorps unit of the children, youth  
7 and families department and the occupational health and safety  
8 bureau of the department of environment shall be binding and  
9 effective upon the workforce development department.

10 Section 108. TEMPORARY PROVISION--TRANSFER OF  
11 APPROPRIATIONS, EQUIPMENT, SUPPLIES, RECORDS, PERSONNEL, MONEY  
12 AND CONTRACTS FOR THE STATE MEDICAID PROGRAM --

13 A. On July 1, 1998, all appropriations, equipment,  
14 supplies, records, personnel and money of the medical assistance  
15 division of the workforce development department are transferred  
16 to the department of health. For the remainder of fiscal year  
17 1999, the budget of the medical assistance division shall be the  
18 budget of the department of health, subject to such transfers as  
19 may be required by the secretary of health. All federal program  
20 grants and fund allocations or other payments made to the  
21 medical assistance division of the workforce development  
22 department shall be transferred to the department of health and  
23 shall not be commingled with other funds of the department or be  
24 used for any purpose except for the administration of the  
25 program for which such funds were granted.

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Underscored material = new  
[bracketed material] = delete

1           B. All existing contracts and agreements in effect  
2 as to the medical assistance division of the workforce  
3 development department shall be binding and effective on the  
4 department of health.

5           Section 108. TEMPORARY PROVISION--EFFECT OF EXISTING  
6 RULES, REGULATIONS, ORDERS AND RULINGS.--

7           A. The rules, regulations, orders and rulings of the  
8 medical assistance division of the human services department in  
9 effect on June 30, 1997 shall remain in effect after the  
10 effective date of this act, until repealed or amended.

11           B. The rules, regulations, orders and rulings of the  
12 medical assistance division of the workforce development  
13 department in effect on June 30, 1998 shall remain in effect on  
14 or after July 1, 1998 until repealed or amended.

15           Section 109. REPEAL.--Sections 9-8-1 through 9-8-14,  
16 9-18-1 through 9-18-15 and 50-6-15 NMSA 1978 (being Laws 1977,  
17 Chapter 252, Sections 1 through 4, 6 through 13 and 15, Laws  
18 1987, Chapter 31, Section 4, Laws 1987, Chapter 342, Sections 1  
19 through 14, Laws 1993, Chapter 16, Section 2, Laws 1993, Chapter  
20 25, Section 2 and Laws 1963, Chapter 175, Section 3, as amended)  
21 are repealed.

22           Section 110. SEVERABILITY.--If any part or application of  
23 this act is held invalid, the remainder of its application to  
24 other situations or persons shall not be affected.

25           Section 111. EFFECTIVE DATE.--

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A. The effective date of the provisions of Sections 1 through 25, 27 through 33, 35, 37, 39, 42, 44, 46, 47, 49, 50, 52, 54, 56, 57, 59, 61 through 107 and 109 through 112 of this act is July 1, 1997.

B. The effective date of the provisions of Sections 26, 34, 36, 38, 40, 41, 43, 45, 48, 51, 53, 55, 58, 60 and 108 of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

3 SB 429/a

4  
5  
6 February 8, 1997

7  
8 Mr. President:

9  
10 Your COMMITTEE OF THE WHOLE, to whom has been referred

11  
12 SENATE BILL 429

13  
14 has had it under consideration and reports same WITHOUT

15  
16 RECOMMENDATION, amended as follows:

17  
18 1. On page 161, line 10, strike "108" and insert in lieu thereof  
19 "107".,

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21 and thence referred to the PUBLIC AFFAIRS COMMITTEE.

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23 Respectfully submitted,

FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

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Manny M. Aragon, Chairman

Adopted \_\_\_\_\_

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

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 24 For 4 Against

Yes: 24

No: Adair, Gorham, Griego and Jennings

Excused: Boitano, Howes, Kidd, Lyons, Macias, Maes, McKibben, McSorley,  
Rawson, Romero, Sanchez, Stockard, Tsosie, and Vernon

Absent: None

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