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HOUSE BILL 74

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

GARY K. KING

FOR THE REGULATION COMMISSION REORGANIZATION COMMITTEE

AN ACT

RELATING TO THE MERGER OF THE STATE CORPORATION COMMISSION AND  
THE NEW MEXICO PUBLIC UTILITY COMMISSION; PROVIDING THE  
STATUTORY FRAMEWORK TO CARRY OUT THE PROVISIONS OF ARTICLE 11,  
SECTIONS 1 AND 2 OF THE CONSTITUTION OF NEW MEXICO THAT  
CREATED THE PUBLIC REGULATION COMMISSION; HARMONIZING CERTAIN  
STATUTORY PROVISIONS RELATING TO REGULATION BY THE COMMISSION;  
ABOLISHING THE NEW MEXICO PUBLIC UTILITY COMMISSION; MOVING  
THE STATE FIRE MARSHAL AND THE FIREFIGHTER'S TRAINING ACADEMY  
TO THE DEPARTMENT OF PUBLIC SAFETY; ABOLISHING THE INSURANCE  
BOARD AND THE FIRE BOARD; TRANSFERRING PERSONNEL, PROPERTY,  
CONTRACTUAL AGREEMENTS, RULES AND STATUTORY REFERENCES.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 20 of this act may be cited as the "Public Regulation  
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1 Commission Act".

2 Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the  
3 Public Regulation Commission Act:

4 A. "commission" means the public regulation  
5 commission;

6 B. "commissioner" means a person elected or  
7 appointed to the public regulation commission; and

8 C. "person" means an individual, corporation,  
9 firm, partnership, association, joint venture or similar legal  
10 entity.

11 Section 3. [NEW MATERIAL] PUBLIC REGULATION  
12 COMMISSION. --

13 A. The "public regulation commission", created in  
14 Article 11, Section 1 of the constitution of New Mexico, is  
15 composed of five commissioners elected from districts as  
16 provided in that article and the Public Regulation Commission  
17 Apportionment Act.

18 B. The commission shall annually elect one of its  
19 members chairman, who shall preside at hearings. In the  
20 absence of the chairman, the commission may appoint any other  
21 member to preside.

22 Section 4. [NEW MATERIAL] COMMISSION--GENERAL POWERS  
23 AND DUTIES. --

24 A. The commission shall administer and enforce the  
25 laws with which it is charged and has every power conferred by

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1 law.

2 B. The commission may:

3 (1) subject to legislative appropriation,  
4 appoint and employ such professional, technical and clerical  
5 assistance as it deems necessary to assist it in performing  
6 its powers and duties;

7 (2) delegate authority to subordinates as it  
8 deems necessary and appropriate, clearly delineating such  
9 delegated authority and any limitations;

10 (3) retain competent attorneys to handle the  
11 legal matters of the commission and give advice and counsel in  
12 regard to any matter connected with the duties of the  
13 commission and, in the discretion of the commission, to  
14 represent the commission in any legal proceeding;

15 (4) organize into organizational units as  
16 necessary to enable it to function most efficiently, subject  
17 to provisions of law requiring or establishing specific  
18 organizational units;

19 (5) take administrative action by issuing  
20 orders not inconsistent with law to assure implementation of  
21 and compliance with the provisions of law for which the  
22 commission is responsible and to enforce those orders by  
23 appropriate administrative action and court proceedings;

24 (6) conduct research and studies to improve  
25 the commission's operations or the provision of services to

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1 the citizens of New Mexico;

2 (7) conduct investigations as necessary to  
3 carry out the commission's responsibilities;

4 (8) apply for and accept grants and donations  
5 in the name of the state to carry out its powers and duties;

6 (9) enter into contracts to carry out its  
7 powers and duties;

8 (10) adopt such reasonable administrative,  
9 regulatory and procedural rules as may be necessary or  
10 appropriate to carry out its powers and duties;

11 (11) cooperate with tribal and pueblo  
12 governments on topics over which the commission and the other  
13 governments have jurisdiction and conduct joint  
14 investigations, hold joint hearings and issue joint or  
15 concurrent orders as appropriate; and

16 (12) apply to the district court for  
17 injunctions to prevent violations of any laws that it  
18 administers or rules or orders adopted pursuant to those laws.

19 C. The commission shall:

20 (1) prepare an annual budget for submission  
21 to the legislature;

22 (2) provide for surety bond coverage for all  
23 employees of the commission as provided in the Surety Bond Act  
24 and pay the costs of such bonds;

25 (3) adopt rules to streamline the resolution

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1 of cases before it when appropriate by:  
2 (a) the use of hearing examiners;  
3 (b) the taking of evidence with the  
4 least delay practicable;  
5 (c) limiting repetitious testimony; and  
6 (d) adopting procedures for resolving  
7 cases in ways other than by trial-type hearings when  
8 appropriate, including consent calendars, conferences,  
9 settlements, mediation, arbitration and other alternative  
10 dispute resolution methods and the use of staff decisions; and  
11 (4) provide a toll-free telephone number and  
12 publish it and the commission's general telephone number in  
13 local telephone directories.

14 D. A majority of the commission constitutes a  
15 quorum for the transaction of business; provided, however,  
16 that a majority vote of the commission is needed for a final  
17 decision of the commission.

18 Section 5. [NEW MATERIAL] CHIEF OF STAFF--DIVISION  
19 DIRECTORS--OTHER STAFF.--

20 A. The commission shall appoint a "chief of staff"  
21 who is responsible for the day-to-day operations of the  
22 commission staff under the general direction of the  
23 commission. The chief of staff shall serve at the pleasure of  
24 the commission.

25 B. With the consent of the commission, the chief

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1 of staff shall appoint division directors. Appointments shall  
2 be made without reference to party affiliation and solely on  
3 the ground of fitness to perform the duties of their offices.

4 C. Each director, with the consent of the chief of  
5 staff, shall employ such professional, technical and support  
6 staff as necessary to carry out the duties of his division.  
7 Employees shall be hired solely on the ground of their fitness  
8 to perform the job for which they are hired. Division staff  
9 are subject to the provisions of the Personnel Act.

10 Section 6. [NEW MATERIAL] COMMISSION--DIVISIONS. --The  
11 commission shall include the following organizational units:

- 12 A. the administrative services division;
- 13 B. the consumer relations division;
- 14 C. the insurance division;
- 15 D. the legal division;
- 16 E. the transportation division; and
- 17 F. the utility division.

18 Section 7. [NEW MATERIAL] ADMINISTRATIVE SERVICES  
19 DIVISION--CHIEF CLERK. --

20 A. The chief of staff shall appoint a "chief  
21 clerk" who shall record the judgments, rules, orders and other  
22 proceedings of the commission and make a complete index to the  
23 judgments, rules, orders and other proceedings; issue and  
24 attest all processes issuing from the commission and affix the  
25 seal of the commission to them; and preserve the seal and

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1 other property belonging to the commission.

2 B. The chief clerk shall direct the administrative  
3 services division, including the "corporations bureau" and the  
4 following functions:

- 5 (1) case docketing;
- 6 (2) budget and accounting;
- 7 (3) personnel services;
- 8 (4) procurement; and
- 9 (5) information systems services.

10 C. The corporations bureau shall perform the  
11 functions of the corporations department of the former state  
12 corporation commission.

13 Section 8. [NEW MATERIAL] CONSUMER RELATIONS  
14 DIVISION. --

15 A. The consumer relations division shall:

16 (1) receive and investigate nondocketed  
17 consumer complaints and assist consumers in resolving, in a  
18 fair and timely manner, complaints against a person under the  
19 authority of the commission, including mediation and other  
20 methods of alternative dispute resolution; provided, however,  
21 that assistance pursuant to this paragraph does not include  
22 legal representation of a private complainant in an  
23 adjudicatory proceeding;

24 (2) work with the consumer protection  
25 division of the attorney general's office, the governor's

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1 constituent services office and other state agencies as needed  
2 to ensure fair and timely resolution of complaints;

3 (3) advise the commission on how to maximize  
4 public input into commission proceedings, including ways to  
5 eliminate language, disability and other barriers;

6 (4) identify, research and advise the  
7 commission on consumer issues;

8 (5) assist the commission in the development  
9 and implementation of consumer policies and programs; and

10 (6) perform such other duties as prescribed  
11 by the commission.

12 B. All complaints received by the division with  
13 regard to quality or quantity of service provided by a  
14 regulated entity or its competitors shall be recorded by the  
15 division for the purpose of determining general concerns of  
16 consumers. A report of consumer complaints and their status  
17 shall be included in the commission's annual report.

18 Section 9. [NEW MATERIAL] INSURANCE DIVISION. --

19 A. The director of the insurance division is the  
20 "superintendent of insurance" and shall have all the powers  
21 and duties prescribed to him in the New Mexico Insurance Code.

22 B. The insurance division shall consist of such  
23 bureaus as the superintendent of insurance determines for the  
24 orderly conduct of business.

25 Section 10. [NEW MATERIAL] LEGAL DIVISION. --

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1           A. The commission shall set minimum requirements  
2 for the director of the legal division, including membership  
3 in the New Mexico bar and administrative and supervisory  
4 experience.

5           B. The legal division shall:

6                 (1) provide legal counsel for the commission  
7 in matters not involving advice on contested proceedings  
8 before the commission; and

9                 (2) provide legal counsel to all divisions,  
10 including the legal component of the staff that represents the  
11 public interest in matters before the commission.

12           Section 11. [NEW MATERIAL] TRANSPORTATION DIVISION. --

13 The transportation division shall serve as staff to the  
14 commission for the following functions, as provided by law:

- 15           A. motor carrier regulation and enforcement;
- 16           B. railroad safety enforcement;
- 17           C. pipeline safety; and
- 18           D. ambulance standards.

19           Section 12. [NEW MATERIAL] UTILITY DIVISION. --

20           A. The utility division shall serve as staff to  
21 the commission in the regulation of electric, natural gas,  
22 telecommunications and water and wastewater systems as  
23 provided by law.

24           B. The commission shall set minimum educational  
25 and experience requirements for the director of the utility

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1 division.

2 C. The utility division shall represent the public  
3 interest in utility matters before the commission and may  
4 present testimony and cross-examine witnesses.

5 D. The utility division shall perform the  
6 functions of the telecommunications department of the former  
7 state corporation commission and staff functions, not  
8 including advisory functions, of the former New Mexico public  
9 utility commission.

10 E. Utility division staff shall not have ex parte  
11 communications with commissioners or a hearing examiner  
12 assigned to a utility case.

13 Section 13. [NEW MATERIAL] ADVISORY STAFF. --

14 A. The chief of staff may hire, with the consent  
15 of the commission, advisory staff with expertise in regulatory  
16 law, engineering, economics and other professional or  
17 technical disciplines to advise the commission on any matter  
18 before the commission. The chief of staff may hire on a  
19 temporary, term or contract basis such other experts or staff  
20 as the commission requires for a particular case.

- 21 B. Advisory staff shall:
- 22 (1) analyze case records;
  - 23 (2) analyze recommended decisions;
  - 24 (3) advise the commission on policy issues;
  - 25 (4) assist the commission in the development

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1 of rules;

2 (5) assist the commission in writing final  
3 orders; and

4 (6) perform such other duties as required by  
5 the chief of staff.

6 Section 14. [NEW MATERIAL] HEARING EXAMINERS. --

7 A. The commission may appoint a commissioner or a  
8 hearing examiner to preside over any matter before the  
9 commission, including rulemakings, adjudicatory hearings and  
10 administrative matters.

11 B. Except as provided in the New Mexico Insurance  
12 Code, a hearing examiner shall provide the commission with a  
13 recommended decision on the matter assigned to him, including  
14 findings of fact and conclusions of law. The recommended  
15 decision shall be provided to the parties, and they may file  
16 exceptions to the decision prior to the final decision of the  
17 commission.

18 Section 15. [NEW MATERIAL] COMMISSION RULES--PROCEDURES  
19 FOR ADOPTION. --

20 A. Unless otherwise provided by law, no rule  
21 affecting a person outside the commission shall be adopted,  
22 amended or repealed except after public notice and public  
23 hearing before the commission or a hearing examiner designated  
24 by the commission.

25 B. Notice of the subject matter of the rule, the

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1 action proposed to be taken, the manner in which interested  
2 persons may present their views and the method by which copies  
3 of the proposed rule, amendment or repealing provisions may be  
4 obtained shall be published at least once at least thirty days  
5 prior to the hearing date in a newspaper of general  
6 circulation and mailed at least thirty days prior to the  
7 hearing date to all persons who have made a written request  
8 for advance notice. Additional notice may be made by posting  
9 on the internet or by using other alternative methods of  
10 informing interested persons.

11 C. If the commission finds that immediate  
12 adoption, amendment or suspension of a rule is necessary for  
13 the preservation of the public peace, health, safety or  
14 general welfare, the commission may dispense with notice and  
15 public hearing and adopt, amend or suspend the rule as an  
16 emergency. The commission's finding of why an emergency  
17 exists shall be incorporated in the emergency rule, amendment  
18 or suspension filed with the state records center. Upon  
19 adoption of an emergency rule that is intended to remain in  
20 effect for longer than sixty days, notice shall be given  
21 within seven days of filing the rule as required in this  
22 section for proposed rules.

23 D. The commission shall issue a rule within  
24 eighteen months following the publication of that proposed  
25 rule or it shall be deemed to be withdrawn. The commission

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1 may propose the same or revised rule in a subsequent  
2 rulemaking.

3 E. All rules shall be filed in accordance with the  
4 State Rules Act and shall be effective fifteen days after  
5 filing unless a longer time is provided by the rule.

6 Section 16. [NEW MATERIAL] RECORD OF PROCEEDINGS. --  
7 Unless otherwise provided by law, the commission may by rule  
8 provide that oral proceedings before the commission may be  
9 taken by any means that provides a full and complete record,  
10 including tape recording or stenography. The commission by  
11 rule shall determine when tape recordings are transcribed. A  
12 party to the proceeding may request a copy of a tape recording  
13 or a written transcript if one is provided. The commission  
14 may charge a reasonable fee for a copy of a proceeding. Copy  
15 costs shall be determined by the commission by rule and money  
16 collected shall be deposited in the general fund.

17 Section 17. [NEW MATERIAL] EX PARTE COMMUNICATIONS. --

18 A. A commissioner shall not initiate, permit or  
19 consider a communication directly or indirectly with a party  
20 or his representative outside the presence of the other  
21 parties concerning a pending rulemaking after the record has  
22 been closed or a pending adjudication.

23 B. A hearing examiner shall not initiate, permit  
24 or consider a communication directly or indirectly with a  
25 party or his representative outside the presence of the other

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1 parties concerning a pending rulemaking or adjudication.

2 C. Notwithstanding the provisions of Subsections A  
3 and B of this section, the following ex parte communications  
4 are permitted:

5 (1) where circumstances require, ex parte  
6 communications for procedural or administrative purposes or  
7 emergencies that do not deal with substantive matters or  
8 issues on the merits are allowed if the commissioner or  
9 hearing examiner reasonably believes that no party will gain  
10 an advantage as a result of the ex parte communication and the  
11 commissioner or hearing examiner makes provision to promptly  
12 notify all other parties of the substance of the ex parte  
13 communication;

14 (2) a commissioner may consult with another  
15 commissioner or with advisory staff whose function is to  
16 advise the commission in carrying out the commissioner's  
17 rulemaking or adjudicative responsibilities;

18 (3) a hearing examiner may consult with the  
19 commission's advisory staff; and

20 (4) a commissioner or hearing examiner may  
21 obtain the advice of a nonparty expert on an issue raised in  
22 the rulemaking or adjudication if the commissioner or hearing  
23 examiner gives notice to the parties of the person consulted  
24 and the substance of the advice and affords the parties  
25 reasonable opportunity to respond.

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1           D. A commissioner or hearing examiner who receives  
2 or who makes or knowingly causes to be made a communication  
3 prohibited by this section shall disclose it to all parties  
4 and give other parties an opportunity to respond.

5           E. Upon receipt of a communication knowingly made  
6 or caused to be made by a party to a commissioner or hearing  
7 examiner in violation of this section, the commissioner or  
8 hearing examiner may, to the extent consistent with the  
9 interests of justice and the policy of the underlying  
10 statutes, require the party to show cause why his claim or  
11 interest in the proceeding should not be dismissed, denied,  
12 disregarded or otherwise adversely affected on account of the  
13 violation of this section.

14           Section 18. [NEW MATERIAL] RECUSAL OF COMMISSIONER OR  
15 HEARING EXAMINER. --

16           A. A commissioner or hearing examiner shall recuse  
17 himself in any adjudicatory proceeding in which he is unable  
18 to make a fair and impartial decision or in which there is  
19 doubt about whether he can make a fair and impartial decision,  
20 including:

21                   (1) when he has a personal bias or prejudice  
22 concerning a party or its representative or has prejudged a  
23 disputed evidentiary fact involved in a proceeding prior to  
24 hearing. For the purposes of this paragraph, "personal bias  
25 or prejudice" means a predisposition toward a person based on

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1 a previous or ongoing relationship, including a professional,  
2 personal, familial or other intimate relationship, that sways  
3 judgment and renders the commissioner or hearing examiner  
4 unable to exercise his functions impartially;

5 (2) when he has a pecuniary interest in the  
6 outcome of the proceeding other than as a customer of a party;

7 (3) when in previous employment he served as  
8 an attorney, adviser, consultant or witness in the matter in  
9 controversy; or

10 (4) when, as a candidate for office, he  
11 announced how he would rule on the adjudicatory proceeding or  
12 a factual issue in the adjudicatory proceeding.

13 B. If a commissioner or hearing examiner fails to  
14 recuse himself when it appears that grounds exist, a party  
15 shall promptly notify the commissioner or hearing examiner of  
16 the apparent grounds for recusal. If the commissioner or  
17 hearing examiner declines to recuse himself upon request of a  
18 party, he shall provide full disclosure on the record of all  
19 facts in support of his refusal to recuse himself.

20 Section 19. [NEW MATERIAL] PROHIBITED ACTS--  
21 CANDIDATES-- COMMISSIONERS AND EMPLOYEES. --

22 A. As used in this section, in addition to the  
23 definitions provided in Section 2 of the Public Regulation  
24 Commission Act:

25 (1) "affiliated interest" means a person who

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1 directly controls or is controlled by or is under common  
2 control with a regulated entity, including an agent,  
3 representative, attorney, employee, officer, owner, director  
4 or partner of an affiliated interest. For the purposes of  
5 this definition, "control" includes the possession of the  
6 power to direct or cause the direction of the management and  
7 policies of a person, whether directly or indirectly, through  
8 the ownership, control or holding with the power to vote of  
9 ten percent or more of the person's voting securities;

10 (2) "intervenor" means a person who is  
11 intervening as a party in an adjudicatory matter or commenting  
12 in a rulemaking pending before the commission or has  
13 intervened in an adjudicatory or rulemaking matter before the  
14 commission within the preceding twenty-four months, including  
15 an agent, representative, attorney, employee, officer, owner,  
16 director, partner or member of an intervenor;

17 (3) "pecuniary interest" includes owning or  
18 controlling securities; serving as an officer, director,  
19 partner, owner, employee, attorney or consultant; or otherwise  
20 benefiting from a business relationship, but does not include  
21 an investment in a mutual fund or similar third-party-  
22 controlled investment or pension or disability benefits; and

23 (4) "regulated entity" means a person whose  
24 charges for services to the public are regulated by the  
25 commission and includes any direct or emerging competitors of

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1 a regulated entity and includes an agent, representative,  
2 attorney, employee, officer, owner, director or partner of the  
3 regulated entity.

4 B. In addition to the requirements of the  
5 Financial Disclosure Act and the Governmental Conduct Act,  
6 candidates for the commission, commissioners and employees of  
7 the commission shall comply with the requirements of this  
8 section and Sections 17 and 18 of the Public Regulation  
9 Commission Act, as applicable.

10 C. A candidate for election to the public  
11 regulation commission shall not solicit or accept anything of  
12 value, either directly or indirectly, from a person whose  
13 charges for services to the public are regulated by the  
14 commission. For the purposes of this paragraph, "anything of  
15 value" includes money, in-kind contributions and volunteer  
16 services to the candidate or his campaign organization, but  
17 does not include pension or disability benefits.

18 D. A commissioner or employee of the commission  
19 shall not:

20 (1) accept anything of value from a regulated  
21 entity, affiliated interest or intervenor. For the purposes  
22 of this paragraph, a commissioner may accept allowable  
23 campaign contributions when campaigning for reelection. For  
24 the purposes of this paragraph, "anything of value" does not  
25 include:

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1 (a) the cost of refreshments totaling  
2 no more than five dollars (\$5.00) a day or refreshments at a  
3 public reception or other public social function that are  
4 available to all guests equally;

5 (b) inexpensive promotional items that  
6 are available to all customers of the regulated entity,  
7 affiliated interest or intervenor; or

8 (c) pension or disability benefits  
9 received from a regulated entity, affiliated interest or  
10 intervenor;

11 (2) have a pecuniary interest in a regulated  
12 entity, affiliated interest or intervenor; or

13 (3) solicit any regulated entity, affiliated  
14 interest or intervenor to appoint a person to a position or  
15 employment in any capacity.

16 E. After leaving the commission:

17 (1) a former commissioner shall not be  
18 employed or retained by a regulated entity, affiliated  
19 interest or intervenor within two years of his separation from  
20 the commission;

21 (2) a former employee shall not appear before  
22 the commission representing a party to an adjudication or a  
23 participant in a rulemaking within one year of ceasing to be  
24 an employee; and

25 (3) a former commissioner or employee shall

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1 not represent a party before the commission or a court in a  
2 matter that was pending before the commission while the  
3 commissioner or employee was associated with the commission  
4 and in which he was personally and substantially involved in  
5 the matter.

6 F. The attorney general or a district attorney may  
7 institute a civil action in the district court for Santa Fe  
8 county or, in his discretion, the district court for the  
9 county in which a defendant resides if a violation of this  
10 section has occurred or to prevent a violation of this  
11 section. A civil penalty may be assessed in the amount of two  
12 hundred fifty dollars (\$250) for each violation, not to exceed  
13 five thousand dollars (\$5,000).

14 Section 20. [NEW MATERIAL] COMMISSION REPORTS. -- By  
15 December 1 of each year, the commission shall report to the  
16 legislature and the governor regarding its activities for the  
17 previous year in sufficient detail to disclose the workings of  
18 the commission and the impact of regulation on the industries  
19 regulated by the commission. The report may include  
20 suggestions and recommended changes in law, as the commission  
21 deems appropriate, that would be in the public interest.

22 Section 21. Section 8-1-1 NMSA 1978 (being Laws 1971,  
23 Chapter 260, Section 1, as amended) is amended to read:

24 "8-1-1. COMPENSATION OF ELECTIVE STATE OFFICERS. --

25 A. Annual compensation of elective state officers

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1 shall be paid as follows:

- 2 governor. . . . . \$90,000
- 3 secretary of state. . . . . 65,000
- 4 state auditor . . . . . 65,000
- 5 state treasurer . . . . . 65,000
- 6 attorney general. . . . . 72,500
- 7 commissioner of public lands. . . . . 72,500
- 8 [~~state corporation~~] public regulation
- 9 commissioner. . . . . [ ~~65,000~~ ] 72,500.

10 B. Any person succeeding to the office of governor  
11 as provided in Article 5, Section 7 of the constitution of New  
12 Mexico shall receive the salary of the office. Every person  
13 serving as acting governor during the incapacity or absence of  
14 the governor from the state, other than the secretary of  
15 state, shall receive one hundred fifty dollars (\$150) as  
16 compensation for each day's service as acting governor.

17 C. All compensation under this section shall be  
18 paid from the general fund, except that the amount paid to the  
19 commissioner of public lands shall be paid from the state  
20 [~~land office~~] lands maintenance fund. "

21 Section 22. A new section of Chapter 8, Article 5 NMSA  
22 1978 is enacted to read:

23 "[NEW MATERIAL] ATTORNEY GENERAL-- CONSUMER  
24 REPRESENTATION BEFORE COMMISSION. --

25 A. The attorney general shall represent

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1 residential and small business consumers in matters before the  
2 public regulation commission as the attorney general deems  
3 appropriate.

4 B. The attorney general:

5 (1) shall research, study and analyze  
6 residential and small business consumer interests;

7 (2) shall prepare and present briefs,  
8 arguments, proposed rates or orders and intervene or appear on  
9 behalf of residential and small business consumers before the  
10 public regulation commission as a party in interest;

11 (3) may accept grants and donations in the  
12 name of the state to carry out the provisions of this section;

13 (4) may cooperate with tribal and pueblo  
14 governments in New Mexico to ensure that the interests of  
15 Indian residential and small business consumers are being  
16 represented appropriately before the public regulation  
17 commission; and

18 (5) shall report by December 1 of each year  
19 to the legislature and the governor on the activities of his  
20 office on behalf of residential and small business  
21 consumers. "

22 Section 23. Section 9-19-4 NMSA 1978 (being Laws 1987,  
23 Chapter 254, Section 4, as amended) is amended to read:

24 "9-19-4. DEPARTMENT ESTABLISHED.--There is created in  
25 the executive branch the "department of public safety". The

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1 department shall be a cabinet department and shall [ consist  
2 of, but not be limited to, four program divisions and one  
3 administrative division, as follows] include the following  
4 divisions:

- 5 A. the New Mexico state police division;
- 6 B. the special investigations division;
- 7 C. the training and recruiting division;
- 8 D. the technical and emergency support division;

9 [and]

- 10 E. the administrative services division; and
- 11 F. the state fire marshal division, including the  
12 firefighters training academy, which shall be a bureau of the  
13 state fire marshal division."

14 Section 24. Section 53-5-1 NMSA 1978 (being Laws 1959,  
15 Chapter 181, Section 1) is amended to read:

16 "53-5-1. SHORT TITLE. -- [ This act] Chapter 53, Article 5  
17 NMSA 1978 may be cited as the "Corporate Reports Act". "

18 Section 25. Section 53-7-18 NMSA 1978 (being Laws 1983,  
19 Chapter 312, Section 1) is amended to read:

20 "53-7-18. SHORT TITLE. -- [ This act] Sections 53-7-18  
21 through 53-7-46 NMSA 1978 may be cited as the "Business  
22 Development Corporation Act". "

23 Section 26. Section 53-8-1 NMSA 1978 (being Laws 1975,  
24 Chapter 217, Section 1, as amended) is amended to read:

25 "53-8-1. SHORT TITLE. -- [ Article 14 of Chapter 51, NMSA

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1 ~~1953]~~ Chapter 53, Article 8 NMSA 1978 may be cited as the  
2 "Nonprofit Corporation Act". "

3 Section 27. Section 53-8-2 NMSA 1978 (being Laws 1975,  
4 Chapter 217, Section 2, as amended) is amended to read:

5 "53-8-2. DEFINITIONS. --As used in the Nonprofit  
6 Corporation Act, unless the context otherwise requires [ ~~the~~  
7 ~~term~~]:

8 A. "corporation" or "domestic corporation" means a  
9 nonprofit corporation subject to the provisions of the  
10 Nonprofit Corporation Act, except a foreign corporation;

11 B. "foreign corporation" means a nonprofit  
12 corporation organized under laws other than the laws of New  
13 Mexico for a purpose [ ~~or purposes~~ ] for which a corporation may  
14 be organized under the Nonprofit Corporation Act;

15 C. "nonprofit corporation" means a corporation no  
16 part of the income or profit of which is distributable to its  
17 members, directors or officers;

18 D. "articles of incorporation" means the original  
19 or restated articles of incorporation or articles of  
20 consolidation and all amendments thereto, including articles  
21 of merger;

22 E. "bylaws" means the code [ ~~or codes~~ ] of rules  
23 adopted for the regulation or management of the affairs of the  
24 corporation, irrespective of the name [ ~~or names~~ ] by which such  
25 rules are designated;

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1 F. "member" means one having membership rights in  
2 a corporation in accordance with the provisions of its  
3 articles of incorporation or bylaws;

4 G. "board of directors" means the group of persons  
5 vested with the management of the affairs of the corporation,  
6 irrespective of the name by which such group is designated;

7 H. "insolvent" means inability of a corporation to  
8 pay its debts as they become due in the usual course of its  
9 affairs;

10 I. "commission" or "corporation commission" means  
11 the [~~state corporation~~] public regulation commission or its  
12 delegate;

13 J. "address" means:

14 (1) the mailing address and the street  
15 address, if within a municipality; or

16 (2) the mailing address and a rural route  
17 number and box number, if any, or the geographical location,  
18 using well-known landmarks, if outside a municipality;

19 K. "duplicate original" means a document [~~which~~]  
20 that is signed or executed in duplicate;

21 L. "delivery" means:

22 (1) if personally served, the date  
23 documentation is received by the [~~commission's corporation~~  
24 ~~department~~] corporations bureau of the commission; and

25 (2) if mailed to the commission, the date of

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1 the postmark plus three days, upon proof thereof by the party  
2 delivering the documentation; and

3 M "person" includes individuals, partnerships,  
4 corporations and other associations. "

5 Section 28. Section 53-11-1 NMSA 1978 (being Laws 1967,  
6 Chapter 81, Section 1, as amended) is amended to read:

7 "53-11-1. SHORT TITLE. -- Sections [ ~~51-24-1 through~~  
8 ~~51-31-11 NMSA 1953~~] 53-11-1 through 53-18-12 NMSA 1978 is the  
9 general corporation law of New Mexico and may be cited as the  
10 "Business Corporation Act". "

11 Section 29. Section 53-11-2 NMSA 1978 (being Laws 1967,  
12 Chapter 81, Section 2, as amended) is amended to read:

13 "53-11-2. DEFINITIONS. -- As used in the Business  
14 Corporation Act, unless the text otherwise requires:

15 A. "corporation" or "domestic corporation" means a  
16 corporation for profit subject to the provisions of the  
17 Business Corporation Act, except a foreign corporation;

18 B. "foreign corporation" means a corporation for  
19 profit organized under laws other than the laws of this state  
20 for a purpose [ ~~or purposes~~ ] for which a corporation may be  
21 organized under the Business Corporation Act;

22 C. "articles of incorporation" means the original  
23 or restated articles of incorporation or articles of  
24 consolidation and all amendments thereto, including articles  
25 of merger;

. 120103. 2

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1           D. "shares" means the units into which the  
2 proprietary interests in a corporation are divided;

3           E. "subscriber" means one who subscribes for  
4 shares in a corporation, whether before or after  
5 incorporation;

6           F. "shareholder" means one who is a holder of  
7 record of shares in a corporation;

8           G. "authorized shares" means the shares of all  
9 classes which the corporation is authorized to issue;

10          H. "annual report" means the corporate report  
11 required by the Corporate Reports Act;

12          I. "distribution" means a direct or indirect  
13 transfer of money or other property (except its own shares) or  
14 incurrence of indebtedness, by a corporation to or for the  
15 benefit of any of its shareholders in respect of any of its  
16 shares, whether by dividend or by purchase redemption or other  
17 acquisition of its shares, or otherwise;

18          J. "franchise tax" means the franchise tax imposed  
19 by the Corporate Income and Franchise Tax Act;

20          K. "fees" means the fees imposed by Section 53-2-1  
21 NMSA 1978;

22          L. "commission" means the [~~state corporation~~]  
23 public regulation commission or its delegate;

24          M "address" means:

25               (1) the mailing address and the street

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1 address, if within a municipality; or

2 (2) the mailing address and a rural route  
3 number and box number, if any, or the geographical location,  
4 using well-known landmarks, if outside a municipality;

5 N. "duplicate original" means a document [ ~~which~~  
6 that is signed or executed in duplicate;

7 O. "delivery" means:

8 (1) if personally served, the date on which  
9 the documentation is received by the [ ~~commission's corporation~~  
10 ~~department~~] corporations bureau of the commission; and

11 (2) if mailed, the date of the postmark plus  
12 three days, upon proof thereof by the party delivering the  
13 documentation; and

14 P. "person" includes individuals, partnerships,  
15 corporations and other associations. "

16 Section 30. Section 53-19-1 NMSA 1978 (being Laws 1993,  
17 Chapter 280, Section 1) is amended to read:

18 "53-19-1. SHORT TITLE. -- [ ~~Sections 1 through 74 of this~~  
19 ~~act~~] Chapter 53, Article 19 NMSA 1978 may be cited as the  
20 "Limited Liability Company Act". "

21 Section 31. Section 53-19-2 NMSA 1978 (being Laws 1993,  
22 Chapter 280, Section 2) is amended to read:

23 "53-19-2. DEFINITIONS. -- As used in the Limited Liability  
24 Company Act:

25 A. "articles of organization" means the original

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1 or restated articles filed pursuant to the Limited Liability  
2 Company Act and any amendments to those articles, including  
3 articles of merger or consolidation;

4 B. "corporation" means an organization  
5 incorporated under the laws of New Mexico or a foreign  
6 corporation;

7 C. "commission" means the [~~state corporation~~]  
8 public regulation commission or its designee;

9 D. "court" means a court having jurisdiction in  
10 the case;

11 E. "event of dissociation" means an event that  
12 causes a person to cease to be a member of a limited liability  
13 company;

14 F. "foreign corporation" means a corporation that  
15 is organized under the laws of another state or a foreign  
16 country;

17 G. "foreign limited liability company" means [an  
18 entity] a person that is:

19 (1) an unincorporated association;  
20 (2) organized under the laws of another state  
21 or foreign country;

22 (3) organized under a statute pursuant to  
23 which an association may be formed that affords to each of its  
24 members limited liability with respect to the liabilities of  
25 the [~~entity~~] person; and

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1 (4) is not required to be registered or  
2 organized under the laws of New Mexico other than the Limited  
3 Liability Company Act;

4 H. "foreign limited partnership" means a limited  
5 partnership formed under the laws of another state or a  
6 foreign country;

7 I. "limited liability company" or "domestic  
8 limited liability company" means an organization formed  
9 pursuant to the provisions of the Limited Liability Company  
10 Act;

11 J. "limited liability company interest" means a  
12 member's or assignee's right to receive distributions and a  
13 return of capital from the limited liability company. A  
14 member's or assignee's limited liability company interest does  
15 not include rights the member or assignee has on account of  
16 other matters, such as a right to receive accrued salary for  
17 services the member or assignee rendered to, repayment of a  
18 loan the member or assignee made to or indemnification by the  
19 limited liability company;

20 K. "limited partnership" means a limited  
21 partnership under the laws of New Mexico or a foreign limited  
22 partnership;

23 L. "manager" means, with respect to a limited  
24 liability company that has included a statement in its  
25 articles of organization that it is to be managed by a manager

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1 [or managers], the person [or persons] designated as  
2 [managers] manager in accordance with the articles of  
3 organization or an operating agreement;

4 M "member" means a person who has been admitted  
5 to membership in a limited liability company and who has not  
6 dissociated from that company;

7 N. "membership interest" or "interest" means a  
8 member's limited liability company interest and his rights to  
9 participate in management and control of the limited liability  
10 company;

11 O. "operating agreement" means a written agreement  
12 providing for the conduct of the business and affairs of a  
13 limited liability company and that agreement as amended in  
14 writing;

15 P. "person" means an individual, a general  
16 partnership, a limited partnership, a domestic or foreign  
17 limited liability company, a trust, an estate, an association,  
18 a corporation or any other legal entity; and

19 Q. "state" means a state, territory or possession  
20 of the United States, the District of Columbia or the  
21 commonwealth of Puerto Rico. "

22 Section 32. Section 59A-1-4 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 4) is amended to read:

24 "59A-1-4. [CORPORATION] COMMISSION. -- "Corporation  
25 commission" or "commission" means the [state corporation]

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1 public regulation ~~commission~~ [of ~~New Mexico~~]. "

2 Section 33. Section 59A-1-7 NMSA 1978 (being Laws 1984,  
3 Chapter 127, Section 7) is amended to read:

4 "59A-1-7. INSURANCE DEPARTMENT. -- "Insurance department",  
5 "insurance division" or "division" means the [~~department of~~]  
6 insurance division of the [~~corporation~~] commission. "

7 Section 34. Section 59A-1-12 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 12) is amended to read:

9 "59A-1-12. SUPERINTENDENT. -- "Superintendent" means the  
10 superintendent of [~~the~~] insurance [~~department, as designated~~  
11 ~~as such by the corporation commission~~] or the superintendent's  
12 duly authorized representative acting in official capacity. "

13 Section 35. Section 59A-2-1 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 19) is amended to read:

15 "59A-2-1. INSURANCE [~~DEPARTMENT CONTINUED--DIVISION OF~~  
16 ~~POWERS~~] DIVISION CREATED. --

17 A. The [~~department of~~] insurance [~~is continued~~]  
18 division is created within the [~~corporation~~] commission.

19 B. All powers relating to state supervision of  
20 insurance, insurance rates and rate practices, together with  
21 collection of insurance licenses, taxes or fees, and all  
22 records pertaining to such supervision [~~shall continue to be~~  
23 ~~and remain~~] are under control of the [~~corporation~~] commission  
24 through [~~its insurance department; except that all powers~~  
25 ~~relating to state control and supervision of insurance rates~~

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[bracketed material] = delete

1 ~~and rate practices, as provided for in Article 17 of the~~  
2 ~~Insurance Code and all records pertaining thereto shall~~  
3 ~~continue to be and remain under exclusive control of the state~~  
4 ~~insurance board] the division."~~

5 Section 36. Section 59A-2-2 NMSA 1978 (being Laws 1984,  
6 Chapter 127, Section 20) is amended to read:

7 "59A-2-2. SUPERINTENDENT [~~DEPARTMENT CHIEF~~]- -  
8 APPOINTMENT--REMOVAL. --The superintendent of insurance shall  
9 be chief officer of the insurance [~~department~~] division. The  
10 superintendent shall be appointed and may be removed for cause  
11 at any time by the [~~corporation~~] commission."

12 Section 37. Section 59A-2-4 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 22, as amended) is amended to read:

14 "59A-2-4. STAFF. -- [A.] With the [~~corporation~~  
15 ~~commission's~~] chief of staff's approval, the superintendent  
16 may designate an employee of the insurance [~~department~~]  
17 division as chief deputy superintendent who shall be acting  
18 superintendent when the office of superintendent is vacant or  
19 the superintendent is unable to perform the duties of that  
20 office because of mental or physical disability.

21 [~~B. With the corporation commission's approval,~~  
22 ~~the superintendent may employ such other administrative and~~  
23 ~~clerical assistants and such examiners and other personnel as~~  
24 ~~may be required for insurance department operations.~~

25 C. ~~Subject to applicable state personnel laws, the~~

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1 ~~corporation commission may, with or without the~~  
2 ~~superintendent's recommendation, remove any deputy, assistant~~  
3 ~~or other insurance department personnel.~~

4 ~~D. With the corporation commission's approval and~~  
5 ~~subject to applicable state personnel laws, the superintendent~~  
6 ~~may make reasonable rules and regulations regarding staff~~  
7 ~~development through job-related college courses, professional~~  
8 ~~programs or other training programs that are commensurate with~~  
9 ~~the duties and responsibilities of all professional and other~~  
10 ~~personnel whose positions require specialized knowledge of~~  
11 ~~insurance.]"~~

12 Section 38. Section 59A-4-1 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 45) is amended to read:

14 "59A-4-1. SCOPE OF ARTICLE. -- Except as otherwise  
15 expressly provided as to particular matters in the Insurance  
16 Code, the provisions of [~~this article~~] Chapter 59A, Article 4  
17 NMSA 1978 as to investigations and hearings by the  
18 superintendent shall apply as to all persons and operations  
19 subject to licensing or supervision under the Insurance Code.  
20 [~~When the matter concerned in this article is within the~~  
21 ~~jurisdiction of the insurance department, the superintendent~~  
22 ~~is acting as superintendent of that department; when the~~  
23 ~~matter concerned is within the jurisdiction of the insurance~~  
24 ~~board, the superintendent is acting in the capacity of~~  
25 ~~secretary of that board.]"~~

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1           Section 39. Section 59A-4-20 NMSA 1978 (being Laws 1984,  
2 Chapter 127, Section 67, as amended) is amended to read:

3           "59A-4-20. APPEAL TO COMMISSION- -APPEAL TO COURT. - -

4           A. A party may appeal from a final order of the  
5 superintendent [~~made after an informal hearing or an~~  
6 ~~administrative hearing, and the court shall try the matter de~~  
7 ~~novvo; provided that if an administrative hearing was held, the~~  
8 ~~court may, in its discretion, limit its review to that~~  
9 ~~provided in Section 12-8-22 NMSA 1978, in which case Sections~~  
10 ~~12-8-17 through 12-8-22 NMSA 1978 shall apply.~~

11           B. ~~The appeal shall be taken within sixty days~~  
12 ~~after receipt, by the party appealing, of a copy of the~~  
13 ~~decision from the review of the superintendent's order by the~~  
14 ~~corporation commission or insurance board, if such review is~~  
15 ~~sought. If no such review is sought, the appeal shall be~~  
16 ~~taken within sixty days after receipt of a copy of the~~  
17 ~~superintendent's order by the party appealing.~~

18           C. ~~The appeal shall be taken to the district court~~  
19 ~~for Santa Fe county in the same manner and under the same~~  
20 ~~rules of pleading, practice and procedure in civil actions as~~  
21 ~~apply to appeals to court from actions of state administrative~~  
22 ~~officers or agencies in general.~~

23           D. ~~Filing of an appeal pursuant to this section~~  
24 ~~shall not stay the effectiveness of the order on hearing~~  
25 ~~appealed from unless, after notice and opportunity given the~~

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1 ~~parties to be heard and for good cause shown, the court~~  
2 ~~determines that a stay should be granted and would not be~~  
3 ~~detrimental to the interests of any other party or to~~  
4 ~~policyholders, stockholders, creditors or to the public.~~

5 ~~E. The district court may affirm, reinstate,~~  
6 ~~modify or vacate the order appealed from or remand for~~  
7 ~~rehearing by the superintendent as to designated matters~~  
8 ~~involved in the hearing. The judgment of the district court~~  
9 ~~may be appealed to the court of appeals or to the supreme~~  
10 ~~court of New Mexico.~~

11 ~~F. This section shall not apply as to matters~~  
12 ~~arising under Chapter 59A, Article 17 NMSA 1978] to the~~  
13 ~~commission.~~

14 B. A party in interest being aggrieved by a final  
15 order or determination of the commission pursuant to the  
16 provisions of the Insurance Code may appeal to the supreme  
17 court.

18 C. The appeal shall be on the record of the  
19 hearing before the commission and shall be governed by the  
20 appellate rules applicable to administrative appeals. The  
21 supreme court shall affirm the commission's order unless it  
22 is:

- 23 (1) arbitrary, capricious or an abuse of
- 24 discretion;
- 25 (2) not supported by substantial evidence in

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1 the record; or

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

3 Section 40. Section 59A-29-6 NMSA 1978 (being Laws 1985,  
4 Chapter 61, Section 6, as amended) is amended to read:

5 "59A-29-6. APPEALS-- JUDICIAL REVIEW [ ~~DE-NOVO~~]. -- Any  
6 person aggrieved by any action or decision of the  
7 administrators of the FAIR plan or the underwriting  
8 association or of any insurer as a result of its participation  
9 therein may appeal to the superintendent [ ~~of insurance~~] within  
10 thirty days from the date of the action or the decision. The  
11 superintendent [ ~~of insurance~~] shall, after hearing held upon  
12 thirty days' written notice, issue an order approving the  
13 action or decision or disapproving the action or decision with  
14 respect to the matter [ ~~which~~] that is the subject of appeal.  
15 All final orders and decisions of the superintendent [ ~~of~~  
16 ~~insurance~~] shall be [ ~~subject to judicial review de novo~~]  
17 appealed as provided in Section 59A-4-20 NMSA 1978. "

18 Section 41. Section 59A-52-1 NMSA 1978 (being Laws 1984,  
19 Chapter 127, Section 947) is amended to read:

20 "59A-52-1. [ ~~STATE FIRE BOARD AND POSITION OF~~] STATE FIRE  
21 MARSHAL [ ~~CONTINUED~~] CREATED. -- [ ~~For purposes of fire prevention~~  
22 ~~and investigation, and reduction of fire insurance premium~~  
23 ~~rates, the state "fire board" is hereby continued. The~~  
24 ~~membership thereof shall be the members of the state insurance~~  
25 ~~board, but they shall receive no extra or additional~~

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1 ~~compensation for acting in that capacity.]~~ The position of  
2 "state fire marshal" is [~~hereby continued. The state fire~~  
3 ~~board shall appoint, fix the compensation of, and have power~~  
4 ~~to remove, the state fire marshal. The marshal shall serve as~~  
5 ~~the executive secretary for the board]~~ created in the  
6 department of public safety. "

7 Section 42. Section 59A-52-2 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 948) is amended to read:

9 "59A-52-2. STATE FIRE MARSHAL TO ADMINISTER ARTICLE. --  
10 The state fire marshal shall administer the provisions of  
11 [~~this article under the supervision of the state fire board]~~  
12 Chapter 59A, Article 52 NMSA 1978. "

13 Section 43. Section 59A-52-3 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 949) is amended to read:

15 "59A-52-3. DEPUTY STATE FIRE MARSHAL AND OTHER  
16 EMPLOYEES-- QUALIFICATIONS OF DEPUTY. --The state fire marshal  
17 [~~shall have the power to]~~ may, with the approval of the  
18 secretary of public safety, appoint or remove a deputy state  
19 fire marshal and other employees to assist in the execution of  
20 the marshal's duties [~~and to set their compensation, subject~~  
21 ~~to state laws and regulations concerning classification and~~  
22 ~~compensation of state employees];~~ provided, however, that the  
23 state fire marshal and any deputy state fire marshal appointed  
24 by the state fire marshal [~~as herein provided]~~ shall be  
25 [~~persons]~~ experienced in fire prevention and fire fighting and

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1 [who] have completed a course of training by actual attendance  
2 at a fire-training school. "

3 Section 44. Section 59A-52-21 NMSA 1978 (being Laws  
4 1984, Chapter 127, Section 967) is amended to read:

5 "59A-52-21. ADMINISTRATIVE APPEAL OF ORDERS AND  
6 MODIFICATIONS. --Any person aggrieved by any order of the state  
7 fire marshal, his deputy or authorized officer or his  
8 designated agent may appeal to the [state fire board]  
9 secretary of public safety within ten [~~(10)~~] days from the  
10 date of the service of such order. The [state fire board]  
11 secretary of public safety shall hear such party [or parties]  
12 within twenty [~~(20)~~] days after receipt of an appeal request  
13 and shall give not less than ten [~~(10)~~] days' written notice  
14 of the hearing. Within fifteen [~~(15)~~] days after such  
15 hearing, the [state fire board] secretary shall file [its] his  
16 decision [~~thereon~~] and, unless by [its] his authority the  
17 order is revoked or modified, it shall be complied with within  
18 the time fixed in the decision, with such time to be not less  
19 than thirty [~~(30)~~] days. "

20 Section 45. Section 59A-52-23 NMSA 1978 (being Laws  
21 1984, Chapter 127, Section 969) is amended to read:

22 "59A-52-23. ENFORCEMENT OF CEASE AND DESIST ORDERS. --  
23 After expiration of time for an administrative appeal, and if  
24 no such appeal has been taken, the state fire marshal may  
25 commence an action in the district court for Santa Fe county

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1 to enforce the cease and desist order by injunction or other  
2 appropriate remedy as the district court may adjudge. The  
3 [~~state fire board~~] secretary of public safety may likewise  
4 commence an action in the district court for Santa Fe county  
5 to enforce [~~its~~] his decision rendered on appeal from the  
6 cease and desist order of the state fire marshal."

7 Section 46. Section 59A-53-6 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 977, as amended) is amended to read:

9 "59A-53-6. APPEAL AND REVIEW OF DETERMINATION. -- The  
10 marshal shall promptly notify each incorporated city, town,  
11 village and county fire district affected of his determination  
12 of needs, and [~~any~~] an incorporated city, town, village or  
13 county fire district may appeal from the determination of the  
14 marshal to the [~~state fire board~~] secretary of public safety,  
15 within ten days after the determination of needs. The [~~state~~  
16 ~~insurance board~~] secretary shall review the determination of  
17 the marshal in such informal and summary proceedings as [~~it~~  
18 ~~may deem~~] he deems proper and shall certify to the state  
19 treasurer annually, on or before the last day of June, the  
20 results of all appeals from the determinations of the marshal.  
21 The certification by the [~~state fire board~~] secretary, or by  
22 the marshal if no appeal is taken, shall be final and binding  
23 on all concerned and not subject to any further review."

24 Section 47. Section 59A-53-7 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 978, as amended) is amended to read:

1 "59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND. --

2 A. Annually on or before the last day of July, the  
3 state treasurer shall distribute from the money in the fire  
4 protection fund, to each incorporated municipality and to each  
5 county fire district, the amount [as] the marshal or the  
6 [~~state fire board~~] secretary of public safety, as the case may  
7 be, [~~shall have~~] has certified to him. Payment shall be made  
8 to the treasurer of any incorporated municipality and to the  
9 county treasurer of the county in which any county fire  
10 district is located for credit to the county fire district.

11 B. The state treasurer is authorized to redirect a  
12 distribution to the New Mexico finance authority in the amount  
13 [as] the marshal or the [~~state fire board~~] secretary, as the  
14 case may be, [~~shall have~~] has certified to him pursuant to an  
15 ordinance or a resolution passed by the municipality or county  
16 and a written agreement of the municipality or county in which  
17 any county fire district is located and the New Mexico finance  
18 authority. "

19 Section 48. Section 62-3-3 NMSA 1978 (being Laws 1967,  
20 Chapter 96, Section 3, as amended) is amended to read:

21 "62-3-3. DEFINITIONS [~~WORDS AND PHRASES~~]. -- Unless  
22 otherwise specified, when used in the Public Utility Act:

23 A. "affiliated interest" means a person who  
24 directly or indirectly, through one or more intermediaries,  
25 controls or is controlled by or is under common control with a

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1 public utility. Control includes instances where a person is  
2 an officer, director, partner, trustee or person of similar  
3 status or function or ~~[who]~~ owns directly or indirectly or has  
4 a beneficial interest in ten percent or more of any class of  
5 securities of a person;

6 B. "commission" means the ~~[New Mexico public~~  
7 ~~utility]~~ public regulation commission;

8 C. "~~[commissioners]~~ commissioner" means ~~[any]~~ a  
9 member of the commission;

10 D. "municipality" means ~~[any]~~ a municipal  
11 corporation organized under the laws of the state, and H-class  
12 counties;

13 E. "person" means ~~[individuals, firms,~~  
14 ~~partnerships, companies]~~ an individual, firm, partnership,  
15 company, rural electric [cooperatives] cooperative organized  
16 under Laws 1937, Chapter 100 or the Rural Electric Cooperative  
17 Act ~~[as amended, corporations and lessees, trustees or~~  
18 ~~receivers]~~, corporation or lessee, trustee or receiver  
19 appointed by any court. ~~[It shall]~~ "Person" does not mean  
20 ~~[any]~~ a class A county as described ~~[by]~~ in Section 4-36-10  
21 NMSA 1978 or ~~[any]~~ a class B county as described ~~[by]~~ in  
22 Section 4-36-8 NMSA 1978. ~~[It shall]~~ "Person" does not mean  
23 ~~[any]~~ a municipality as defined in this section unless the  
24 municipality has elected to come within the terms of the  
25 Public Utility Act as provided in Section 62-6-5 NMSA 1978.

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1 In the absence of [~~such~~] voluntary election by [~~any~~] a  
2 municipality to come within the provisions of the Public  
3 Utility Act, the municipality shall be expressly excluded from  
4 the operation of that act and from the operation of all [~~of~~]  
5 its provisions, and no such municipality shall for any purpose  
6 be considered a public utility;

7 F. "securities" means stock, stock certificates,  
8 bonds, notes, debentures, mortgages or deeds of trust or other  
9 evidences of indebtedness issued, executed or assumed by [~~any~~]  
10 a utility;

11 G. "public utility" or "utility" means every  
12 person not engaged solely in interstate business and, except  
13 as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that [~~now~~  
14 ~~does or hereafter~~] may own, operate, lease or control:

15 (1) any plant, property or facility for the  
16 generation, transmission or distribution, sale or furnishing  
17 to or for the public of electricity for light, heat or power  
18 or other uses;

19 (2) any plant, property or facility for the  
20 manufacture, storage, distribution, sale or furnishing to or  
21 for the public of natural or manufactured gas or mixed or  
22 liquefied petroleum gas for light, heat or power or [~~for~~]  
23 other uses; but the term "public utility" or "utility" shall  
24 not include any plant, property or facility used for or in  
25 connection with the business of the manufacture, storage,

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1 distribution, sale or furnishing of liquefied petroleum gas in  
2 enclosed containers or tank truck for use by others than  
3 consumers who receive their supply through any pipeline system  
4 operating under municipal authority or franchise and  
5 distributing to the public;

6 (3) any plant, property or facility for the  
7 supplying, storage, distribution or furnishing to or for the  
8 public of water for manufacturing, municipal, domestic or  
9 other uses; provided, however, nothing contained in this  
10 paragraph shall be construed to apply to irrigation systems,  
11 the chief or principal business of which is to supply water  
12 for the purpose of irrigation;

13 (4) any plant, property or facility for the  
14 production, transmission, conveyance, delivery or furnishing  
15 to or for the public of steam for heat or power or other uses;  
16 or

17 (5) any plant, property or facility for the  
18 supplying and furnishing to or for the public of sanitary  
19 sewers for transmission and disposal of sewage produced by  
20 manufacturing, municipal, domestic or other uses; provided  
21 that the terms "public utility" or "utility" as used in the  
22 Public Utility Act do not include any utility owned or  
23 operated by [any] a class A county as described in Section  
24 4-36-10 NMSA 1978 either directly or through a corporation  
25 owned by or under contract with such a county;

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1           H. "rate" means every rate, tariff, charge or  
2 other compensation for utility service rendered or to be  
3 rendered by [~~any~~] a utility and every rule, regulation,  
4 practice, act, requirement or privilege in any way relating to  
5 such rate, tariff, charge or other compensation and any  
6 schedule or tariff or part of a schedule or tariff thereof;

7           I. "service" or "service regulation" means every  
8 rule, regulation, practice, act or requirement [~~in any way~~]  
9 relating to the service or facility of a utility;

10          J. "Class I transaction" means the sale, lease or  
11 provision of real property, water rights or other goods or  
12 services by an affiliated interest to [~~any~~] a public utility  
13 with which it is affiliated or by a public utility to its  
14 affiliated interest;

15          K. "Class II transaction" means:

16               (1) the formation after May 19, 1982 of a  
17 corporate subsidiary by a public utility or a public utility  
18 holding company by a public utility or its affiliated  
19 interest;

20               (2) the direct acquisition of the voting  
21 securities or other direct ownership interests of a person by  
22 a public utility if such acquisition would make the  
23 utility the owner of ten percent or more of the voting  
24 securities or other direct ownership interests of that person;

25               (3) the agreement by a public utility to

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1 purchase securities or other ownership interest of a person  
2 other than a nonprofit corporation, contribute additional  
3 equity to, acquire additional equity interest in or pay or  
4 guarantee any bonds, notes, debentures, deeds of trust or  
5 other evidence of indebtedness of any such person; provided,  
6 however, that a public utility may honor all agreements  
7 entered into by such utility prior to ~~May~~ 19, 1982; or

8 (4) the divestiture by a public utility of  
9 any affiliated interest that is a corporate subsidiary of the  
10 public utility;

11 L. "corporate subsidiary" means any person ten  
12 percent or more of whose voting securities or other ownership  
13 interests are directly owned by a public utility; and

14 M "public utility holding company" means an  
15 affiliated interest that controls a public utility through the  
16 direct or indirect ownership of voting securities of [~~such~~  
17 that public utility. "

18 Section 49. Section 62-3-4 NMSA 1978 (being Laws 1967,  
19 Chapter 96, Section 4, as amended) is amended to read:

20 "62-3-4. LIMITATIONS AND EXCEPTIONS. --

21 A. The term "public utility" or "utility", when  
22 used in the Public Utility Act, [~~as amended~~] shall not  
23 include:

24 [~~A.-~~] (1) any person not otherwise a public  
25 utility who furnishes the service or commodity only to

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1 himself, his employees or tenants, when such service or  
2 commodity is not resold to or used by others, or who engages  
3 in the retail distribution of natural gas for vehicular fuel;  
4 or

5 [B-] (2) a corporation engaged in the  
6 business of operating a railroad and that does not primarily  
7 engage in the business of selling the service or commodity but  
8 that only incidentally to its railroad business or  
9 occasionally furnishes the service or commodity to another  
10 under a separate limited or revocable agreement or sells to a  
11 utility or municipality for resale, or that sells the service  
12 or commodity to another railroad, the state or federal  
13 government or a governmental agency, or that sells or gives  
14 for a consideration under revocable agreements or permits  
15 quantities of water out of any surplus of water supply  
16 acquired and held by it primarily for railroad purposes; and  
17 such railroad corporation shall not be subject to any of the  
18 provisions of the Public Utility Act.

19 B. The business of any public utility other than  
20 of the character defined in Subsection G of Section 62-3-3  
21 NMSA 1978 is not subject to provisions of the Public Utility  
22 Act [as amended. ~~Nothing contained in that act shall be~~  
23 ~~construed as giving to the commission any powers or~~  
24 ~~jurisdiction over public utilities covered by Section 7 of~~  
25 ~~Article 11 of the constitution of New Mexico]. "~~

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1           Section 50. Section 62-4-1 NMSA 1978 (being Laws 1977,  
2 Chapter 191, Section 1, as amended) is amended to read:

3           "62-4-1. JOINT HEARINGS AND ORDERS. --The [ ~~public~~  
4 ~~utility~~] commission, in the discharge of its duties under the  
5 Public Utility Act, [~~is authorized to~~] may make joint  
6 investigations, hold joint hearings within or without the  
7 state and issue joint or concurrent orders in conjunction or  
8 concurrence with any official or agency of any state, [~~or of~~]  
9 the United States [~~whether~~] or any New Mexico Indian nation,  
10 tribe or pueblo. In the holding of such investigations or  
11 hearings or in the making of such order, the commission may  
12 function under agreements or compacts between states to  
13 regulate interstate commerce. The commission, in the  
14 discharge of its duties under the Public Utility Act, [~~is~~  
15 ~~further authorized to~~] may also negotiate and enter into  
16 agreements or compacts with agencies of other states, pursuant  
17 to any consent of congress, for cooperative efforts in  
18 certificating the construction, operation and maintenance of  
19 ~~major~~ utility facilities in accord with the purposes of the  
20 Public Utility Act and for the enforcement of the respective  
21 state laws regarding same. "

22           Section 51. Section 62-8-7 NMSA 1978 (being Laws 1991,  
23 Chapter 251, Section 1) is amended to read:

24           "62-8-7. CHANGE IN RATES. --  
25           A. At any hearing [~~as provided in this section~~]

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1 involving an increase in rates or charges sought by a public  
2 utility, the burden of proof to show that the increased rate  
3 or charge is just and reasonable shall be upon the utility.

4 B. Unless the commission otherwise orders, no  
5 public utility shall make any change in any rate [ ~~which~~] that  
6 has been duly established except after thirty days' notice to  
7 the commission, which notice shall plainly state the changes  
8 proposed to be made in the rates then in force and the time  
9 when the changed rates will go into effect and other  
10 information as the commission by rule requires. The utility  
11 shall also give notice of the proposed changes to other  
12 interested persons as the commission may direct. All proposed  
13 changes shall be shown by filing new schedules that shall be  
14 kept open to public inspection. The commission for good cause  
15 shown may allow changes in rates without requiring the thirty  
16 days' notice, under conditions that it may prescribe.

17 C. Whenever there is filed with the commission by  
18 any public utility [ ~~any schedule~~] a complete application as  
19 prescribed by commission rule proposing new rates, the  
20 commission may, upon complaint or upon its own initiative,  
21 except as otherwise provided by law, upon reasonable notice,  
22 enter upon a hearing concerning the reasonableness of the  
23 proposed rates. [ ~~Pending a hearing decision~~] If the  
24 commission determines a hearing is necessary, it shall suspend  
25 the operation of the proposed rates before they become

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1 effective but not for a longer initial period than nine months  
2 beyond the time when the rates would otherwise go into effect,  
3 unless the commission finds that a longer time will be  
4 required, in which case the commission may extend the period  
5 for an additional three months [ provided and notwithstanding  
6 any such order of suspension, the public utility may put the  
7 suspended rates into effect at the expiration of the initial  
8 suspension period by filing with the commission its  
9 undertaking, secured by its bond, to refund to entitled  
10 persons the amount, if any, finally determined to be  
11 excessive. The bond, in terms, amount and sureties, shall be  
12 subject to the commission's approval. There may be  
13 substituted for the bond other arrangements satisfactory to  
14 the commission for the protection of the parties interested;  
15 provided, further, that in any case involving a proposed  
16 change in rates, the commission may permit the utility to make  
17 effective without suspension any portion of the change which  
18 the commission may determine to be proper under the  
19 circumstances. If the public utility fails to make refund  
20 within thirty days after the final determination or within an  
21 additional period of time as may be allowed by the commission  
22 for good cause shown, any person entitled to the refund may  
23 sue therefor in any court of this state of competent  
24 jurisdiction and be entitled to recover, in addition to the  
25 amount of the refund due, all court costs, but no suit may be

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1 ~~maintained for that purpose unless instituted within one year~~  
2 ~~after the final determination. Any number of persons entitled~~  
3 ~~to the refund may join as plaintiffs and recover their several~~  
4 ~~claims in a single action, in which action the court shall~~  
5 ~~render a judgment severally for each plaintiff as his interest~~  
6 ~~may appear. During a period of suspension, the commission~~  
7 ~~may, in its discretion, require that the public utility~~  
8 ~~involved furnish to its patrons a certificate or other~~  
9 ~~evidence of payments made by them under the rates that the~~  
10 ~~public utility has put into operation in excess of the rates~~  
11 ~~in effect immediately prior thereto]. The commission shall~~  
12 ~~hear and decide cases with reasonable promptness. The~~  
13 ~~commission shall adopt rules identifying criteria for various~~  
14 ~~rate and tariff filings to be eligible for suspension periods~~  
15 ~~shorter than what is allowed by this subsection and to be~~  
16 ~~eligible for summary approval without hearing.~~

17 D. If after a hearing the commission finds the  
18 proposed rates to be unjust, unreasonable or in any way in  
19 violation of law, the commission shall determine the just and  
20 reasonable rates to be charged or applied by the utility for  
21 the service in question and shall fix the rates by order to be  
22 served upon the utility; or the commission by its order shall  
23 direct the utility to file new rates respecting such service  
24 that are designed to produce annual revenues no greater than  
25 those determined by the commission in its order to be just and

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1 reasonable. Those rates shall thereafter be observed until  
2 changed, as provided by the Public Utility Act.

3 E. Except as otherwise provided by law, any  
4 increase in rates or charges for the utility commodity based  
5 upon cost factors other than taxes or cost of fuel, gas or  
6 purchased power, filed for after [~~the effective date of this~~  
7 ~~section~~] April 4, 1991 shall be permitted only after notice  
8 and hearing as provided by this section. The commission shall  
9 enact rules [~~and regulations~~] governing the use of tax, fuel,  
10 gas or purchased power adjustment clauses by utilities that  
11 enable the commission to consider periodically at least the  
12 following:

13 (1) whether the existence of a particular  
14 adjustment clause is consistent with the purposes of the  
15 Public Utility Act, including serving the goal of providing  
16 reasonable and proper service at fair, just and reasonable  
17 rates to all customer classes;

18 (2) the specific adjustment mechanism to  
19 recover tax, gas, fuel or purchased power costs;

20 (3) which costs should be included in an  
21 adjustment clause, procedures to avoid the inclusion of costs  
22 in an adjustment clause that should not be included and  
23 methods by which the propriety of costs that are included may  
24 be determined by the commission in a timely manner, including  
25 what informational filings are required to enable the

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1 commission to make such a determination; and

2 (4) the proper adjustment period to be  
3 employed.

4 F. The commission may eliminate or condition a  
5 particular adjustment clause if it finds such elimination or  
6 condition is consistent with the purposes of the Public  
7 Utility Act, including serving the goal of providing  
8 reasonable and proper service at fair, just and reasonable  
9 rates to all customer classes; provided, however, that no such  
10 elimination or condition shall be ordered unless such  
11 elimination or condition will not place the affected utility  
12 at a competitive disadvantage. The commission rules [ ~~and~~  
13 ~~regulations~~] shall also provide for variances and may provide  
14 for separate examination of a utility's adjustment clause  
15 based upon that utility's particular operating  
16 characteristics.

17 [~~F.~~] G. Whenever there is filed with the  
18 commission [ ~~any~~] a schedule proposing [ ~~any~~] new rates by [ ~~any~~]  
19 a rural electric cooperative organized under the Rural  
20 Electric Cooperative Act [ ~~as amended~~], the rates shall become  
21 effective as proposed by the rural electric cooperative  
22 without a hearing. However, the cooperative shall give  
23 written notice of the proposed rates to its affected patrons  
24 at least thirty days prior to the filing with the commission,  
25 and the commission shall suspend the rates and conduct a

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1 hearing concerning the reasonableness of any proposed rates  
2 filed by a rural electric cooperative pursuant to Subsections  
3 C and D of this section upon the filing with the commission of  
4 a protest setting forth grounds for review of the proposed  
5 rates signed by one or more members of the rural electric  
6 cooperative and if the commission determines there is just  
7 cause for reviewing the proposed rates on one or more of the  
8 grounds of the protest. The protest [~~must~~] shall be filed no  
9 later than twenty days after the filing with the commission of  
10 the schedule proposing the new rates. The hearing and review  
11 shall be limited to the issues set forth in the protest and  
12 for which the commission may find just cause for the review,  
13 which issues shall be contained in the notice of hearing. The  
14 provisions of this subsection shall not be construed to affect  
15 commission authority or procedure to regulate the sale,  
16 furnishing or delivery by wholesale suppliers of electricity  
17 to rural electric cooperatives [~~under~~] pursuant to Section  
18 62-6-4 NMSA 1978. In addition to the adjustments permitted by  
19 [~~Subsection~~] Subsections E and F of this section, the  
20 commission may authorize rate schedules of rural electric  
21 cooperatives to recover, without notice and hearing, changes  
22 in the cost of debt capital incurred pursuant to securities  
23 the issuance of which are approved by the commission. For the  
24 purposes of this subsection, a member of a rural electric  
25 cooperative is a member as defined by the Rural Electric

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1 Cooperative Act [~~as amended~~]. "

2 Section 52. Section 62-15-1 NMSA 1978 (being Laws 1939,  
3 Chapter 47, Section 1) is amended to read:

4 "62-15-1. SHORT TITLE. -- [~~This Act~~] Chapter 62, Article  
5 15 NMSA 1978 may be cited as the "Rural Electric Cooperative  
6 Act". "

7 Section 53. Section 63-7-1 NMSA 1978 (being Laws 1912,  
8 Chapter 78, Section 1, as amended) is amended to read:

9 "63-7-1. PUBLIC REGULATION COMMISSION--TERMS DEFINED--  
10 OFFICE--ORGANIZATION. -- [~~SEC. 59.~~] The terms "commission" and  
11 "clerk" or "chief clerk" where used in this article shall  
12 mean, respectively, the [~~state corporation~~] public regulation  
13 commission and the chief clerk [~~thereof~~] of the commission.  
14 The office of the commission shall be located in the city of  
15 Santa Fe, New Mexico. [~~The commission shall annually elect~~  
16 ~~one of its members chairman, who shall preside at hearings.~~  
17 ~~In the absence of the chairman, it may appoint any other~~  
18 ~~member to preside.~~]"

19 Section 54. Section 63-7-23 NMSA 1978 (being Laws 1995,  
20 Chapter 175, Section 1) is amended to read:

21 "63-7-23. TELECOMMUNICATIONS--ADMINISTRATIVE FINES. --

22 A. For purposes of this section:

23 (1) "commission" means the [~~state~~  
24 ~~corporation~~] public regulation commission; and

25 (2) "telecommunications provider" means any

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1 telegraph company, telephone company, transmission company,  
2 telecommunications common carrier, telecommunications company,  
3 cellular service company or pay telephone provider regulated  
4 in whole or in part by the commission under law, including  
5 [~~but not limited to Article 11 of the constitution of New~~  
6 ~~Mexico~~] the Telephone and Telegraph Company Certification Act,  
7 the New Mexico Telecommunications Act, the Cellular Telephone  
8 Services Act and Sections 63-9E-1 and 63-9E-3 NMSA 1978.

9 B. The commission may impose an administrative  
10 fine on a telecommunications provider for any act or omission  
11 that the provider knew or should have known was a violation  
12 of any applicable law or rule or order of the commission.

13 C. An administrative fine of not more than one  
14 thousand dollars (\$1,000) may be imposed for each violation or  
15 each of multiple violations arising out of the same facts, up  
16 to a maximum of twenty-five thousand dollars (\$25,000) or an  
17 administrative fine of not more than one thousand dollars  
18 (\$1,000) may be imposed for each day of a continuing violation  
19 [~~or violations~~] arising out of the same facts, up to a maximum  
20 of twenty-five thousand dollars (\$25,000). Notwithstanding  
21 any other provision of this subsection, the commission may  
22 impose an administrative fine not to exceed twenty-five  
23 thousand dollars (\$25,000) for a single violation:

24 (1) that results in substantial harm to the  
25 customers of the telecommunications provider or substantial

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1 harm to the public interest; or

2 (2) for failure to obtain a certificate of  
3 public convenience and necessity required by law or for  
4 operation outside the scope of [~~any such~~] that certificate.

5 D. The commission shall initiate a proceeding to  
6 impose an administrative fine by giving written notice to the  
7 provider that the commission has facts as set forth in the  
8 notice that, if not rebutted, may lead to the imposition of an  
9 administrative fine under this section and that the  
10 telecommunications provider has an opportunity for a hearing.  
11 The commission may only impose an administrative fine by  
12 written order that, in the case of contested proceedings,  
13 shall be supported by a preponderance of the evidence.

14 E. The commission may initiate a proceeding to  
15 impose an administrative fine within two years from the date  
16 of the commission's discovery of the violation, but in no  
17 event shall a proceeding be initiated more than five years  
18 after the date of the violation. This limitation shall not  
19 run against any act or omission constituting a violation under  
20 this section for any period during which the telecommunications  
21 provider has fraudulently concealed the violation.

22 F. The commission shall consider mitigating and  
23 aggravating circumstances in determining the amount of  
24 administrative fine imposed.

25 G. For purposes of establishing a violation, the

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1 act or omission of any officer, agent or employee of a  
2 telecommunications provider, within the scope of such person's  
3 authority, duties or employment, shall be deemed the act or  
4 omission of the telecommunications provider.

5 H. Any telecommunications provider or other person  
6 aggrieved by an order assessing an administrative fine may  
7 ~~[remove]~~ appeal the order to the supreme court of New Mexico  
8 ~~[as authorized by the provisions of Article 11, Section 7 of~~  
9 ~~the constitution of New Mexico. Any telecommunications~~  
10 ~~provider or other person aggrieved by an order assessing an~~  
11 ~~administrative fine that is not removable to the supreme court~~  
12 ~~of New Mexico under the provisions of Article 11, Section 7 of~~  
13 ~~the constitution of New Mexico may file a notice of appeal in~~  
14 ~~the supreme court of New Mexico asking for a review of the~~  
15 ~~commission's order therein].~~ A notice of appeal shall be  
16 filed within thirty days after the entry of the commission's  
17 order. Notice of appeal shall name the commission as appellee  
18 and shall identify the order from which the appeal is taken.

19 I. The commission shall promulgate procedural  
20 rules ~~[and regulations]~~ for the implementation of this  
21 section. "

22 Section 55. A new section of Chapter 63, Article 7 NMSA  
23 1978 is enacted to read:

24 "[NEW MATERIAL] COMMISSION POWERS AND DUTIES--  
25 TRANSPORTATION AND TRANSMISSION COMPANIES AND COMMON

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1 CARRIERS-- TELEPHONE AND TELEGRAPH COMPANIES. --

2 A. With respect to transportation and transmission  
3 companies and common carriers, the commission shall:

4 (1) fix, determine, supervise, regulate and  
5 control all charges and rates of railway, express, telegraph,  
6 telephone, sleeping car and other transportation and  
7 transmission companies and common carriers within the state;

8 (2) determine any matters of public  
9 convenience and necessity with respect to matters subject to  
10 its regulatory authority as provided by law;

11 (3) require railway companies and other  
12 common carriers to provide and maintain adequate equipment,  
13 depots, stockpens, station buildings, agents and facilities  
14 for the accommodation of shippers and passengers and for  
15 receiving and delivering freight and express and to provide  
16 and maintain necessary crossings, culverts, sidings and other  
17 facilities for convenience and safety whenever in the  
18 commission's judgment the public interest demands;

19 (4) require railway companies, transportation  
20 companies and common carriers to provide such reasonable  
21 safety appliances and use such reasonable safety practices as  
22 may be necessary and proper for the safety of employees and  
23 the public as required by federal or state laws and rules;

24 (5) change, amend and rescind rates;

25 (6) enforce its rules through administrative

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1 sanctions and in the courts; and

2 (7) carry out all other duties and have all  
3 other powers provided by law.

4 B. In fixing rates of telephone and telegraph  
5 companies, due consideration shall be given to the earnings,  
6 investments and expenditures as a whole within the state. The  
7 commission shall include in that consideration the earnings,  
8 investments and expenditures derived from or related to the  
9 sale of directory advertising and other directory listing  
10 services.

11 C. The commission may subpoena witnesses and  
12 documents, enforce its subpoenas through any court and,  
13 through the court, punish for contempt.

14 D. The commission has the power, after notice and  
15 hearing of record, to determine and decide any question and to  
16 issue orders relating to its powers and duties.

17 E. An interested party may appeal from a final  
18 order of the commission by filing a notice of appeal with the  
19 supreme court asking for review of the order within thirty  
20 days of the final order. The appellant shall pay to the  
21 commission any costs of preparing and transmitting the record  
22 to the court.

23 F. The pendency of an appeal shall not  
24 automatically stay the order appealed from. The appellant may  
25 seek to obtain a stay from the commission or the supreme

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1 court.

2 G. The appeal shall be on the record of the  
3 hearing before the commission and shall be governed by the  
4 appellate rules applicable to administrative appeals. The  
5 supreme court shall affirm the commission's order unless it  
6 is:

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

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

11 (3) otherwise not in accordance with law.

12 H. In the case of a failure or refusal of any  
13 person to comply with an order of the commission within the  
14 time prescribed in the order or within thirty days after the  
15 order is entered, whichever is later, unless a stay has been  
16 granted, the commission shall seek enforcement of the order in  
17 the district court. The enforcement hearing shall be held on  
18 an expedited basis. At the hearing, the sole question shall  
19 be whether the person has failed to comply with or violated  
20 the order. "

21 Section 56. Section 63-9-1 NMSA 1978 (being Laws 1965,  
22 Chapter 292, Section 1) is amended to read:

23 "63-9-1. SHORT TITLE. -- [~~This act~~] Chapter 63, Article 9  
24 NMSA 1978 may be cited as the "Telephone and Telegraph Company  
25 Certification Act". "

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1 Section 57. Section 63-9-2 NMSA 1978 (being Laws 1965,  
2 Chapter 292, Section 2, as amended) is amended to read:

3 "63-9-2. DEFINITIONS. -- As used in the Telephone and  
4 Telegraph Company Certification Act:

5 A. "commission" means the [state corporation]  
6 public regulation commission;

7 B. "telephone company" means a company,  
8 corporation, partnership, individual or others, not engaged  
9 solely in interstate business, furnishing mobile telephone  
10 service or radio paging;

11 C. "public utility telephone service" means making  
12 and offering mobile telephone or radio paging service to or  
13 for the public generally and being ready, willing and able to  
14 furnish such service with adequate equipment; and

15 D. "certificated area" means the geographical area  
16 [which] that a telephone company is authorized to serve by a  
17 certificate of public convenience and necessity and [which]  
18 that is defined on the map as part of the certificate. "

19 Section 58. Section 63-9-4 NMSA 1978 (being Laws 1965,  
20 Chapter 292, Section 4) is amended to read:

21 "63-9-4. CERTIFICATE FOR [PRIOR] OPERATIONS. -- [Within  
22 ~~six months after the effective date of this act any~~] A  
23 telephone company furnishing public telephone or telegraph  
24 service [contemplated by Article XI, Section 7 of the  
25 ~~constitution of the state of New Mexico~~], including any

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1 telephone cooperative operating in the state [ of New Mexico],  
2 shall file with the commission an application for a  
3 certificate of public convenience and necessity. The  
4 commission shall [thereupon] grant a certificate only to the  
5 extent of territory served [ on the effective date of this act]  
6 and shall define such area on a map. [ Henceforth such  
7 territory shall be deemed certificated area.] Operations  
8 [after six months from the effective date of this act] for  
9 which no application has been made [ shall be] are unlawful."

10 Section 59. Section 63-9-9 NMSA 1978 (being Laws 1965,  
11 Chapter 292, Section 9) is amended to read:

12 "63-9-9. NONDUPLICATION IN CERTIFICATED AREAS. --

13 A. It [shall hereafter be] is unlawful to  
14 construct, own, operate, manage, lease or control any plant or  
15 equipment for the furnishing of telephone or telegraph service  
16 [contemplated by Article XI, Section 7 of the constitution of  
17 New Mexico and this act] in any certificated area granted to  
18 another telephone company unless public convenience and  
19 necessity [shall require such] require the second plant or  
20 equipment.

21 B. Any person, corporation, municipal corporation,  
22 partnership or association proposing to construct or operate  
23 [such] the second plant or equipment shall first file an  
24 application with the commission, to which application the  
25 authority proposing to authorize the construction of [ such]

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1 the second plant or equipment and the owner, manager or  
2 operator of the plant or equipment then in operation shall be  
3 made parties. The applications shall set up the reasons why  
4 public convenience and necessity require [~~such~~] the second  
5 plant or equipment. In determining whether the public  
6 convenience and necessity require [~~such~~] the second plant or  
7 equipment, the commission shall consider and determine upon  
8 substantial evidence whether the following conditions existed  
9 at the time of the filing of [~~said~~] the application:

10 (1) the existing telephone or telegraph  
11 service is inadequate to meet the reasonable needs and  
12 convenience of the public;

13 (2) the proposed second plant or equipment  
14 would eliminate such inadequacy;

15 (3) it is economically feasible to operate  
16 the proposed second plant or equipment successfully and  
17 continuously for the furnishing of telephone or telegraph  
18 service;

19 (4) the applicant for [~~said~~] the second plant  
20 or equipment has sufficient financial resources to provide the  
21 proposed telephone or telegraph service properly and  
22 continuously;

23 (5) the applicant for [~~said~~] the second plant  
24 or equipment has competent and experienced management and  
25 personnel to provide the proposed telephone or telegraph

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1 service;

2 (6) the applicant for [~~said~~] the second plant  
3 or equipment is willing and able to conform to the  
4 constitution and law of [~~the state of~~] New Mexico and the  
5 rules [~~and regulations~~] of the commission; and

6 (7) the applicant for [~~said~~] the second plant  
7 or equipment is in every respect willing and able to provide  
8 the proposed telephone or telegraph service properly.

9 C. If the commission [~~shall find~~] finds upon  
10 substantial evidence that each of the [~~foregoing~~] conditions  
11 enumerated in Subsection B of this section existed at the time  
12 of filing [~~said~~] the application and after determining that  
13 the public convenience and necessity require that an  
14 additional plant or equipment is necessary, the commission  
15 shall issue an order in the alternative directing the owner,  
16 manager or operator of the plant or equipment then in  
17 operation to make such changes and additions in plant as may  
18 be reasonably necessary to meet the public convenience and  
19 necessity within not less than ninety days or such other  
20 additional time as the commission finds from the testimony  
21 would be reasonably required to expeditiously make the changes  
22 and additions specified and required by the commission.

23 [~~Such~~] The order shall specifically direct what changes or  
24 additions in plant shall be made or what services shall be  
25 provided. If such changes or additions are not made within

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1 the time ordered by the commission or such additional time as  
2 may be ordered, then a certificate of public convenience and  
3 necessity for [~~such~~] the second plant or equipment may issue."

4 Section 60. Section 63-9-16 NMSA 1978 (being Laws 1965,  
5 Chapter 292, Section 16) is repealed and a new Section 63-9-16  
6 NMSA 1978 is enacted to read:

7 "63-9-16. [NEW MATERIAL] APPEAL TO SUPREME COURT. --

8 A. A telephone company or other party in interest  
9 being aggrieved by a final order or determination of the  
10 commission pursuant to Sections 63-9-1 through 63-9-19 NMSA  
11 1978 may appeal to the supreme court within thirty days.

12 B. The appeal shall be on the record of the  
13 hearing before the commission and shall be governed by the  
14 appellate rules applicable to administrative appeals. The  
15 supreme court shall affirm the commission's order unless it  
16 is:

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

22 Section 61. Section 63-9-19 NMSA 1978 (being Laws 1965,  
23 Chapter 292, Section 19) is amended to read:

24 "63-9-19. INJUNCTIONS-- CONTEMPT. -- [~~In any matter not~~  
25 ~~removable to the supreme court of New Mexico under the~~

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1 ~~provisions of Article XI, Section 7 of the constitution of New~~  
2 ~~Mexico]~~ The commission may apply to [ ~~courts having~~  
3 ~~jurisdiction]~~ the district court for injunctions to prevent  
4 violations of any provision of [ ~~this]~~ the Telephone and  
5 Telegraph Company Certification Act or of any rule or order of  
6 the commission in connection with the issuance or nonissuance  
7 of certificates of public [ ~~necessity and]~~ convenience and  
8 necessity pursuant to [ ~~this]~~ that act, and [ ~~such courts shall~~  
9 ~~have]~~ the court has the power to grant [ ~~such]~~ injunctions and  
10 to enforce [ ~~such]~~ injunctions by contempt procedure. "

11 Section 62. Section 63-9A-1 NMSA 1978 (being Laws 1985,  
12 Chapter 242, Section 1) is amended to read:

13 "63-9A-1. SHORT TITLE. -- [ ~~Sections 1 through 21 of this~~  
14 ~~act]~~ Chapter 63, Article 9A NMSA 1978 may be cited as the "New  
15 Mexico Telecommunications Act". "

16 Section 63. Section 63-9A-3 NMSA 1978 (being Laws 1985,  
17 Chapter 242, Section 3, as amended) is amended to read:

18 "63-9A-3. DEFINITIONS. -- As used in the New Mexico  
19 Telecommunications Act:

20 A. "affordable rates" means local exchange service  
21 rates that promote universal service within a local exchange  
22 service area, giving consideration to the economic conditions  
23 and costs to provide service in such area;

24 B. "cable television service" means the one-way  
25 transmission to subscribers of video programming or other

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1 programming service and subscriber interaction, if any,  
2 [~~which~~] that is required for the selection of such video  
3 programming or other programming service;

4 C. "commission" means the [~~state corporation~~]  
5 public regulation commission;

6 D. "competitive telecommunications service" means  
7 a service [~~which~~] that has been determined to be subject to  
8 effective competition pursuant to Section 63-9A-8 NMSA 1978;

9 E. "effective competition" means that the  
10 customers of the service have reasonably available and  
11 comparable alternatives to the service;

12 F. "fund" means the New Mexico universal service  
13 fund;

14 G. "local exchange area" means a geographic area  
15 encompassing one or more local communities, as described in  
16 maps, tariffs or rate schedules filed with the commission,  
17 where local exchange rates apply;

18 H. "local exchange service" means the transmission  
19 of two-way interactive switched voice communications furnished  
20 by a telecommunications company within a local exchange area;

21 I. "message telecommunications service" means  
22 telecommunications service between local exchange areas within  
23 the state for which charges are made on a per-unit basis, not  
24 including wide-area telecommunications service, or its  
25 equivalent, or individually negotiated contracts for

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1 telecommunications services;

2 J. "noncompetitive telecommunications service"  
3 means a service [~~which~~] that has not been determined to be  
4 subject to effective competition pursuant to Section 63-9A-8  
5 NMSA 1978;

6 K. "private telecommunications service" means a  
7 system, including the construction, maintenance or operation  
8 thereof, for the provision of telecommunications service, or  
9 any portion of [~~such~~] that service, by a person [~~or entity~~]  
10 for the sole and exclusive use of that person [~~or entity~~] and  
11 not for resale, directly or indirectly. For purposes of this  
12 definition, the person [~~or entity which~~] that may use such  
13 service includes any affiliates of the person [~~or entity,~~  
14 ~~provided that~~] if at least eighty percent of the assets or  
15 voting stock of the affiliates is owned by the person [~~or~~  
16 ~~entity~~]. If any other person [~~or entity~~] uses the  
17 telecommunications service, whether for hire or not, the  
18 private telecommunications service is a public  
19 telecommunications service;

20 L. "public telecommunications service" means the  
21 transmission of signs, signals, writings, images, sounds,  
22 messages, data or other information of any nature by wire,  
23 radio, lightwaves or other electromagnetic means originating  
24 and terminating in this state regardless of actual call  
25 routing. "Public telecommunications service" does not include

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1 the provision of terminal equipment used to originate or  
2 terminate such service; private telecommunications service;  
3 broadcast transmissions by radio, television and satellite  
4 broadcast stations regulated by the federal communications  
5 commission; radio common carrier services, including [ ~~but not~~  
6 ~~limited to~~] mobile telephone service and radio paging; or one-  
7 way cable television service; and

8 M "telecommunications company" means [ ~~an~~  
9 ~~individual, corporation, partnership, joint venture, company,~~  
10 ~~firm, association, proprietorship or other entity which~~] a  
11 person that provides public telecommunications service. "

12 Section 64. A new section of the New Mexico  
13 Telecommunications Act is enacted to read:

14 "[NEW MATERIAL] CHANGE IN RATES. --

15 A. At a hearing involving an increase in rates or  
16 charges sought by a telecommunications company, the burden of  
17 proof to show that the increased rate or charge is just and  
18 reasonable shall be upon the company.

19 B. Unless the commission otherwise orders, no  
20 telecommunications company shall make a change in an  
21 established rate except after thirty days' notice to the  
22 commission, which notice shall plainly state the changes  
23 proposed to be made in the rates then in force, the time when  
24 the changed rates will go into effect and other information as  
25 the commission by rule requires. The telecommunications

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1 company shall also give notice of the proposed changes to  
2 other interested persons as the commission may direct. All  
3 proposed changes shall be shown by filing new schedules that  
4 shall be kept open to public inspection. The commission for  
5 good cause shown may allow changes in rates without requiring  
6 the thirty days' notice, under conditions that it may  
7 prescribe.

8 C. Whenever a telecommunications company files a  
9 complete application proposing new rates, the commission may,  
10 upon complaint or upon its own initiative, except as otherwise  
11 provided by law, upon reasonable notice, enter upon a hearing  
12 concerning the reasonableness of the proposed rates. If the  
13 commission determines a hearing is necessary, it shall suspend  
14 the operation of the proposed rates before they become  
15 effective but not for a longer initial period than nine months  
16 beyond the time when the rates would otherwise go into effect,  
17 unless the commission finds that a longer time will be  
18 required, in which case the commission may extend the period  
19 for an additional three months. The commission shall hear and  
20 decide cases with reasonable promptness. The commission shall  
21 adopt rules identifying criteria for various rate and tariff  
22 filings to be eligible for suspension periods shorter than  
23 what is allowed by this subsection and to be eligible for  
24 summary approval without hearing.

25 D. If after a hearing the commission finds the

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1 proposed rates to be unjust, unreasonable or in any way in  
2 violation of law, the commission shall determine the just and  
3 reasonable rates to be charged or applied by the  
4 telecommunications company for the service in question and  
5 shall fix the rates by order to be served upon the  
6 telecommunications company; or the commission by its order  
7 shall direct the telecommunications company to file new rates  
8 respecting such service that are just and reasonable. Those  
9 rates shall thereafter be observed until changed as provided  
10 by the New Mexico Telecommunications Act. "

11 Section 65. Section 63-9A-14 NMSA 1978 (being Laws 1985,  
12 Chapter 242, Section 14) is amended to read:

13 "63-9A-14. [~~ACTION TO SET ASIDE NONREMOVABLE~~] APPEAL OF  
14 ORDERS OF THE COMMISSION. -- Any provider of telecommunications  
15 services and any other person in interest being aggrieved by  
16 [~~an~~] a final order or determination of the commission under  
17 the New Mexico Telecommunications Act [~~not removable to the~~  
18 ~~supreme court of New Mexico under the provisions of Article~~  
19 ~~11, Section 7 of the constitution of New Mexico~~] may file a  
20 notice of appeal in the supreme court asking for a review of  
21 the commission's final orders [~~therein~~]. A notice of appeal  
22 [~~must~~] shall be filed within thirty days after the entry of  
23 the commission's final order. Every notice of appeal shall  
24 name the [~~state corporation~~] commission as appellee and shall  
25 identify the order from which the appeal is taken. Any person

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1 whose rights may be directly affected by the appeal may appear  
2 and become a party, or the supreme court may upon proper  
3 notice order any person to be joined as a party. "

4 Section 66. Section 63-9A-16 NMSA 1978 (being Laws 1985,  
5 Chapter 242, Section 16) is amended to read:

6 "63-9A-16. APPEAL ON THE RECORD. --

7 A. The appeal shall be heard on the record made  
8 before the commission ~~[and the supreme court shall not permit~~  
9 ~~the introduction of new evidence addressed to any of the~~  
10 ~~issues presented at the hearing before the commission]~~ and  
11 shall be governed by the appellate rules applicable to  
12 administrative appeals.

13 B. The supreme court shall affirm the commission's  
14 order unless it is:

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

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

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

20 Section 67. Section 63-9A-20 NMSA 1978 (being Laws 1985,  
21 Chapter 242, Section 20) is amended to read:

22 "63-9A-20. INJUNCTIONS-- CONTEMPT. -- ~~[ In any matter not~~  
23 ~~removable to the supreme court of New Mexico under the~~  
24 ~~provisions of Article 11, Section 7 of the constitution of New~~  
25 ~~Mexico]~~ The commission may apply to ~~[ courts having~~

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1 ~~jurisdiction]~~ the district court for injunctions to prevent  
2 violations of any provision of the New Mexico  
3 Telecommunications Act or of any rule or order of the  
4 commission issued pursuant to that act, and [ ~~such courts shall~~  
5 ~~have~~] the court has the power to grant such injunctions and to  
6 enforce such injunctions by contempt procedure. "

7 Section 68. Section 63-9B-1 NMSA 1978 (being Laws 1987,  
8 Chapter 296, Section 1) is amended to read:

9 "63-9B-1. SHORT TITLE. -- [ ~~This act~~] Chapter 63, Article  
10 9B NMSA 1978 may be cited as the "Cellular Telephone Services  
11 Act". "

12 Section 69. Section 63-9B-3 NMSA 1978 (being Laws 1987,  
13 Chapter 296, Section 3) is amended to read:

14 "63-9B-3. DEFINITIONS. --As used in the Cellular  
15 Telephone Services Act:

16 A. "commission" means the [ ~~state corporation~~] public  
17 regulation commission;

18 B. "cellular service company" means a cellular  
19 telephone company that uses cellular telephone equipment and  
20 is a radio common carrier or telephone or telecommunications  
21 company licensed by the federal communications commission [ ~~and~~  
22 ~~operates within the 800 megahertz band of frequency~~]. A  
23 cellular service company operates a cellular system [ ~~which~~  
24 that is a high capacity land mobile system in which assigned  
25 spectrum is divided into discrete channels [ ~~which~~] that are

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1 assigned in groups to geographic cells covering a cellular  
2 geographic area, as defined by the federal communications  
3 commission. "Cellular service company" does not include  
4 noncellular radio common carrier service, including [ ~~but not~~  
5 ~~limited to~~] noncellular mobile telephone service, radio-paging  
6 service or one-way cable television service; and

7 C. "certificated area" means the geographical area  
8 [which] that a cellular service company is authorized to serve  
9 by a certificate of public convenience and necessity and  
10 [which] that is defined on the map as part of the certificate  
11 issued under such law authorizing the issuance of a  
12 certificate of public convenience and necessity for such  
13 purpose. "

14 Section 70. Section 63-9B-8 NMSA 1978 (being Laws 1987,  
15 Chapter 296, Section 8) is amended to read:

16 "63-9B-8. [ACTION TO SET ASIDE NONREMOVABLE] APPEAL OF  
17 ORDERS OF THE COMMISSION. -- [Any] A cellular service company  
18 [and any] or other person in interest being aggrieved by an  
19 order or determination of the commission under the Cellular  
20 Telephone Services Act [not removable to the supreme court of  
21 New Mexico under the provisions of Article 11, Section 7 of  
22 the constitution of New Mexico] may file a notice of appeal in  
23 the supreme court asking for a review of the commission's  
24 final orders. A notice of appeal shall be filed within thirty  
25 days after the entry of the commission's final order. Every

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1 notice of appeal shall name the commission as appellee and  
2 shall identify the order from which the appeal is taken. Any  
3 person whose rights may be directly affected by the appeal may  
4 appear and become a party, or the supreme court may upon  
5 proper notice order any person to be joined as a party. "

6 Section 71. Section 63-9B-10 NMSA 1978 (being Laws 1987,  
7 Chapter 296, Section 10) is amended to read:

8 "63-9B-10. APPEAL ON THE RECORD. --

9 A. The appeal shall be heard on the record made  
10 before the commission ~~[and the supreme court shall not permit~~  
11 ~~the introduction of new evidence addressed to any of the~~  
12 ~~issues presented at the hearing before the commission]~~ and  
13 shall be governed by the appellate rules applicable to  
14 administrative appeals.

15 B. The supreme court shall affirm the commission's  
16 order unless it is:

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

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

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

22 Section 72. Section 63-9B-14 NMSA 1978 (being Laws 1987,  
23 Chapter 296, Section 14) is amended to read:

24 "63-9B-14. INJUNCTIONS-- CONTEMPT. -- ~~[ In any matter~~  
25 ~~not removable to the supreme court of New Mexico under the~~

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1 ~~provisions of Article 11, Section 7 of the constitution of New~~  
2 ~~Mexico]~~ The commission may apply to [ ~~courts having~~  
3 ~~jurisdiction]~~ the district court for injunctions to prevent  
4 violations of any provision of the Cellular Telephone Services  
5 Act or of any rule or order of the commission issued pursuant  
6 to that act, and [ ~~the courts shall have]~~ the court has the  
7 power to grant injunctions and to enforce injunctions by  
8 contempt procedure. "

9 Section 73. Section 63-9C-1 NMSA 1978 (being Laws 1987,  
10 Chapter 197, Section 1) is amended to read:

11 "63-9C-1. SHORT TITLE. -- [ ~~This act~~] Chapter 63, Article  
12 9C NMSA 1978 may be cited as the "Low Income Telephone Service  
13 Assistance Act". "

14 Section 74. Section 63-9C-3 NMSA 1978 (being Laws 1987,  
15 Chapter 197, Section 3) is amended to read:

16 "63-9C-3. DEFINITIONS. -- As used in the Low Income  
17 Telephone Service Assistance Act:

18 A. "commission" means the [ ~~state corporation~~] public  
19 regulation commission;

20 B. "department" means the human services department;  
21 and

22 C. "local exchange company" means a person [ ~~company,~~  
23 ~~corporation, partnership, cooperative, joint venture or other~~  
24 ~~business organization or association~~] not engaged solely in  
25 interstate business [ ~~which~~] that provides services or

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1 facilities for the transmission of two-way interactive  
2 switched voice communications over a telephone line within a  
3 local exchange area for single-line customers. "

4 Section 75. Section 63-9D-1 NMSA 1978 (being Laws 1989,  
5 Chapter 25, Section 1, as amended) is amended to read:

6 "63-9D-1. SHORT TITLE. -- [~~Chapter 63, Article 9D~~]  
7 Sections 63-9D-1 through 63-9D-11.1 NMSA 1978 may be cited as  
8 the "Enhanced 911 Act". "

9 Section 76. Section 63-9D-3 NMSA 1978 (being Laws 1989,  
10 Chapter 25, Section 3, as amended) is amended to read:

11 "63-9D-3. DEFINITIONS. -- As used in the Enhanced 911 Act:

12 A. "911 emergency surcharge" means the monthly  
13 uniform charge assessed on each local exchange service  
14 customer in the state for each local exchange access line to  
15 pay for the purchase, lease, installation and maintenance of  
16 equipment necessary for the establishment of a 911 system,  
17 including the repayment of bonds issued pursuant to the  
18 Enhanced 911 Bond Act;

19 B. "911 service area" means the area within a local  
20 governing body's jurisdiction that has been designated by the  
21 local governing body or the division to receive enhanced 911  
22 service;

23 C. "911 system" means the basic 911 system or the  
24 enhanced 911 system;

25 D. "basic 911 system" means a telephone service that

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1 automatically connects a person dialing the single three-digit  
2 number 911 to an established public safety answering point  
3 through normal telephone service facilities;

4 E. "commission" means the [~~state corporation~~] public  
5 regulation commission;

6 F. "department" means the taxation and revenue  
7 department;

8 G. "division" means the local government division of  
9 the department of finance and administration;

10 H. "enhanced 911 system" means a telephone system  
11 consisting of network, database and on-premises equipment that  
12 [~~utilizes~~] uses the single three-digit number 911 for  
13 reporting police, fire, medical or other emergency situations,  
14 thereby enabling the users of a public telephone system to  
15 reach a public safety answering point to report emergencies by  
16 dialing 911, and includes the capability to:

17 (1) selectively route incoming 911 calls to the  
18 appropriate public safety answering point operating in a 911  
19 service area; and

20 (2) automatically display the name, address and  
21 telephone number of an incoming 911 call on a video monitor at  
22 the appropriate public safety answering point;

23 I. "enhanced 911 equipment" means the customer  
24 premises equipment directly related to the operation of an  
25 enhanced 911 system, including [~~but not limited to~~] automatic

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1 number identification or automatic location identification  
2 controllers and display units, printers, cathode ray tubes and  
3 software associated with call detail recording;

4 J. "equipment supplier" means [ any] a person [or  
5 entity] who provides or offers to provide telecommunications  
6 equipment necessary for the establishment of enhanced 911  
7 services;

8 K. "local 911 surcharge" means the additional charge  
9 imposed by a local governing body of a community served by a  
10 local exchange telephone company that has not otherwise  
11 provided for enhanced 911 capability in its network in order  
12 to provide funding for the local governing body to pay for  
13 development of the network and database;

14 L. "local exchange access line" means [ any] a  
15 telephone line that connects a local exchange service customer  
16 to the local switching office and has the capability of  
17 reaching local public safety service agencies, but does not  
18 include any line used by a carrier for the provision of  
19 interexchange services;

20 M. "local exchange area" means a geographic area  
21 encompassing one or more local communities, as described in  
22 maps, tariffs or rate schedules filed with the commission,  
23 where local exchange rates apply;

24 N. "local exchange service" means the transmission  
25 of two-way interactive switched voice communications furnished

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1 by a local exchange telephone company within a local exchange  
2 area, including access to enhanced 911 systems;

3 0. "local exchange telephone company" means a  
4 telecommunications company, as defined by Subsection M of  
5 Section 63-9A-3 NMSA 1978, certified to provide local exchange  
6 service;

7 P. "local governing body" means the board of county  
8 commissioners of a county or the governing body of a  
9 municipality as defined in the Municipal Code;

10 Q. "network" means [~~any~~] a system designed to  
11 provide one or more access paths for communications between  
12 users at different geographic locations; provided that a  
13 system may be designed for voice, data or both and may feature  
14 limited or open access and may employ appropriate analog,  
15 digital switching or transmission technologies;

16 R. "network and database surcharge" means the  
17 monthly uniform charge assessed on each local exchange service  
18 customer in the state for each local exchange access line to  
19 pay for the costs of developing and maintaining a network and  
20 database for a 911 emergency system; and

21 S. "public safety answering point" means a twenty-  
22 four-hour local jurisdiction communications facility that  
23 receives 911 service calls and directly dispatches emergency  
24 response services or that relays calls to the appropriate  
25 public or private safety agency. "

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1           Section 77. Section 65-2-82 NMSA 1978 (being Laws 1981,  
2 Chapter 358, Section 3, as amended by Laws 1989, Chapter 250,  
3 Section 1 and also by Laws 1989, Chapter 375, Section 1) is  
4 amended to read:

5           "65-2-82. DEFINITIONS. --As used in the Motor Carrier  
6 Act:

7           A. "antitrust laws" means the laws of this state  
8 relating to combinations in restraint of trade;

9           B. "broker" means [~~any~~] a person not included in the  
10 term "motor carrier" and not a bona fide employee or agent of  
11 any motor carrier who, as principal or agent, sells or offers  
12 for sale any transportation subject to the Motor Carrier Act  
13 or negotiates for or holds himself [~~or itself~~] out by  
14 solicitation, advertisement or otherwise as one who sells,  
15 provides, furnishes, contracts or arranges for [~~such~~] that  
16 transportation;

17           C. "certificate" means a certificate of public  
18 convenience and necessity issued under authority of the laws  
19 of the state to ~~common~~ motor carriers;

20           D. "clerk" or "chief clerk" means the chief clerk of  
21 the [~~state corporation~~] public regulation commission;

22           E. "commission" means the [~~state corporation~~] public  
23 regulation commission;

24           F. "common motor carrier" means [~~any~~] a person who  
25 undertakes, whether directly or indirectly or by lease of

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1 equipment or operating rights or any other arrangement, to  
2 transport persons or property or any class of property for the  
3 general public by motor vehicle for compensation, whether over  
4 regular or irregular routes and under scheduled or  
5 nonscheduled service, but does not include farm carriers;

6 G. "contract motor carrier" means [~~any~~] a person not  
7 a common motor carrier who, under individual contracts or  
8 agreements and whether directly or indirectly or by lease of  
9 equipment or operating rights or any other arrangements,  
10 transports persons or property by motor vehicle for  
11 compensation, but does not include farm carriers;

12 H. "farm carrier" means [~~any~~] a motor vehicle  
13 registered in this state being used in the transportation for  
14 hire of a cargo consisting of [~~only~~] one or several of the  
15 following: farm produce, including [~~but not limited to~~]  
16 grains, cotton, cottonseed, vegetables, hay and other farm  
17 products; livestock feed; livestock; stock salt; manure; wire;  
18 posts; dairy products; and farm or ranch machinery except  
19 tractors weighing more than forty-five thousand pounds;

20 I. "highway" means the public roads, highways,  
21 streets and ways in this state;

22 J. "household goods" means:

23 (1) personal effects and property used or to be  
24 used in a dwelling when a part of the equipment or supply of  
25 the dwelling and other similar property as the commission may

Underscored material = new  
[bracketed material] = delete

1 provide by [~~regulation~~] rule; except that this paragraph shall  
2 not be construed to include property moving from a factory or  
3 store, except property as the householder has purchased with  
4 intent to use in his dwelling and [~~which~~] that is transported  
5 at the request of, and the transportation charges paid to the  
6 carrier by, the householder;

7 (2) furniture, fixtures, equipment and the  
8 property of stores, offices, ~~museums~~, institutions, hospitals  
9 or other establishments when a part of the stock, equipment or  
10 supply of stores, offices, ~~museums~~, institutions, hospitals or  
11 other establishments and other similar property as the  
12 commission may provide by [~~regulation~~] rule; except that this  
13 paragraph shall not be construed to include the stock-in-trade  
14 of any establishment, whether consignor or consignee, other  
15 than used furniture and used fixtures, except when transported  
16 as incidental to the moving of the establishment, or a portion  
17 [~~thereof~~] of it, from one location to another; and

18 (3) articles, including objects of art,  
19 displays and exhibits, [~~which~~] that, because of their unusual  
20 nature or value require the specialized handling and equipment  
21 usually employed in moving household goods and other similar  
22 articles as the commission may provide by [~~regulation~~] rule;  
23 except that this paragraph shall not be construed to include  
24 any article, whether crated or uncrated, [~~which~~] that does  
25 not, because of its unusual nature or value, require the

Underscored material = new  
[bracketed material] = delete

1 specialized handling and equipment usually employed in moving  
2 household goods;

3 K. "interested parties" shall in all cases include  
4 all carriers operating over the routes or any part thereof or  
5 in the territory involved in [~~any~~] an application for a  
6 certificate or permit or [~~any~~] an application to file or  
7 change [~~any~~] a schedule of rates, charges or fares or [~~any~~] a  
8 rule [~~regulation~~] or practice, and other parties as the  
9 commission may deem interested in the particular matter;

10 L. "irregular route" means that the route to be used  
11 by a motor carrier is not restricted to any specific highway  
12 within the area the motor carrier is authorized to serve;

13 M. "lease" means [~~any~~] an arrangement whereby a  
14 motor carrier augments his equipment by use of equipment owned  
15 by others;

16 N. "license" means a license issued [~~under~~] pursuant  
17 to the Motor Carrier Act to a broker;

18 O. "motor carrier" includes common motor carriers,  
19 contract motor carriers and any person performing for-hire  
20 transportation service without authority from the commission  
21 and farm carriers;

22 P. "motor vehicle" means [~~any~~] a vehicle, machine,  
23 tractor, trailer or semi-trailer propelled or drawn by  
24 mechanical power and used upon the highways in the  
25 transportation of property or persons, but does not include

Underscored material = new  
[bracketed material] = delete

1 any vehicle, locomotive or car operated exclusively on rail or  
2 rails;

3 Q. "permit" means a permit issued under authority of  
4 the laws of this state to contract motor carriers;

5 R. "person" means [~~any~~] an individual, firm,  
6 partnership, corporation, company, association or organization  
7 and includes any trustee, receiver, assignee or personal  
8 representative thereof;

9 S. "regular route" means a fixed, specific and  
10 determined course to be traveled by a motor carrier's vehicles  
11 rendering service to, from or between various points,  
12 localities or municipalities in this state;

13 T. the "services" and "transportation" to which the  
14 Motor Carrier Act applies include all vehicles operated by,  
15 for or in the interest of any motor carrier irrespective of  
16 ownership or of contract, express or implied, together with  
17 all facilities and property controlled by any motor carrier  
18 and used in the transportation of persons or property or in  
19 the performance of any service in connection therewith;

20 U. "shipper" means a person who consigns or receives  
21 goods for transportation;

22 V. "single-line rate" means a rate, charge or  
23 allowance proposed by a single common motor carrier of  
24 property that is applicable only over its line and for which  
25 the transportation can be provided by that common motor

Underscored material = new  
[bracketed material] = delete

1 carrier;

2 W. "state" means [~~the state of~~] New Mexico;

3 X. "towing company" means [~~any~~] a common motor  
4 carrier engaged in transporting for hire disabled or abandoned  
5 motor vehicles by means of a tow truck or flatbed vehicle  
6 carrier; and

7 Y. "weight-bumping" means the knowing and willful  
8 making or securing of a fraudulent weight on a shipment of  
9 household goods [~~which~~] that is subject to the jurisdiction of  
10 the commission under the Motor Carrier Act. "

11 Section 78. Section 65-2-120 NMSA 1978 (being Laws 1981,  
12 Chapter 358, Section 41, as amended) is repealed and a new  
13 Section 65-2-120 NMSA 1978 is enacted to read:

14 "65-2-120. [NEW MATERIAL] APPEAL TO SUPREME COURT. --

15 A. A motor carrier or other party in interest being  
16 aggrieved by a final order or determination of the commission  
17 pursuant to Chapter 65, Article 2 NMSA 1978 may appeal to the  
18 supreme court within thirty days.

19 B. The appeal shall be on the record of the hearing  
20 before the commission and shall be governed by the appellate  
21 rules applicable to administrative appeals. The supreme court  
22 shall affirm the commission's order unless it is:

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

25 (2) not supported by substantial evidence in

Underscored material = new  
[bracketed material] = delete

1 the record; or

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

3 Section 79. Section 65-4-4 NMSA 1978 (being Laws 1933,  
4 Chapter 120, Section 4) is amended to read:

5 "65-4-4. ADMINISTRATION OF ACT. -- The [~~State Corporation~~]  
6 ~~commission [of the State of New Mexico is hereby vested with~~  
7 ~~authority to]~~ shall administer [this act] Sections 65-4-1  
8 through 65-4-18 NMSA 1978 with full power to regulate and  
9 control the issuance and revocation of licenses to be issued  
10 under the provisions of [~~this act~~] those sections and to  
11 perform all other acts and duties provided in [~~this act and~~]  
12 those sections necessary for [~~its~~] their enforcement."

13 Section 80. Section 65-4-18 NMSA 1978 (being Laws 1933,  
14 Chapter 120, Section 19) is amended to read:

15 "65-4-18. COMMISSION DEFINED. -- The term "commission",  
16 when used in [~~this act~~] Sections 65-4-1 through 65-4-18 NMSA  
17 1978, means the [state corporation] public regulation  
18 commission [of the State of New Mexico]."

19 Section 81. Section 65-6-2 NMSA 1978 (being Laws 1974,  
20 Chapter 82, Section 2, as amended) is amended to read:

21 "65-6-2. DEFINITIONS. -- As used in the Ambulance  
22 Standards Act:

23 A. "ambulance" means [~~any~~] a vehicle, including  
24 motor vehicles or watercraft, designed and used or intended to  
25 be used for the transportation of sick or injured persons;

Underscored material = new  
[bracketed material] = delete

1           B. "driver" means a person who, on a regular or  
2 irregular basis, either paid or voluntary, serves as the  
3 operator of an ambulance;

4           C. "attendant" means a person who, on a regular or  
5 irregular basis, either paid or voluntary, serves as an  
6 assistant to the [~~ambulance~~] driver in the operation of the  
7 ambulance; and

8           D. "commission" means the [~~state corporation~~] public  
9 regulation commission. "

10           Section 82. Section 70-3-12 NMSA 1978 (being Laws 1969,  
11 Chapter 71, Section 2, as amended) is amended to read:

12           "70-3-12. DEFINITIONS. --As used in the Pipeline Safety  
13 Act:

14           A. "person" means [~~any~~] an individual, firm, joint  
15 venture, partnership, corporation, association, state,  
16 municipality, political subdivision, cooperative association,  
17 joint stock association or any combination thereof and  
18 includes any receiver, trustee, assignee or personal  
19 representative thereof;

20           B. "commission" means the [~~state corporation~~] public  
21 regulation commission;

22           C. "gas" means natural gas, flammable gas or gas  
23 that is toxic or corrosive;

24           D. "oil" means crude oil and liquid hydrocarbons and  
25 manufactured products derived from either;

Underscored material = new  
[bracketed material] = delete

1           E. "transportation of gas" means the gathering,  
2 transmission or distribution of gas by pipeline or its  
3 storage, except that it shall not include the gathering of gas  
4 in those rural locations [~~which~~] that lie outside the limits  
5 of any municipality or unincorporated city, town or village or  
6 any residential or commercial area such as a subdivision, a  
7 business or shopping center, a ~~community~~ development or any  
8 similar populated area [~~which~~] that the commission may define  
9 by order as a nonrural area;

10           F. "transportation of oil" means the transmission of  
11 oil by pipeline, except pipelines operated exclusively for the  
12 gathering of oil in any field or area or pipelines  
13 constituting a part of any tank farm, plant facilities of any  
14 processing plant, gasoline plant, refinery, carbon-black  
15 plant, recycling system or similar operations;

16           G. "gas pipeline facilities" means new and existing  
17 pipeline rights of way and any equipment, facility or  
18 structure used in the transportation of gas or the treatment  
19 of gas during the course of transportation;

20           H. "oil pipeline facilities" means new and existing  
21 pipeline rights of way and any equipment, facility or  
22 structure used in the transportation of oil; and

23           I. "intrastate pipeline facilities" means oil  
24 pipeline facilities or gas pipeline facilities within the  
25 state that are not gas pipeline facilities subject to the

Underscored material = new  
[bracketed material] = delete

1 jurisdiction of the federal energy regulatory commission  
2 pursuant to the federal Natural Gas Act or oil pipeline  
3 facilities used in the transportation of oil in interstate or  
4 foreign commerce, except that it shall include pipeline  
5 facilities within the state that transport gas from an  
6 interstate gas pipeline to a direct sales customer within the  
7 state purchasing gas for its own consumption. "

8 Section 83. TEMPORARY PROVISION-- TRANSFERS. --

9 A. Except as otherwise provided in this section, on  
10 January 1, 1999, all personnel and all money, appropriations,  
11 records, furniture, equipment, supplies and other property  
12 belonging to the state corporation commission, the insurance  
13 board and the New Mexico public utility commission are  
14 transferred to the public regulation commission. On January  
15 1, 1999, all personnel and all money, appropriations, records,  
16 furniture, equipment, supplies and other property belonging to  
17 the attorney general for the provision of legal services to  
18 the state corporation commission are transferred to the public  
19 regulation commission.

20 B. Except as otherwise provided in this section, on  
21 January 1, 1999, all existing contracts, agreements and other  
22 obligations in effect for the state corporation commission,  
23 the insurance board or the New Mexico public utility  
24 commission shall be binding on the public regulation  
25 commission.

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Underscored material = new  
[bracketed material] = delete

1 C. Except as otherwise provided in this section, on  
2 January 1, 1999, all pending cases, legal actions, appeals and  
3 other legal proceedings of every description and all pending  
4 administrative proceedings that involve the state corporation  
5 commission, the insurance board or the New Mexico public  
6 utility commission shall be unaffected and shall continue in  
7 the name of the public regulation commission.

8 D. All rules, tariffs, orders and other official  
9 acts of the state corporation commission, the insurance board  
10 or the New Mexico public utility commission shall continue in  
11 effect until amended, replaced or repealed by the public  
12 regulation commission; provided, however, that the public  
13 regulation commission shall review all rules, tariffs and  
14 other official acts of the state corporation commission and  
15 the New Mexico public utility commission by July 1, 2003 and  
16 readopt, amend, replace or repeal them.

17 E. All references in law, rules, tariffs, orders and  
18 other official acts to the state corporation commission, the  
19 insurance board or the New Mexico public utility commission  
20 shall be construed to be references to the public regulation  
21 commission.

22 F. On January 1, 1999, all personnel and all money,  
23 appropriations, records, furniture, equipment, supplies and  
24 other property belonging to the state fire marshal's office,  
25 the fire board or the firefighter's training academy of the

Underscored material = new  
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1 state corporation commission are transferred to the department  
2 of public safety. All existing contracts, agreements and  
3 other obligations; all appeals and other proceedings; all  
4 rules and orders; and all references in law to the state fire  
5 marshal's office, the fire board or the firefighter's training  
6 academy shall be deemed to be obligations of or references to  
7 the department of public safety.

8 Section 84. REPEAL. -- Sections 53-1-2 through 53-1-6,  
9 53-3-34, 59A-1-6, 59A-2-5 and 59A-2-6, 59A-3-1 through  
10 59A-3-9, 62-5-1 through 62-5-11, 62-6-1 through 62-6-3,  
11 62-10-7, 62-10-15, 62-15-29, 63-2-11, 63-2-17, 63-3-3 through  
12 63-3-5, 63-3-9 through 63-3-22, 63-3-24, 63-3-29 through  
13 63-3-32, 63-4-1 through 63-4-8, 63-6-1 through 63-6-7, 63-7-2  
14 through 63-7-9, 63-7-11 through 63-7-19, 63-8-1 through  
15 63-8-7, 63-9-12 through 63-9-14, 63-9-17, 63-9A-13, 63-9A-15,  
16 63-9A-17 and 63-9A-18, 63-9B-7, 63-9B-11, 63-9B-12, 65-2-118  
17 and 65-2-119 NMSA 1978 (being Laws 1913, Chapter 68, Sections  
18 2 and 3, Laws 1912, Chapter 83, Section 18, Laws 1913, Chapter  
19 83, Section 11, Laws 1951, Chapter 93, Section 1, Laws 1979,  
20 Chapter 390, Section 11, Laws 1984, Chapter 127, Sections 6,  
21 23, 24, 35, 36 and 38 through 44, Laws 1941, Chapter 84,  
22 Section 3, Laws 1977, Chapter 255, Section 121, Laws 1941,  
23 Chapter 84, Sections 4 through 8, 10 through 16, 56 and 64,  
24 Laws 1939, Chapter 47, Section 29, Laws 1878, Chapter 1,  
25 Section 8-23, Laws 1882, Chapter 59, Section 1, Laws 1947,

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1 Chapter 49, Sections 1 and 2, Laws 1878, Chapter 1, Section  
2 8-14, Laws 1882, Chapter 60, Sections 1 and 2, Laws 1878,  
3 Chapter 1, Sections 9-3 and 8-18, Laws 1882, Chapter 59,  
4 Sections 2 through 7 and 9, Laws 1878, Chapter 1, Section  
5 8-12, Laws 1912, Chapter 62, Sections 1 and 2, Laws 1878,  
6 Chapter 1, Section 8-13, Laws 1915, Chapter 37, Sections 1  
7 through 4, Laws 1921, Chapter 200, Sections 1 through 8, Laws  
8 1878, Chapter 1, Sections 9-4 through 9-10, Laws 1912, Chapter  
9 78, Sections 2 through 5, Laws 1925, Chapter 19, Section 1,  
10 Laws 1912, Chapter 78, Sections 6 through 8 and 10 through 18,  
11 Laws 1955, Chapter 43, Sections 1 through 7, Laws 1965,  
12 Chapter 292, Sections 12 through 14 and 17, Laws 1985, Chapter  
13 242, Sections 13, 15, 17 and 18, Laws 1987, Chapter 296,  
14 Sections 7, 11 and 12 and Laws 1981, Chapter 358, Sections 39  
15 and 40, as amended) are repealed.

16 Section 85. DELAYED REPEAL. --The following are repealed  
17 effective July 1, 2001:

- 18 A. the Public Utility Act;
- 19 B. Chapter 63, Article 7 NMSA 1978;
- 20 C. the Telephone and Telegraph Company Certification  
21 Act;
- 22 D. the New Mexico Telecommunications Act; and
- 23 E. the Cellular Telephone Services Act.

24 Section 86. EFFECTIVE DATE. --The effective date of the  
25 provisions of this act is January 1, 1999.

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3 FORTY-THIRD LEGISLATURE  
4 SECOND SESSION  
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6

7 January 27, 1998  
8

9 Mr. Speaker:  
10

11 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to  
12 whom has been referred  
13

14  
15 HOUSE BILL 74  
16

17  
18 has had it under consideration and reports same with  
19 recommendation that it DO PASS, amended as follows:  
20

21 1. On page 1, line 17, after the semicolon strike the  
22 remainder of the line, strike all of line 18 and strike line 19  
23 through the semicolon.  
24

25 2. On page 8, line 24, after "business" insert ", including

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2 FORTY-THIRD LEGISLATURE  
3 SECOND SESSION

4 HCPAC/HB 74

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5 the fire marshal bureau. The superintendent of insurance may  
6 organize the firefighter's training academy as part of the fire  
7 marshal bureau or may organize it as a separate bureau. "

8  
9 3. On page 15, line 18, after "is" insert "reasonable".

10  
11 4. On page 16, lines 2 and 3, strike "sways judgment and".

12  
13 5. On page 17, line 20, strike ", but" and insert in lieu  
14 thereof a period and "'Pecuniary interest'".

15  
16 6. On page 17, line 22, strike "or" the first time it  
17 appears on the line and insert in lieu thereof a comma.

18  
19 7. On page 17, line 22, after "benefits" insert:  
20  
21 'or an interest in capital credits of a rural electric  
22 cooperative or telephone cooperative because of current or past  
23 patronage".

24  
25 8. On pages 22 and 23, strike Section 23 in its entirety.

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2 FORTY-THIRD LEGISLATURE  
3 SECOND SESSION

4 HCPAC/HB 74

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5  
6 9. Renumber the succeeding sections accordingly.

7  
8 10. On page 38, lines 5 and 6, strike "in the department of  
9 public safety" and insert in lieu thereof "as the bureau chief of  
10 the fire marshal bureau of the insurance division".

11  
12 11. On page 38, line 18, strike "secretary of public  
13 safety" and insert in lieu thereof "superintendent".

14  
15 12. On page 39, line 9, strike "secretary of public safety"  
16 and insert in lieu thereof "commission".

17  
18 13. On page 39, line 11, strike "secretary of public  
19 safety" and insert in lieu thereof "commission".

20  
21 14. On page 39, line 15, strike "secretary" and insert in  
22 lieu thereof "commission".

23  
24 15. On page 39, line 15, remove the brackets and line  
25 through "its" and strike the remainder of the line.

Underscored material = new  
[bracketed material] = delete

1  
2 FORTY-THIRD LEGISLATURE  
3 SECOND SESSION

4 HCPAC/HB 74

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5 16. On page 39, line 16, remove the brackets and line  
6 through "its" and strike "his".

7  
8 17. On page 40, line 3, strike "secretary of public safety"  
9 and insert in lieu thereof "commission".

10  
11 18. On page 40, line 5, remove the brackets and line  
12 through "its" and strike "his".

13  
14 19. On page 40, line 14, strike "secretary of public  
15 safety" and insert in lieu thereof "commission".

16  
17 20. On page 40, line 16, strike "secretary" and insert in  
18 lieu thereof "commission".

19  
20 21. On page 40, line 18, strike "he" and insert in lieu  
21 thereof "it".

22  
23 22. On page 40, line 21, strike "secretary" and insert in  
24 lieu thereof "commission".

25  
Underscored material = new  
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2 FORTY-THIRD LEGISLATURE  
3 SECOND SESSION

4 HCPAC/HB 74

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5 23. On page 41, line 6, strike "secretary of public safety"  
6 and insert in lieu thereof "commission".

7  
8 24. On page 41, line 13, strike "secretary" and insert in  
9 lieu thereof "commission".

10  
11 25. On page 91, line 13, after "board" insert ", the fire  
12 board".

13  
14 26. On page 91, line 23, after "board" insert ", the fire  
15 board".

16  
17 27. On page 92, line 5, after "board" insert ", the fire  
18 board".

19  
20 28. On page 92, line 9, after "board" insert ", the fire  
21 board".

22  
23 29. On page 92, line 19, after "board" insert ", the fire  
24 board".

25  
Underscored material = new  
~~[bracketed material]~~ = delete

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2 FORTY-THIRD LEGISLATURE  
3 SECOND SESSION

4 HCPAC/HB 74

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5 30. On pages 92 and 93, strike Subsection F in its  
6 entirety.,

7  
8  
9 and thence referred to the JUDICIARY COMMITTEE.  
10

11  
12 Respectfully submitted,

13  
14  
15  
16 \_\_\_\_\_  
17 Gary K. King, Chairman

18  
19  
20  
21 Adopted \_\_\_\_\_

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

22 (Chief Clerk)

(Chief Clerk)

23  
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25  
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2 FORTY-THIRD LEGISLATURE  
3 SECOND SESSION

4 HCPAC/HB 74

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5 Date \_\_\_\_\_  
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13 The roll call vote was 9 For 0 Against

14 Yes: 9

15 Excused: Trujillo-Knauer

16 Absent: none  
17  
18  
19

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4 SECOND SESSION  
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6

7 February 6, 1998  
8

9 Mr. Speaker:  
10

11 Your JUDICIARY COMMITTEE, to whom has been referred  
12

13 HOUSE BILL 74, as amended  
14  
15

16 has had it under consideration and reports same with  
17

18 recommendation that it DO PASS, amended as follows:  
19

20 1. On page 9, line 21, after "gas" insert ", renewable  
21 energy sources".

22 2. On page 10, line 4, after "testimony" insert "and  
23 evidence".

24  
25 3. On page 12, line 4, strike "thirty" and insert in lieu

1  
2 FORTY-THIRD LEGISLATURE  
3 SECOND SESSION

4 HCPAC/HJC/HB 74, aa

Page 103

5  
6 thereof "sixty".

7  
8 4. On page 12, lines 5 and 6, strike "in a newspaper of  
9 general circulation".

10  
11 5. On page 12, line 6, strike "thirty" and insert in lieu  
12 thereof "sixty".

13  
14 6. On page 12, line 8, after the period insert:

15  
16 "For each rule, ~~amendment~~ or repealing provision that  
17 affects only one or a limited number of ~~municipalities~~, towns,  
18 villages or counties, notice shall be published in the largest  
19 circulation newspaper published and distributed locally in those  
20 areas as well as in a newspaper of general circulation in the  
21 state. For each rule, ~~amendment~~ or repealing provision that  
22 affects the entire state, notice shall be published in three  
23 newspapers of general circulation in the state."

24  
25 7. On page 16, line 18, after "provide" strike the

1  
2 FORTY-THIRD LEGISLATURE  
3 SECOND SESSION

4 HCPAC/HJC/HB 74, aa

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5  
6 remainder of the line and on line 19, strike "facts" and insert  
7 in lieu thereof "a full explanation".  
8

9 8. On page 19, line 12, after "intervenor" insert ", and if  
10 a pecuniary interest in an intervenor develops, the commissioner  
11 or employee shall divest himself of that interest or recuse  
12 himself from the proceeding with the intervenor interest".  
13

14 9. On page 19, line 18, after "retained" insert "in a  
15 position that requires appearances before the commission".  
16

17 10. On pages 35 through 37, strike Sections 39 and 40 in  
18 their entirety.  
19

20 11. On page 92, line 13, after "rules" strike the remainder  
21 of the line and strike line 14 through "acts".  
22

23 12. On page 92, line 15, after "2003" strike the remainder  
24 of the line and strike line 16 up to the period.  
25

Underscored material = new  
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1  
2 **FORTY-THIRD LEGISLATURE**  
3 **SECOND SESSION**

4 HCPAC/HJC/HB 74, aa

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5  
6 13. On page 94, strike Section 85 in its entirety.

7  
8 14. Renumber sections to correspond with these amendments.

9  
10 Respectfully submitted,

11  
12  
13 \_\_\_\_\_  
14 Thomas P. Foy, Chairman

15  
16  
17  
18 Adopted \_\_\_\_\_

(Chief Clerk)

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

(Chief Clerk)

19  
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23 Date \_\_\_\_\_  
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FORTY-THIRD LEGISLATURE  
SECOND SESSION

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The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Rios, Sanchez

Absent: None

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FORTY-THIRD LEGISLATURE

SECOND SESSION

February 8, 1998

HOUSE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 74, as amended

Amendment sponsored by Representative Gary K. King

1. On page 18, line 11, after "accept" insert a colon and the paragraph designation "(1)".

2. On page 18, line 17, strike the period, insert in lieu thereof "; or" and between lines 17 and 18, insert the following new paragraph:

"(2) more than five hundred dollars (\$500) per election from any other person."

Underscored material = new  
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FORTY-THIRD LEGISLATURE  
SECOND SESSION

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HF1/HB 74, aa

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Gary K. King

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

HB 74/a

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4  
5 February 13, 1998

6 Mr. President:

7  
8 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom  
9  
10 has been referred

11  
12 HOUSE BILL 74, as amended

13  
14 has had it under consideration and reports same with recommendation  
15 that it DO PASS, amended as follows:

16  
17 1. On page 94, line 25, after "of" insert "Sections 1 through 18  
18 and 20 through 81 of",

19  
20 and thence referred to the CONSERVATION COMMITTEE.  
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22  
23 Respectfully submitted,

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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\_\_\_\_\_  
Roman M. Maes, III, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Howes, Robinson, Wilson

Absent: None

H0074CT1

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

HB 74/A

February 17, 1998

Mr. President:

Your CONSERVATION COMMITTEE, to whom has been referred

HOUSE BILL 74, as amended

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

1. On page 92, line 12, after the semicolon insert:

"provided, however, that a tariff, final order or other nonprocedural  
official act of the state corporation commission, the state insurance  
board, the fire board or the New Mexico public utility commission

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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SCONC/HB74

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promulgated, approved, made or taken after January 1, 1998 shall be reviewed by the public regulation commission and unless modified or repealed before June 15, 1999, after notice and hearing, for prospective application by that commission is deemed ratified; and".

2. On page 92, line 12, after "provided" and before the comma insert "further".

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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SCONC/HB74

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Respectfully submitted,

\_\_\_\_\_  
Michael S. Sanchez, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 0 Against

Yes: 8

No: None

Excused: Davis, Kysar

Absent: None

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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SCONC/HB74

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FORTY-THIRD LEGISLATURE

SECOND SESSION

February 18, 1998

SENATE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 74, as amended

Amendment sponsored by Senator Michael S. Sanchez

1. Strike Senate Conservation Committee Amendments 1 and 2.

\_\_\_\_\_  
Michael S. Sanchez

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

123600.1

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FORTY-THIRD LEGISLATURE  
SECOND SESSION

SF1/HB 74

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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**FORTY-THIRD LEGISLATURE  
SECOND SESSION**

**SF1/HB 74**

**Page 117**

**FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998**

**February 18, 1998**

**SENATE FLOOR AMENDMENT number \_\_\_\_\_ to HOUSE BILL 74, as amended**

**AMENDMENT sponsored by SENATOR VERNON**

- 1. On page 94, line 16, reinstate Section 85 in its entirety.**
- 2. On page 94, line 17, after "July 1," strike "2001" and insert**

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**FORTY-THIRD LEGISLATURE  
SECOND SESSION**

**SF1/HB 74**

**Page 118**

in lieu thereof "2003".

\_\_\_\_\_  
Senator L. Skip Vernon

Adopted \_\_\_\_\_

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

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

**H0074FS2**

**123600.1**

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