CHAPTER 12
Miscellaneous Public Affairs Matters

ARTICLE 1
Compilation Commission

12-1-1. Ratification of contract.

The contract entered, subject to approval of the New Mexico legislature, between The Michie Company of Charlottesville, Virginia, and the compilation commission on January 7, 1977, to publish a 1978 compilation of the New Mexico Statutes Annotated is hereby ratified and approved.

History: 1953 Comp., § 1-1-1, enacted by Laws 1977, ch. 74, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1977, ch. 74, § 1, repealed 1-1-1, 1953 Comp., relating to ratification of contract and contents and form of compilation, and enacted a new section.

Compiler's notes. — The 1978 NMSA is the tenth codification, revision or compilation of the laws of New Mexico since the "Kearny Code of Laws" of 1846. The Kearny Code, which with its accompanying Bill of Rights and congressional acts, was the basis of the New Mexico legal system until statehood, was prepared under Brigadier General Stephan W. Kearny's orders by Col. Alexander W. Doniphan and Pvt. Willard P. Hall, with assistance from Franklin P. Blair and Dr. David Waldo.

In 1854 the territorial legislature provided for a revision, correction and codification of the laws which was completed by Chief Justice James J. Deavenport in 1856 as the "Revised Statutes of the Territory of New Mexico."

The third revision was authorized by the legislature in 1859, and the commission reported to that body in 1865. The 1865 revision was held to repeal all acts enacted prior thereto. See Tafoya v. Garcia, 1 N.M. 480 (1871), in the notes to this section. An unauthorized compilation following the plan of the 1865 Code was prepared by Chief Justice L. Bradford Prince in 1880.

A compilation of the laws was again authorized in 1884 and was prepared by three commissioners who published their work in 1885 under the title "Compiled Laws of New Mexico." The last territorial compilation was authorized and published in 1897 as the "Compiled Laws of New Mexico."

After New Mexico achieved statehood in 1912, a new compilation was planned. However, the New Mexico Statutes of 1915 was issued as a codification, in both English and Spanish, and was enacted into law by the legislature. The title of the act read "An act to codify the laws of the state of New Mexico." The enacting clause was: "Be it enacted by the legislature of the state of New Mexico:" after which was set out the body of the code, which became effective June 11, 1915. The repealing and saving clause of the 1915 codification read, in part: "This act shall not be considered as enacting or adopting any chapter heading, article heading, section heading, footnote, reference or citation." (See Code 1915, p. 1665; C.S. 1929, § 138-101; 1941 Comp., § 1-118).

The New Mexico Statutes of 1929 was a compilation authorized by Laws 1929, ch. 135, and was also translated into Spanish.

The 1941 Compilation was authorized by Laws 1941, ch. 191, which also created the 1941 compilation commission.

Laws 1953, ch. 39, § 1, authorized the 1953 Compilation, which was the last revision prior to NMSA 1978.

I. GENERAL CONSIDERATION.

Effect of omission of law from NMSA 1978. — Since NMSA 1978 is a compilation, not a revision or codification, i.e., it is gathered from other books and documents, a failure to refer to an enacted law in NMSA 1978 would not diminish the applicability of that enacted law. *Loesch v. Henderson*, 1985-NMCA-104, 103 N.M. 554, 710 P.2d 748.

"Revised Statutes" means not merely the compilation or collecting together of existing statutes, but also the amendation or expurgation of such provisions as the revisors might deem unnecessary. *Tafoya v. Garcia*, 1871-NMSC-003, 1 N.M. 480.

Meaning of revision. — A revision of statutes implies one, or all of the following: (1) a reexamination of existing statutes; (2) a restatement of existing statutes in a corrected or improved form; (3) the restatement may or may not include material changes; (4) all parts and provisions of the former statute or statutes that are omitted are repealed; (5) the revision displaces and repeals the former law as it stood relating to the subject or subjects within its purview. *City of Raton v. Sproule*, 1967-NMSC-141, 78 N.M 136, 429 P.2d 336.

Reenactment of statute in substantially same language in which it was originally phrased constitutes the latter statute merely a continuation of the former. *McClain v. Haley*, 1949-NMSC-036, 53 N.M. 327, 207 P.2d 1013; *State v. Thompson*, 1933-NMSC-021, 37 N.M. 229, 20 P.2d 1030.

Reenactment of part of statute in substantially same language. — Where original language of a statute was reenacted on two separate occasions, the statute was not to be deemed a new enactment as to that part of the section as remained in its original

form, but rather as a continuation thereof. *Janney v. Fullroe, Inc.*, 1943-NMSC-042, 47 N.M. 423, 144 P.2d 145.

II. 1865 REVISION.

Statutes not included impliedly repealed. — All statutes of a public nature enacted prior to 1864-65 legislature and not contained in the revised statutes adopted at that session were impliedly repealed by such omission. *Tafoya v. Garcia*, 1871-NMSC-003, 1 N.M. 480.

Statutes construed as not mutually repugnant. — Provisions of 1865 Revised Statutes were considered as all reenacted on date of legislative adoption of the revision; all provisions touching the same subject matter were to be construed in such manner that one part not be repugnant to another. *In re Watts*, 1872-NMSC-002, 1 N.M. 541.

Unless conflicting in practical operation. — Where sections dealing with same subject matter but enacted at different times were reenacted, on same day, as part of Revised Statutes of 1865, each section was in full force and effect unless the sections conflicted with each other in their practical operation. *Gallegos v. Pino*, 1867-NMSC-003, 1 N.M. 410.

III. 1915 CODIFICATION.

Purpose in adopting. — In adopting the 1915 Codification, it was the purpose to continue all statutes in force so far as necessary to afford protection to parties who had initiated rights thereunder. *In re Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

Existing statutes continued. — The sections embodied in the 1915 Codification were taken or adopted from existing statutes and were to be construed as continuations. *Wells v. Dice*, 1929-NMSC-008, 33 N.M. 647, 275 P. 90.

Commenced prosecutions not affected. — Prosecution under 1897 Comp. Laws was not affected by repeal of that compilation and adoption of 1915 Codification where commenced prior to the repeal. *State v. Coppinger*, 1916-NMSC-012, 21 N.M. 435, 155 P. 732.

Existing remedies and rules of evidence preserved. — All statutes omitted from the 1915 Codification were continued in force for the preservation of all remedies and rules of evidence existing by virtue of such statutes, insofar as they applied to a contract made, or a right initiated or an event which had happened prior to the adoption of the codification. *Harris v. Friend*, 1918-NMSC-116, 24 N.M. 627, 175 P. 722.

Effect of repealing clause. — Repealing clause of 1915 Codification repealed only laws of a general and permanent nature not included in the codification. *Scarbrough v. Wooten*, 1918-NMSC-019, 23 N.M. 616, 170 P. 743.

Pardon statute deemed unconstitutional until codification. — Pardon statute which was inoperative by reason of being unconstitutional at time of its adoption and at all times thereafter until codified in 1915 Codification became component part of laws of state by virtue of adoption of the 1915 Code. *Ex parte Bustillos*, 1920-NMSC-095, 26 N.M. 449, 194 P. 886.

IV. 1953 COMPILATION.

The 1953 statutes annotated were a compilation and not a reenactment. *City of Albuquerque v. Campbell*, 1960-NMSC-138, 68 N.M. 75, 358 P.2d 698.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 Am. Jur. 2d Statutes §§ 325 to 332.

Adoption of compiled or revised statutes as giving effect to former repealed or suspended provisions included therein, 12 A.L.R.2d 423.

82 C.J.S. Statutes §§ 271 to 277.

12-1-2. New Mexico compilation commission; creation.

The "New Mexico compilation commission" is created. The commission consists of the chief justice of the supreme court or a justice designated by the chief justice, who shall act as president of the commission; the clerk of the supreme court; the attorney general or a deputy or assistant attorney general designated by the attorney general; the dean of the university of New Mexico school of law or the dean's designee; the director of the legislative council service; and the president of the state bar of New Mexico or a bar commissioner designated by the president of the state bar of New Mexico.

History: 1941 Comp., § 1-120, enacted by Laws 1953, ch. 39, § 2; 1953 Comp., § 1-1-2; 2006, ch. 70, § 1; 2019, ch. 74, § 2.

ANNOTATIONS

The 2019 amendment, effective May 3, 2019, changed the membership of the New Mexico compilation commission; and deleted "the state records administrator or the administrator’s designee", and changed "New Mexico state bar association or a member of the state bar commissioners appointed by the president" to "state bar of New Mexico or a bar commissioner designated by the president of the state bar of New Mexico".

The 2006 amendment, effective July 1, 2006, expanded the number of members of the commission to add the state records administrator or designee, the dean of the university of New Mexico school of law or designee, the director of the legislative council service and the president of the New Mexico state bar association or a member

of the bar commission appointed by the president and authorized the appointment of designees by the chief justice and attorney general.

12-1-3. Powers of commission.

The New Mexico compilation commission, acting on the advice and approval of an advisory committee appointed by the New Mexico supreme court, may:

A. provide for official, annotated compilations of the New Mexico statutes and court rules as approved by the supreme court and all other necessary things pertaining to the publication, including online publication, of any compilation and related publications;

B. provide for the licensing of the content of the compilation and any related publications;

C. contract with a publisher for any compilation or related publications as may be necessary or desirable to carry out the provisions of this section;

D. do all things necessary to keep current the master database of publications published or authorized for publication by the compilation commission; and

E. hire an executive director, who shall:

(1) serve as the chief administrative officer of the commission;

(2) serve at the pleasure of the commission;

(3) carry out the policies established by the commission; and

(4) within available funding, hire such additional staff as necessary to effectuate the powers exercised by the commission.

History: 1953 Comp., § 1-1-3, enacted by Laws 1977, ch. 74, § 2; 1979, ch. 106, § 4; 2006, ch. 70, § 2; 2019, ch. 74, § 3.

ANNOTATIONS

The 2019 amendment, effective May 3, 2019, clarified that the official, annotated compilations of the New Mexico compilation commission include court rules as approved by the Supreme Court and the publication of official compilations includes online publication, provided for the licensing of content of the compilation and any related publications, authorized the commission to contract with a publisher for related publications and to keep current a master database of publications that are published or authorized to be published, and removed a provision authorizing the commission to exchange compilations and supplements with libraries of other states and territories; in Subsection A, after "New Mexico statutes", deleted "including" and added "and", after

"court rules", deleted "governing practice and procedure in the state courts, provide for supplements to the compilation" and added "as approved by the supreme court", and after "pertaining to the publication" added "including online publication"; in Subsection B, after "provide for the", deleted "sale" and added "licensing of the content", and after "compilation and", deleted "the supplements thereto" and added "any related publications"; deleted former Subsection C, which related to exchanging compilations and supplements with exchange libraries of other states and territories, and redesignated former Subsections D through F as Subsections C through E, respectively; in Subsection C, after "compilation", added "or related publications"; and in Subsection D, after "keep current", deleted "one or more computer databases" and added "the master database", and after "publications published", added "or authorized for publication", and after "by the compilation commission", deleted "and parallel tables prepared by the commission for computerized search and manipulation".

Temporary provisions. — Laws 2019, ch. 74, § 9 provided:

A. On the effective date of this act, May 3, 2019, all state, local and district officers designated by the New Mexico compilation commission to receive distributions of sets of the compilation, replacement volumes or replacement pamphlets may dispose of such sets according to procedures set out for disposal of surplus property. Sets shall not be delivered or returned to the office of the commission in Santa Fe. The commission shall determine how many full sets of the printed statutes and other publications it will maintain for historical, reference and possible replacement purposes, and the remainder of the sets held by the commission may be disposed of according to procedures set out for the disposal of surplus property.

B. All contracts in effect on the effective date of this act, May 3, 2019, shall continue to be effective until the contract has been completed or the commission decides to terminate the contract.

C. On the effective date of this act, May 3, 2019, all references in law and other legal documents to the New Mexico statutes annotated or the NMSA 1978 shall be deemed to be references to the content of the master database.

The 2006 amendment, effective July 1, 2006, deleted the provision that the commission acts through the secretary; deleted former Subsection A, which provided that the commission carry out the contract referred to in Section 12-1-1 NMSA 1978; provided in Subsection A (formerly Subsection B) that the official compilation includes court rules governing practice and procedure in state courts; and added a new Subsection F to authorize and provide the duties of an executive director.

Compilation presumptively official. — Compiled versions of statutes and court rules, certified by the compilation commission, are presumptively official. *State v. Sandoval*, 2003-NMSC-027, 134 N.M. 453, 78 P.3d 907.

Rules compilation. — Where the supreme court authorized the compilation commission to follow a set of drafting guidelines in the recompilation of the 1986 Supreme Court Rules Annotated, and the court approved the recompiled versions of the rules, instructions and forms, the version of the rules appearing in the 1986 Supreme Court Rules Annotated, and later in the New Mexico Rules Annotated, was the "official" version approved by the supreme court. *State v. Sandoval*, 2003-NMSC-027, 134 N.M. 453, 78 P.3d 907.

The advisory committee's advice and approval is a condition precedent to the valid exercise of the compilation commission's authority. — Where petitioner sought a writ of mandamus directing respondent, the advisory committee to the New Mexico compilation commission, to effectuate the compilation of three constitutional amendments, and where respondent argued that it was not the proper respondent for the relief being sought by petitioner, because it had no responsibility to declare the results of an election and it therefore has not failed to fulfill any legal duty to petitioner, the New Mexico supreme court held that the advisory committee is the proper respondent because the New Mexico compilation commission's duty is to compile, certify, and publish the various laws and duly ratified constitutional amendments of the state of New Mexico and the advisory committee's advice and approval is a condition precedent to the valid exercise of the compilation commission's authority. *State ex rel. League of Women Voters v. Advisory Comm.*, 2017-NMSC-025.

12-1-3.1. Additional powers of commission; master database.

A. The New Mexico compilation commission shall keep current the automated legal databases, known as the official "master database", of the following legal publications, including any revisions, and shall provide free online access to these publications:

(1) all appellate court opinions and decisions;

(2) all opinions and advisory letters issued by the attorney general of New Mexico;

(3) publications of session laws and court rules of this state; and

(4) parallel tables of New Mexico laws.

B. The commission may license any part of the master database.

C. The commission may include other statutory or legal content in the master database and may license the use of that information or may electronically publish that content on its online website.

History: 1978 Comp., § 12-1-3.1, enacted by Laws 1982, ch. 7, § 2; 2006, ch. 70, § 3; 2019, ch. 74, § 4.

ANNOTATIONS

The 2019 amendment, effective May 3, 2019, required the New Mexico compilation commission to keep current the official master database, specified which legal publications are included in the master database, required the commission to provide free online access to the publications in the master database, and authorized the commission to license any part of the master database; in the section heading, added "master database"; designated the introductory paragraph as Subsection A; in Subsection A, after "New Mexico compilation commission", deleted "may publish, distribute, or sell and" and added "shall", after "legal databases", added "known as the official 'master database'"; deleted former Subsections A, B, C and F and subsection designations "D." and "G.", and added "and shall provide free online access to these publications", added Paragraph A(1) and new paragraph designations "(2)" through "(4)", in Paragraph A(2), added "all", after "opinions", deleted "compliance guides and informational pamphlets" and added "and advisory letters", in Paragraph A(3), after "publications of", added "session", and after "court", deleted "and administrative"; and added new Subsections B and C.

Temporary provisions. — Laws 2019, ch. 74, § 9 provided:

A. On May 3, 2019, all state, local and district officers designated by the New Mexico compilation commission to receive distributions of sets of the compilation, replacement volumes or replacement pamphlets may dispose of such sets according to procedures set out for disposal of surplus property. Sets shall not be delivered or returned to the office of the commission in Santa Fe. The commission shall determine how many full sets of the printed statutes and other publications it will maintain for historical, reference and possible replacement purposes, and the remainder of the sets held by the commission may be disposed of according to procedures set out for the disposal of surplus property.

B. All contracts in effect on May 3, 2019, shall continue to be effective until the contract has been completed or the commission decides to terminate the contract.

C. On May 3, 2019, all references in law and other legal documents to the New Mexico statutes annotated or the NMSA 1978 shall be deemed to be references to the content of the master database.

The 2006 amendment, effective July 1, 2006, deleted the provision that the commission act through the secretary; deleted Subsection D relating to the New Mexico juvenile probation officers manual and added a new Subsection E relating to publication of laws and court and administrative rules of the state.

12-1-4. Repealed.

History: 1941 Comp., § 1-122, enacted by Laws 1953, ch. 39, § 4; 1953 Comp., § 1-1-4; Laws 1969, ch. 277, § 1; 1973, ch. 202, § 1; 1977, ch. 74, § 3; 1978, ch. 130, § 1; repealed by Laws 2019, ch. 74, § 10.

ANNOTATIONS

Repeals. — Laws 2019, ch. 74, § 10 repealed 12-1-4 NMSA 1978, as enacted by Laws 1953, ch. 39, § 4, relating to distribution, effective May 3, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

12-1-5. New Mexico compilation fund; created.

The "New Mexico compilation fund" is created as a nonreverting fund in the state treasury. The fund consists of filing, licensing and other fees; gifts, grants and donations; appropriations; and any other money credited to the fund. The fund shall be administered by the New Mexico compilation commission, and money in the fund is appropriated to the commission to carry out the purposes of Chapter 12, Article 1 NMSA 1978. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission or the executive director's authorized representative.

History: 1941 Comp., § 1-123, enacted by Laws 1953, ch. 39, § 5; 1953 Comp., § 1-1-5; 2019, ch. 74, § 5.

ANNOTATIONS

The 2019 amendment, effective May 3, 2019, designated the New Mexico compilation fund as a nonreverting fund in the state treasury, provided that the fund consists of filing, licensing and other fees, gifts, grants, donations and appropriations, and provided that money in the fund is appropriated to the commission to carry out its duties; added the section heading; and deleted "There is hereby established in the state treasury a fund to be known as", and after "'New Mexico compilation fund'", added the remainder of the section.

12-1-6. Repealed.

History: 1941 Comp., § 1-124, enacted by Laws 1953, ch. 39, § 6; 1953 Comp., § 1-1-6; repealed by Laws 2019, ch. 74, § 10.

ANNOTATIONS

Repeals. — Laws 2019, ch. 74, § 10 repealed 12-1-6 NMSA 1978, as enacted by Laws 1953, ch. 39, § 6, relating to compilation fund, contents, effective May 3, 2019. For provisions of former section, see the 2018 NMSA 1978 on NMOneSource.com.

12-1-7. Recognition as official compilation.

Upon the annual certification of the compilation of 1978 by the New Mexico compilation commission, with the advice and approval of the advisory committee of the supreme court, the compilation shall be in force and recognized, referred to and used in all the courts and in all departments and offices of the state as the official compilation of the statutory law of New Mexico and may be cited as the "NMSA 1978", whether printed under an exclusive license of the content of the compilation or published electronically free of charge.

History: 1941 Comp., § 1-125, enacted by Laws 1953, ch. 39, § 7; 1953 Comp., § 1-1-7; Laws 1977, ch. 74, § 4; 2006, ch. 70, § 4; 2019, ch. 74, § 6.

ANNOTATIONS

Compiler's notes. — The annual certification of the commission and advisory committee is filed with the secretary of state. *See* 12-1-3 NMSA 1978 prior to the 2006 amendment of that section on *NMOneSource.com.*

The 2019 amendment, effective May 3, 2019, clarified that the compilation, whether printed under an exclusive license of the content of the compilation or published electronically free of charge, shall be recognized as the official compilation of the statutory law of New Mexico; after "Upon the", added "annual", after "shall be in force and", deleted "printed and electronic copies thereof shall be received", and added "whether printed under an exclusive license of the content of the compilation or published electronically free of charge".

Temporary provisions. — Laws 2019, ch. 74, § 9 provided:

A. On May 3, 2019, all state, local and district officers designated by the New Mexico compilation commission to receive distributions of sets of the compilation, replacement volumes or replacement pamphlets may dispose of such sets according to procedures set out for disposal of surplus property. Sets shall not be delivered or returned to the office of the commission in Santa Fe. The commission shall determine how many full sets of the printed statutes and other publications it will maintain for historical, reference and possible replacement purposes, and the remainder of the sets held by the commission may be disposed of according to procedures set out for the disposal of surplus property.

B. All contracts in effect on May 3, 2019, shall continue to be effective until the contract has been completed or the commission decides to terminate the contract.

C. On May 3, 2019, all references in law and other legal documents to the New Mexico statutes annotated or the NMSA 1978 shall be deemed to be references to the content of the master database.

The 2006 amendment, effective July 1, 2006, deleted the provision that the commission act through the secretary and provides for electronic copies of the official compilation or supplements.

Effect of omission of law from NMSA 1978. — Since NMSA 1978 is a compilation, not a revision or codification, i.e., it is gathered from other books and documents, a failure to refer to an enacted law in NMSA 1978 would not diminish the applicability of that enacted law. *Loesch v. Henderson*, 1985-NMCA-104, 103 N.M. 554, 710 P.2d 748.

Compilation presumptively official. — Compiled versions of statutes and court rules, certified by the compilation commission, are presumptively official. *State v. Sandoval*, 2003-NMSC-027, 134 N.M. 453, 78 P.3d 907.

Rules compilation. — Where the supreme court authorized the compilation commission to follow a set of drafting guidelines in the recompilation of the 1986 Supreme Court Rules Annotated, and the court approved the recompiled versions of the rules, instructions and forms, the version of the rules appearing in the 1986 Supreme Court Rules Annotated, and later in the New Mexico Rules Annotated, was the "official" version approved by the supreme court. *State v. Sandoval*, 2003-NMSC-027, 134 N.M. 453, 78 P.3d 907.

12-1-8. Rules of construction governing compilation of statutes.

In carrying out the duties provided by law and contract, absent an expressed contrary legislative intent, the executive director of the New Mexico compilation commission and the advisory committee of the supreme court shall be governed by the following rules:

A. if two or more acts are enacted during the same session of the legislature amending the same section of the NMSA, regardless of the effective dates of the acts, the act last signed by the governor shall be compiled in the NMSA and, if the New Mexico compilation commission, after consultation with the legislative council service, determines that the provisions of one or more of the earlier signed acts can be reconciled with the act that is to be compiled, those provisions shall be incorporated in the last-signed act and compiled in the NMSA. The history following the amended section shall set forth the section, chapter and year of all acts amending the section. A compiler's note shall be included in the annotations setting forth the nature of the difference between the acts or sections, if any; and

B. if two or more irreconcilable acts dealing with the same section of law are enacted by the same session of the legislature, the last act signed by the governor shall be presumed to be the law. The act last signed by the governor shall be compiled in the NMSA with an annotation following the compiled section setting forth in full the text of any conflicting section of any earlier signed act.

History: 1953 Comp., § 1-1-7.1, enacted by Laws 1977, ch. 74, § 5; 2013, ch. 176, § 1; 2019, ch. 74, § 7.

ANNOTATIONS

The 2019 amendment, effective May 3, 2019, after "legislative intent, the", deleted "secretary" and added "executive director.

The 2013 amendment, effective April 4, 2013, provided for the compilation of multiple amendments to the same section of law when their provisions are deemed reconcilable; in Subsection A, in the first sentence, after "signed by the governor", deleted "shall be presumed to be the law and", after "compiled in the NMSA", added the remainder of the sentence, and in the second sentence, after "acts or sections", added "if any"; and in Subsection B, in the first sentence, after "acts dealing with the same", deleted "subject matter" and added "section of law" and after "any conflicting", deleted "acts" and added "section of any earlier signed act".

Temporary provisions. — Laws 2013, ch. 176, § 2 provided that multiple amendments to the same section of law that were enacted before the effective date of this act may be reconciled and compiled in accordance with the provisions of Laws 2013, ch. 176, § 1.

Limitations on statutory construction. — An examination of two acts passed by the 1977 legislature, and Section 12-1-8 NMSA 1978 governing their respective stature in the official compilation of the laws of New Mexico, would have shown that because one act was signed into law by the governor after the other, the last act signed is presumed to be the law. A state court is free to apply its rules of statutory interpretation without federal review. However, where the court departed from the rule of statutory construction stated in Section 12-1-8 NMSA 1978 and applied other rules of statutory construction to give effect to both conflicting enactments, the court's interpretation of the conflicting enactments was not foreseeable and violated the due process clause. *Devine v. N.M. Dep't of Corrs.*, 866 F.2d 339 (10th Cir. 1989)

Faced with the appearance of a conflict, the compilation commission has no choice but to compile the last act signed by the governor as presumptive law. In most cases that presumption will prevail, yet in limited circumstances it may not. *State v. Smith*, 2004-NMSC-032, 136 N.M. 372, 93 P.3d 1022.

This section applies rules of construction governing the compilation of statutes: all rules of statutory construction are but aids in arriving at the true legislative intent. *Quintana v. N.M. Dep't of Corrs.*, 1983-NMSC-066, 100 N.M. 224, 668 P.2d 1101.

Repeal of section blocks later amendment of same section by same legislature. — Where two acts are enacted during the same session of the legislature, and the earlier act repeals an existing law while the later act amends that law, the later act cannot be given effect because the earlier act repealed the law which the later act purported to

amend. *Quintana v. N.M. Dep't of Corrs.*, 1983-NMSC-066, 100 N.M. 224, 668 P.2d 1101.

Under Section 12-1-8 NMSA 1978, the determination of which of two or more acts amending the same statutory provision is the law for purposes of codification generally depends solely on which act the governor signed last. The rule will apply unless (1) the legislature has expressly stated its intent to the contrary, or (2) there are other valid reasons, beyond the fact that the acts amend the same section of the NMSA, that convincingly rebut the presumption set forth in Section 12-1-8(A) NMSA 1978 that only the act last signed by the governor is law. 2000 Op Att'y Gen. No. 00-05.

12-1-9. Fee levy on actions filed.

Each district court clerk shall indicate the sum of twelve dollars ($12.00) from each civil case docket fee paid in the district court for credit to the New Mexico compilation fund, no part of which shall revert at the end of any fiscal year. Vouchers for expenditures from the fund shall be signed by the secretary of the New Mexico compilation commission.

History: 1978 Comp., § 12-1-9, enacted by Laws 1982, ch. 7, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1982, ch. 7, § 3, repealed former 12-1-9 NMSA 1978, relating to fee levy on actions filed, and enacted a new section.

Fee deemed tax, not cost. — Charge levied under Laws 1929, ch. 135, § 10 (similar to this section), upon court actions, was a tax and not costs, and could not be awarded to the successful litigant, but had to be forwarded to the state treasurer. It referred to civil actions only. 1929 Op. Att'y Gen. No. 29-28.

Fee held an additional fee. — The fee imposed by an earlier version of this section was held to be an additional fee to the basic filing fee in district court. 1957 Op. Att'y Gen. No. 57-135.

Fee included in filing fees for appeal to district courts. — Under former law, the proper fee for filing appeals in the district court from civil cases in justice of the peace courts (now magistrate courts) included the fee specified in Section 34-6-40 NMSA 1978 and the fee specified in Section 12-1-9 NMSA 1978. 1970 Op. Att'y Gen. No. 70-65, 1964 Op. Att'y Gen. No. 64-50, 1961 Op. Att'y Gen. No. 61-74, 1961 Op. Att'y Gen. No. 61-105.

Appeals to which fee applicable. — The compilation fund docket fee required by this section would be applicable to appeals from the municipal court to the district court. 1980 Op. Att'y Gen. No. 80-18; 1970 Op. Att'y Gen. No. 70-65.

When fee not collectable. — The $1.25 (now $12) fee levied on civil actions "upon which a docket fee is now required to be paid" by this section's predecessor could not be collected in the following types of cases:

(1) free process cases;.

(2) suits by federal agencies upon which a docket fee is required to be paid;.

(3) tax petitions filed under Laws 1939, ch. 139, § 1 (since repealed), and approved by the district attorney;.

(4) tax petitions filed under Laws 1939, ch. 212 (72-7-30, 1953 Comp. since repealed); and.

(5) workmen's compensation cases.

It should be collected on all other civil actions docketed in district court including appeals from justice and probate courts. 1941 Op. Att'y Gen. No. 41-3927.

12-1-10. Applicability [of increased fee].

The increased fee levied by this act [12-1-9, 12-1-10 NMSA 1978] shall apply to all actions filed on or after July 1, 1967.

History: 1953 Comp., § 1-1-8.1, enacted by Laws 1967, ch. 222, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Appeals to which fee applicable. — A docket fee is applicable to appeals from municipal court to district court only when brought from an action enforcing ordinances under Section 35-15-1 NMSA 1978 et seq.; moreover, the compilation fund docket fee required by Section 12-1-9 NMSA 1978 would be applicable to such actions as well. 1980 Op. Att'y Gen. No. 80-18.

12-1-11. Issuance of debentures.

The New Mexico compilation commission is authorized to anticipate the proceeds of the collection of any or all of the taxes or fees on civil actions hereinabove provided for by the issuance and sale of New Mexico compilation commission debentures, in such amounts not to exceed outstanding at any one time, the sum of two hundred thousand dollars ($200,000), issuable at such times and bearing such rate of interest, not exceeding four percent (4%) per annum, as the commission may determine. The debentures may be issued in serial form and shall mature at stated periods not

exceeding ten (10) years from the date of issuance. The debentures shall be, signed by the president of the commission, attested by its secretary, countersigned by the treasurer of the state of New Mexico, and in such form as may be provided by the attorney general.

History: 1941 Comp., § 1-127, enacted by Laws 1953, ch. 39, § 10; 1953 Comp., § 1-1-10; Laws 1961, ch. 140, § 1.

12-1-12. [Sale of debentures.]

Said debentures shall be sold by the state treasurer to the highest bidder for cash at not less than par and accrued interest at such times and in such amounts as may be determined by the New Mexico compilation commission, after advertising the time and place of sale in such manner as the commission may determine. Provided, however, that said debentures or any part thereof may be sold by the state treasurer at any time at private sale without advertisement for not less than par and accrued interest. The state treasurer may, with the approval of the state board of finance, and other officials whose approval is required by law for investment of public funds, purchase any or all of such debentures at not less than par and accrued interest without the necessity of advertising or offering said debentures for public sale or after rejection of bids for all or part of any issue.

History: 1941 Comp., § 1-128, enacted by Laws 1953, ch. 39, § 11; 1953 Comp., § 1-1-11.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

12-1-13. [Pledge of fees levied.]

The issuance and sale of such debentures shall constitute and be an irrevocable and irrepealable contract between the state of New Mexico and the owner of any said debentures, that the taxes or fees pledged for the payment thereof at the rate now provided by this act shall not be reduced as long as any of said debentures remain outstanding, and unpaid, and that the state will cause said taxes and fees to be promptly collected, remitted and set aside and applied to pay said debentures, and the interest thereon according to the terms thereof. Any holder of any of the debentures issued pursuant to the provisions of this act, or any person or officer being a party in interest may, either at law or in equity, by suit, action or mandamus, enforce and compel the performance of the duties required by this act of any officer or person herein mentioned.

History: 1941 Comp., § 1-129, enacted by Laws 1953, ch. 39, § 12; 1953 Comp., § 1-1-12.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Meaning of "this act". — The words "this act" refer to Laws 1953, ch. 39, the compiled provisions of which appear as 12-1-2, 12-1-4 to 12-1-7, and 12-1-11 to 12-1-14 NMSA 1978.

When all fees are within terms of contract and pledge. — To the extent fees, or any portion thereof, are needed to carry out the provisions of § 1-1-12, (now Section 12-1-13 NMSA 1978) they are fees within the terms of the contract and pledge and hence reversion would not occur. 1958 Op. Att'y Gen. No. 58-134.

12-1-14. Proceeds from sale of debentures.

The proceeds of the sale of said debentures shall be placed to the credit of the New Mexico compilation fund, except such amount as may have been paid as accrued interest, which amount shall be credited to a special interest fund for payment of interest on such debentures. The expenses incurred by the state treasurer in the preparation and sale of said debentures shall be paid out of said compilation fund. The proceeds from said debentures shall be used exclusively for the purposes for which said indebtedness is authorized and shall be paid out on warrants drawn by the secretary of finance and administration supported by vouchers of the New Mexico compilation commission. The state treasurer shall keep separate accounts for all moneys collected from the taxes or fees hereby imposed for the payment of the interest and to provide a sinking fund for said debentures respectively, and may from time to time invest the moneys in said sinking fund in any bonds or other securities issued by the United States of America or the state of New Mexico at their market value, provided, such bonds or other securities will mature before the maturity date of the debentures for which the sinking fund is created.

History: 1941 Comp., § 1-130, enacted by Laws 1953, ch. 39, § 13; 1953 Comp., § 1-1-13; Laws 1977, ch. 247, § 8.

ARTICLE 2
Statutory Construction

12-2-1, 12-2-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 173 § 21 repealed 12-2-1 and 12-2-2 NMSA 1978, as enacted or amended by or as compiled as Laws 1865-1866, p. 192, § 4, Laws 1880 ch. 6, § 32, C.L. 1884, §§ 1851, 2610; C.L. 1897, §§ 2900, 3784, Code 1915, §§ 5423,

5424, C.S. 1929, §§ 139-102, 139-401, 1941 Comp., §§ 1-201, 1-202, 1953 Comp., §§ 1-2-1, 1-2-2, Laws 1965, ch. 110, § 1, Laws 1969, ch. 132, § 1 and Laws 1973, ch. 138, § 1, providing that the original act governs and setting forth rules of construction, effective July 1, 1997. For provisions of former sections, *see* 1996 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* Chapter 12, Article 2A NMSA 1978.

12-2-3. Officer defined for certain statutes.

In all statutes which:

A. use the general term or terms "public officer," "public official," "officer" or any similar term signifying the same class of persons; and

B. do not specifically define the term to include those excluded by this section; and

C. which limit, prohibit or penalize the ability, privilege or right of persons of that class to deal with the state, or any of its agencies or political subdivision [subdivisions], other than an agency or subdivision under the executive control or supervision of that person or a board or commission of which that person is a member, the term or terms shall be construed to mean a salaried public official who receives an annual, monthly or daily salary, or is compensated for his services in the form of fees. The term or terms shall not be construed to mean officers or officials who receive per diem expense and mileage only.

History: 1953 Comp., § 1-2-2.1, enacted by Laws 1963, ch. 197, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

12-2-4. Determination of death.

A. For all medical, legal and statutory purposes, death occurs when an individual has sustained either:

(1) irreversible cessation of circulatory or respiratory functions; or

(2) irreversible cessation of all functions of the entire brain, including the brain stem.

B. A determination of death shall be made in accordance with accepted medical standards.

C. Death is to be pronounced pursuant to the provisions of Subsection A of this section before artificial means of supporting circulatory or respiratory functions are terminated and before any vital organ is removed for purposes of transplantation, therapy, research or education in compliance with the provisions of the Jonathan Spradling Revised Uniform Anatomical Gift Act [Chapter 24, Article 6B NMSA 1978].

D. The definition of death set forth in Subsection A of this section is to be utilized for all purposes in this state, including civil and criminal actions, notwithstanding any other law to the contrary.

History: 1978 Comp., § 12-2-4, enacted by Laws 1993, ch. 174, § 1; 2007, ch. 323, § 26.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 174, § 1 repealed former 12-2-4 NMSA 1978, as enacted by Laws 1973, ch. 168, § 1, relating to death defined, and enacted a new section, effective July 1, 1993.

The 2007 amendment, effective July 1, 2007, provided that death is to be pronounced before any vital organ is removed for purposes of therapy, research or education and changed the name of the act.

Law reviews. — For lecture, "Euthanasia and the Right to Die: Nancy Cruzan and New Mexico," see 20 N.M.L. Rev. 675 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40 Am. Jur. 2d Homicide § 1.5.

Homicide: physician's withdrawal of life supports from comatose patient, 47 A.L.R.4th 18.

25 C.J.S. Death § 1.

12-2-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 174, § 84 repealed 12-2-5 NMSA 1978, as enacted by Laws 1973, ch. 168, § 2, relating to presumptive decedents, effective July 1, 1993. For provisions of former section, *see* 1992 NMSA 1978 on *NMOneSource.com.*

12-2-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 173 § 21 repealed 12-2-6 NMSA 1978, as enacted by Laws 1912, ch. 21, § 1, relating to repeal of a repealing act, effective July 1, 1997. For provisions of former section, *see* 1996 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 12-2A-15 NMSA 1978.

ARTICLE 2A
Uniform Statute and Rule Construction Act

12-2A-1. Short title; applicability.

A. This act [12-2A-1 to 12-2A-20 NMSA 1978] may be cited as the "Uniform Statute and Rule Construction Act".

B. The Uniform Statute and Rule Construction Act applies to a statute enacted or rule adopted on or after the effective date of that act unless the statute or rule expressly provides otherwise, the context of its language requires otherwise or the application of that act to the statute or rule would be infeasible.

C. Subsection B of this section does not authorize an administrative agency to exempt its rules from a provision of the Uniform Statute and Rule Construction Act.

History: Laws 1997, ch. 173, § 1.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

I. IN GENERAL.

Construction is issue of law. — Where the question is simply one of construction, the courts may pass upon it as an issue "solely of law." *Pan Am. Petroleum Corp. v. El Paso Natural Gas Co.*, 1966-NMSC-271, 77 N.M. 481, 424 P.2d 397.

Rules of construction to resolve not create ambiguity. — Techniques in aid of construction of a statute are used to resolve an ambiguity, not to create one. *Tafoya v. New Mexico State Police Bd.*, 1970-NMSC-106, 81 N.M. 710, 472 P.2d 973.

Rules not inconsistent with intent. — If there be doubt as to a statute's construction, courts are permitted to interpret, to arrive at the intention of the legislature, but rules or canons of construction are not to be invoked to arrive at a construction inconsistent with clear intent. *State ex rel. Maloney v. Sierra*, 1970-NMSC-144, 82 N.M. 125, 477 P.2d 301.

All rules of statutory construction are but aids in arriving at the true legislative intent and should never be used to override same where it otherwise plainly appears. *Bradbury & Stamm Constr. Co. v. Bureau of Revenue*, 1962-NMSC-078, 70 N.M. 226, 372 P.2d 808.

Statute construed to make whole act consistent. — In statutory construction, the inquiry is to determine what particular words, clauses or provisions mean and to determine the legislative intent. Statutes are enacted as a whole and each part should be construed in connection with every other part to ascertain the intent, and where a comparison of one clause with the statute as a whole makes a meaning clear the act must be so construed as to make the whole consistent. *Reed v. Styron*, 1961-NMSC-119, 69 N.M. 262, 365 P.2d 912.

When power conferred, rights to effect are implied. — It is a fundamental rule of construction that when a power is conferred by statute everything necessary to carry out the power and make it effective and complete will be implied. *Kennecott Copper Corp. v. Employment Sec. Comm'n*, 1967-NMSC-182, 78 N.M. 398, 432 P.2d 109.

When power not granted is implied. — A power not expressly granted is implied only where it is necessary to carry into effect powers expressly granted. *Kennecott Copper Corp. v. Employment Sec. Comm'n*, 1967-NMSC-182, 78 N.M. 398, 432 P.2d 109.

II. CONSTRUCTION OF CONSTITUTION.

Usual principles governing construction of statutes apply also to interpretation of constitutions. *State ex rel. State Hwy. Comm'n v. City of Aztec*, 1967-NMSC-046, 77 N.M. 524, 424 P.2d 801.

No interpretation when provision is clear and unambiguous. — When a constitutional provision is clear and unambiguous, it is not subject to interpretation or construction by this court. *State ex rel. Sage v. Montoya*, 1959-NMSC-029, 65 N.M. 416, 338 P.2d 1051.

Intent arrived at from vantage point of framers. — What the framers of the constitution intended as disclosed by the language employed is, of course, the interpretation properly to be given the instrument. That intent must be arrived at by construing together its various pertinent provisions and giving to each the meaning which its language most naturally suggests when considered in proper relationship to the others. We should, as nearly as we may, endeavor to look at the instrument from the vantage point of the framers the better to understand their view of the matter and the meaning likely intended. Whenever we refer to the framers that term is to be taken as embracing the people who adopted it. We are not unmindful of the rule of construction applicable to a constitution that its language is to be taken in its common and ordinary sense and as likely understood by the people who adopted it. *State ex rel. Witt v. State Canvassing Bd.*, 1968-NMSC-017, 78 N.M. 682, 437 P.2d 143.

Intent controls literal application of language when result incongruous. — The supreme court is limited to determining the intention of those who adopted the constitution, and where the spirit and intent is clearly ascertainable as contrary to the strict letter of the language and literal application would lead to an incongruous result, it should not be permitted to control. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445.

Purpose and scope of constitutional provision must be considered. — Canon of construction that a sovereign is presumptively not intended to be bound by its own statute unless included by the clearest implication is but a rule of construction and consideration must be given to the purpose and scope of the constitutional provision (here N.M. Const., art. IX, § 12) involved. *State ex rel. State Hwy. Comm'n v. City of Aztec*, 1967-NMSC-046, 77 N.M. 524, 424 P.2d 801.

Duty of court to declare intent of amendment. — It is the duty of the court to search out and declare the true meaning and intent of any constitutional amendment adopted by the people, and this duty is no different in considering the constitution itself. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445.

Amendments valid unless illegal beyond reasonable doubt. — Whenever a constitutional amendment is attacked as not constitutionally adopted, the question presented is, not whether it is possible to condemn, but whether it is possible to uphold; every reasonable presumption, both of law and fact, is to be indulged in favor of the legality of the amendment, which will not be overthrown, unless illegality appears beyond a reasonable doubt. *City of Raton v. Sproule*, 1967-NMSC-141, 78 N.M. 138, 429 P.2d 336.

The constitution must be construed as a whole and the court held that the two sections, N.M. Const., art. V, § 3 and art. VII, § 2, should be read together, thereby requiring that in order to hold the office of governor, a person must be a citizen of the United States, at least 30 years of age, who has been a resident continuously for five years preceding his election and who is a qualified elector in New Mexico. *State ex rel. Chavez v. Evans*, 1968-NMSC-167, 79 N.M. 578, 446 P.2d 445.

Liberal construction of certain provisions. — Constitutional provision (N.M. Const., art. XIX, § 1) that electors be enabled to vote on amendments separately should receive a liberal, rather than a narrow or technical construction, especially where the legislature obviously considered the problem carefully, and the amendment has been submitted to the people for their vote thereon. *City of Raton v. Sproule*, 1967-NMSC-141, 78 N.M. 138, 429 P.2d 336.

Supplementary legislation may supply details to constitutional provisions. — Although a self-executing constitutional provision has full force on its own, the legislature may protect or further it through supplementary legislation. That is to say, a legislature may supply details relative to the constitutional provision. 1962 Op. Att'y Gen. No. 62-149.

No construction when intention clear. — The constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning; where the intention is clear there is no room for construction and no excuse for interpolation or addition. 1960 Op. Att'y Gen. No. 60-205.

If meaning of statute doubtful, consequences are considered in construction. 1953 Op. Att'y Gen. No. 53-5878.

Rule of employment security commission construed same as statute. — Rule legally promulgated by employment security commission (now employment security division) has the same force as a statute and is therefore subject to the same construction. 1947 Op. Att'y Gen. No. 47-5115.

Law reviews. — For article, "Approaching Statutory Interpretation in New Mexico," see 8 Nat. Resources J. 689 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 Am. Jur. 2d Statutes § 142 et seq.; 74 Am. Jur. 2d Time §§ 15, 16.

Supplying omitted words in statute, 3 A.L.R. 404, 126 A.L.R. 1325.

"Devise" or "devisee" in statute as including "legacy" or "legatee," or vice versa, 4 A.L.R. 246.

Statute requiring filing of formal notice of lis pendens in certain classes of cases as affecting common-law doctrine of lis pendens in other cases, 10 A.L.R. 306.

Meaning of "by" as fixing time for performance of an act or happening of an event, 12 A.L.R. 1168, 21 A.L.R. 1543.

Effect of mistake in reference in statute to another statute, constitution, public document, record or the like, 14 A.L.R. 274.

Retroactive effect of statute in relation to presentation of notice of claim for personal injury against municipality, 14 A.L.R. 710.

"Until" as word of inclusion or exclusion, 16 A.L.R. 1094.

"Similar," construed, 17 A.L.R. 94.

Act done on same day as, but before another act or event, as satisfying a statutory requirement that the former must precede the latter, 21 A.L.R. 1216.

Title of statutes as an element bearing upon their construction, 37 A.L.R. 927.

Retroactive effect of provision for reduction or increase of award under workmen's compensation law, 40 A.L.R. 1473.

Signing or endorsing bill or note by printing or stamping, 46 A.L.R. 1498.

Declaratory judgment construing statute, 50 A.L.R. 42, 68 A.L.R. 110, 87 A.L.R. 1205, 114 A.L.R. 1361.

Implied abrogation of state's prerogative right of preference at common law, 51 A.L.R. 1355, 65 A.L.R. 1331, 90 A.L.R. 184, 167 A.L.R. 640.

Computation of time allowed for approval or disapproval of bill by governor, 54 A.L.R. 339.

Resort to constitutional or legislative debates, committee reports and journals as aid in construction of statute, 70 A.L.R. 5

Amendments as aid in construction of statute, 70 A.L.R. 22.

Inclusion of Sunday in computation of time within which bill must be presented to governor, 71 A.L.R. 1363.

Stipulation of parties as to construction and effect of statute, 92 A.L.R. 663.

"And/or," 118 A.L.R. 1367, 154 A.L.R. 866.

Retroactive application of repeal of statute which operated as limitation of or exception to a substantive right of action in tort otherwise arising at common law, 120 A.L.R. 943.

Inclusion or exclusion of first or last day in computing period of time prescribed by insurance contract, 137 A.L.R. 1155.

Construction and application of statutory and constitutional provisions exempting property of persons in military service, or formerly in such service, from taxation, 149 A.L.R. 1485.

Removal or suspension of constitutional limitation as affecting construction of statute previously enacted, 171 A.L.R. 1070.

Constitutional requirement that repealing or amendatory statute refer to statute repealed or amended, to repeal or amendment by implication, 5 A.L.R.2d 1270.

Meaning of term "radius" employed in statute as descriptive area, location or distance, 10 A.L.R.2d 605.

Validity, construction, and application of statute limiting damages recoverable for defamation, 13 A.L.R.2d 285.

Simultaneous repeal and reenactment of all, or part, of legislative act, 77 A.L.R.2d 336.

What 12-month period constitutes "year" or "calendar year" as used in public enactment, contract or other written instrument, 5 A.L.R.3d 584.

82 C.J.S. Statutes §§ 330, 337, 338, 358; 86 C.J.S. Time § 13(1).

12-2A-2. Common and technical usage.

Unless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage. A word or phrase that has acquired a technical or particular meaning in a particular context has that meaning if it is used in that context.

History: Laws 1997, ch. 173, § 2.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

Plain meaning and legislative intent. — If the meaning of a statute is truly clear - not vague, uncertain, ambiguous, or otherwise doubtful - it is of course the responsibility of the judiciary to apply the statute as written and not to second-guess the legislature's selection from among competing policies or adoption of one of perhaps several ways of effectuating a particular legislative objective. But courts must exercise caution in applying the plain meaning rule; its beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning. While - as in this case - one part of the statute may appear absolutely clear and certain to the point of mathematical precision, lurking in another part of the enactment, or even in the same section, or in the history or background of the legislation, or in an apparent conflict between the statutory wording and the overall legislative intent, there may be one or more provisions giving rise to genuine uncertainty as to what the legislature was trying to accomplish. In such a case, it is part of the essence of judicial responsibility to search for and effectuate the legislative intent - the purpose or object - underlying the statute. *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, 117 N.M. 346, 871 P.2d 1352.

Application of plain meaning rule. — Plain meaning rule does not require a mechanical, literal interpretation of a statute. *State v. Calvert*, 2003-NMCA-028, 133 N.M. 281, 62 P.3d 372, cert. denied, 133 N.M. 413, 63 P.3d 516.

When ordinary meaning given to words. — Ordinary words are given ordinary meaning where there is no evidence of legislative intent to do otherwise. *State ex rel. Maloney v. Sierra*, 1970-NMSC-144, 82 N.M. 125, 477 P.2d 301.

When no intent, otherwise, usual meaning given. — In construing a statute where there is no clearly expressed legislative intent requiring otherwise, the word is to be given its usual, ordinary meaning. *Tafoya v. New Mexico State Police Bd.*, 1970-NMSC-106, 81 N.M. 710, 472 P.2d 973.

Unless different intent indicated words given ordinary meaning. — Words used in a statute are to be given their ordinary and usual meaning unless a different intent is clearly indicated. *State ex rel. State Hwy. Comm'n v. Marquez*, 1960-NMSC-099, 67 N.M. 353, 355 P.2d 287.

Presumption words are used in ordinary sense. — Statutory words are presumed to be used in their ordinary and usual sense. *Bettini v. City of Las Cruces*, 1971-NMSC-054, 82 N.M. 633, 485 P.2d 967.

Each word construed with other words to accomplish legislative purpose. — The rules of construction require each word or phrase used in a statute to be construed in connection with every other word, phrase or portion, so as to accomplish the legislative purpose. *Peyton v. Nord*, 1968-NMSC-027, 78 N.M. 717, 437 P.2d 716.

Technical words. — The interpretation of technical language in a statute can and should be informed by evidence concerning how those technical terms are interpreted by experts in the pertinent field. *Dynacon, Inc. v. D & S Contracting, Inc.*, 1995-NMCA-071, 120 N.M. 170, 899 P.2d 613.

Statute given effect as written unless different intent. — A statute is to be read and given effect as written and the words used in a statute are to be given their ordinary and usual meaning unless a different intent is clearly indicated. *Gonzales v. Oil, Chem. & Atomic Workers Int'l Union*, 1966-NMSC-211, 77 N.M. 61, 419 P.2d 257.

Statutes must be read according to their grammatical sense. *Garcia v. Schneider, Inc.*, 1986-NMCA-127, 105 N.M. 234, 731 P.2d 377.

Meaning of "indebtedness". — In using word "indebtedness" in statute creating and organizing new county, legislature intended what that expression meant in common parlance. *Sierra County v. Dona Ana County*, 1889-NMSC-017, 5 N.M. 190, 21 P. 83.

Meaning of "removed". — The removal contemplated by the word "removed" as used in N.M. Const., art. XX, § 2, refers to ouster from office of an officer under the provisions of the statute authorizing removal for misconduct. It has no reference to ouster by quo warranto proceedings, which are invoked and exercised only where a person is usurping the functions of an office to which he has no legal title. The provision clearly intended to permit the immediate removal from office of all officers who were found

guilty of misconduct sufficient to oust them from office. *Haymaker v. State ex rel. McCain*, 1917-NMSC-005, 22 N.M. 400, 163 P. 248.

Construction of "the ballot shall contain . . .". — The words "the ballot shall contain the text of the ordinance or resolution . . .." from Section 3-14-17 NMSA 1978 direct that the ballot show the complete text of a proposed ordinance. The statute is not ambiguous, therefore construction is not called for. 1970 Op. Att'y Gen. No. 70-40.

Meaning of "vacancy". — The word "vacancy," as applied to an office, has no technical meaning. An office is vacant whenever it is unoccupied by a legally qualified incumbent who has a lawful right to continue therein until the happening of some future event. 1959 Op. Att'y Gen. No. 59-01.

A statute means what it says. Southern Union Gas Co. v. New Mexico Pub. Serv. Comm'n, 82 N.M. 405, 482 P.2d 913 (1971), overruled on other grounds, De Vargas Sav. & Loan Ass'n v. Campbell, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

When statute makes sense no language read into it. — An appellate court may not read into a statute language which is not there, particularly if it makes sense as written. State ex rel. Barela v. New Mexico State Bd. of Educ., 1969-NMSC-038, 80 N.M. 220, 453 P.2d 583.

When meaning plain, no construction. — When the meaning of the statute is plain, there is no room for construction. State v. Clark, 1969-NMCA-004, 80 N.M. 91, 451 P.2d 995, *rev'd on other grounds*, 1969-NMSC-078, 80 N.M. 340, 455 P.2d 844.

When words free from ambiguity and doubt, no interpretation. — In interpreting a statute the intent is to be first sought in the meaning of the words used, and when they are free from ambiguity and doubt and express plainly, clearly and distinctly the sense of the legislature, no other means of interpretation should be resorted to. City of Roswell v. New Mexico Water Quality Control Comm'n, 1972-NMCA-160, 84 N.M. 561, 505 P.2d 1237, cert. denied, 84 N.M. 560, 505 P.2d 1236 (1973).

When terms plain and unambiguous no room for construction. — The meaning of a statute is to be ascertained primarily from its terms, and where they are plain and unambiguous, there is no room for construction. Southern Union Gas Co. v. New Mexico Pub. Serv. Comm'n, 1971-NMSC-035, 82 N.M. 405, 482 P.2d 913, *overruled on other grounds*, De Vargas Sav. & Loan Ass'n v. Campbell, 1975-NMSC-026, 87 N.M. 469, 535 P.2d 1320.

No room exists for construction when language of act is clear and unambiguous. Giomi v. Chase, 1942-NMSC-071, 47 N.M. 22, 132 P.2d 715.

Statute free of ambiguity given literal meaning. — Where the statute is free of ambiguity it must be given its literal meaning. Sunset Package Store, Inc. v. City of Carlsbad, 1968-NMSC-105, 79 N.M. 260, 442 P.2d 572.

No construction when words plain and unambiguous. — If words in the statute being considered are plain and unambiguous, there is no room for construction. State v. McHorse, 1973-NMCA-144, 85 N.M. 753, 517 P.2d 75.

No construction when words plain and unambiguous. — Where a statute is plain, meaningful and unambiguous, there is no room for construction. State ex rel. Barela v. New Mexico State Bd. of Educ., 1969-NMSC-038, 80 N.M. 220, 453 P.2d 583.

If language unambiguous legislative intent understood as it is written. — Legislative intent must be ascertained primarily from the language of the statute and if the language used is plain and unambiguous, the legislature must be understood as meaning what is expressly declared. 1959 Op. Att'y Gen. No. 59-63.

Unless ambiguity, no construction. — Rule of statutory construction that unless there is ambiguity in a statute, construction is uncalled for. 1959 Op. Att'y Gen. No. 59-63.

The plain meaning of the language contained in legislation is controlling. — Once legislation is enacted, the plain meaning of the language contained in the legislation is controlling regardless of a legislator's original intent, and once funds are appropriated by the legislature, those funds cannot be expended for any purpose that the legislature did not contemplate in the statute, and therefore, where a capital outlay funding request that was signed into law in 2019 unequivocally stated that the funds appropriated will be used to "plan, design, construct, equip and make improvements to Kearns field to comply with the federal American with Disabilities Act of 1990 in Milan in Cibola County" the appropriation cannot be utilized for any other purpose, regardless of the legislator's original intent in requesting the funding. *Legislative intent* (4/24/20), Att'y Gen. Adv. Ltr. 2020-05.

All parts of act generally considered. — Generally all parts of an act of a legislature should be considered so as to give effect to the whole statute. 1955 Op. Att'y Gen. No. 55-6247.

12-2A-3. General definitions.

In the statutes and rules of New Mexico:

A. "annually" means per year;

B. "age of majority" begins on the first instant of an individual's eighteenth birthday;

C. "child" includes a child by adoption;

D. "oath" includes an affirmation;

E. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity;

F. "personal property" means property other than real property;

G. "personal representative" of a decedent's estate includes an administrator and executor;

H. "population" means the number of individuals enumerated in the most recent federal decennial census;

I. "property" means real and personal property;

J. "real property" means an estate or interest in, over or under land and other things or interests, including minerals, water, structures and fixtures that by custom, usage or law pass with a transfer of land even if the estate or interest is not described or mentioned in the contract of sale or instrument of conveyance and, if appropriate to the context, the land in which the estate or interest is claimed;

K. "rule" means a rule, regulation, order, standard or statement of policy, including amendments thereto or repeals thereof, promulgated by an administrative agency, that purports to affect one or more administrative agencies other than the promulgating agency or that purports to affect persons who are not members or employees of the promulgating agency;

L. "sign" or "subscribe" includes the execution or adoption of any symbol by a person with the present intention to authenticate a writing;

M. "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States;

N. "swear" includes affirm;

O. "will" includes a codicil; and

P. "written" and "in writing" includes printing, engraving or any other mode of representing words and letters.

History: Laws 1997, ch. 173, § 3.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

County is body corporate therefore "person". — A county is fairly included as a body politic and corporate, to which the word "person" is extended. *Donalson v. County of San Miguel*, 1859-NMSC-001, 1 N.M. 263.

12-2A-4. Construction of "shall", "must" and "may".

A. "Shall" and "must" express a duty, obligation, requirement or condition precedent.

B. "May" confers a power, authority, privilege or right.

C. "May not", "must not" and "shall not" prohibit the exercise of a power, authority, privilege or right.

History: Laws 1997, ch. 173, § 4.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

"Shall" and "must". — The words "shall" and "must" generally indicate that the provisions of a statute are mandatory and not discretionary. *State v. Lara*, 2000-NMCA-037, 129 N.M. 391, 9 P.3d 74.

Mandatory or directory. — The question of whether a statutory requirement is mandatory or merely directory is answered by looking to the intent of the statute. *Stokes v. Tatman*, 1990-NMSC-113, 111 N.M. 188, 803 P.2d 673.

"May" contrasted with "can". — In the context of the annexation statutes and the statutes relating to municipal planning, the word "may" in Section 3-7-15A NMSA 1978, cannot reasonably be interpreted as "can." *City of Albuquerque v. State Mun. Boundary Comm'n*, 2002-NMCA-024, 131 N.M. 665, 41 P.3d 933.

"Shall" and "may" not interchangeable, legislative intent determines use. — Whether words of statutes are mandatory or discretionary is a matter of legislative intent to be determined by consideration of the purpose sought to be accomplished and the general rule is that the words "shall" and "may" shall not be used interchangeably. *State ex rel. Robinson v. King*, 1974-NMSC-028, 86 N.M. 231, 522 P.2d 83.

Directions not essence of duties not mandatory. — Directions in a statute which are not the essence of things to be done are not commonly considered mandatory, particularly where failure to comply does not result in prejudice. *State v. Lindwood*, 1968-NMCA-063, 79 N.M. 439, 444 P.2d 766.

If public interest involved, public officer's power is mandatory. — Where a public officer is clothed with power in permissive form to perform an act in which the interests

of the public are concerned, the permissive language of a statute will be construed as mandatory. *State ex rel. Robinson v. King*, 1974-NMSC-028, 86 N.M. 231, 522 P.2d 83.

When "shall" mandatory. — A claim for relief "shall contain a short and plain statement of the claim showing that the pleader is entitled to relief," and that "each averment of a pleading shall be simple, concise and direct." The word "shall" is mandatory. *Mantz v. Follingstad*, 1972-NMCA-164, 84 N.M. 473, 505 P.2d 68.

"Shall" held mandatory. — "Shall" in Section 31-1-3 NMSA 1978, and in former Rule 40, N.M.R. Crim. P. (now Rule 5-607), is mandatory. *State v. Davis*, 1982-NMCA-057, 97 N.M. 745, 643 P.2d 614.

When permissive language mandatory. — Permissive language may be construed as mandatory when it plainly appears that the legislature intended to impose a ministerial duty upon a public official or agency rather than entrust the agency with a judgmental function. A mandatory construction is normally suggested when the public or an individual has a claim de jure which demands that the power conferred upon the administrative agency be exercised for the benefit of that claim. 1971 Op. Att'y Gen. No. 71-104.

12-2A-5. Number, gender and tense.

A. Use of the singular number includes the plural, and use of the plural number includes the singular.

B. Use of a word of one gender includes corresponding words of the other genders.

C. Use of a verb in the present tense includes the future tense.

History: Laws 1997, ch. 173, § 5.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

Singular includes the plural. — Courts have consistently construed enhancement statutes that are written in the singular as authorizing the imposition of multiple enhancements. *State v. McClendon*, 2001-NMSC-023, 130 N.M. 551, 28 P.3d 1092.

When singular appears it can be construed as plural, and vice versa. *New Mexico & S. Pac. R.R. Co. v. Madden*, 1893-NMSC-018, 7 N.M. 215, 34 P. 50.

Where intent determined it is appropriate to transpose words. — This section provides that words importing the plural number may be applied to one person or thing, for it is appropriate to transpose words and phrases to carry out the manifest intent

where the purpose and intent of a statute has been determined. *State ex rel. Dresden v. District Court*, 1941-NMSC-013, 45 N.M. 119, 112 P.2d 506.

Person includes persons. — While effect of a former statute similar to this section was that use of word "person" in statute included plural "persons," the homestead exemption statute could not be construed so as to permit individual partners an exemption of partnership assets equivalent to their homestead. *In re Spitz Bros.*, 1896-NMSC-025, 8 N.M. 622, 45 P. 1122.

Construing the term "owner". — Construing the term "owner" in 30-31-34G(2) NMSA 1978 to protect innocent co-owners as well as sole owners from forfeiture of their vehicles for drug use is not contrary to the legislature's intent and is a permissible extension of a singular term to include the plural under this rule of statutory construction. *In re Forfeiture of One 1970 Ford Pickup*, 1991-NMCA-124, 113 N.M. 97, 823 P.2d 339.

12-2A-6. Reference to series.

A reference to a series of numbers or letters includes the first and last number or letter.

History: Laws 1997, ch. 173, § 6.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

12-2A-7. Computation of time.

In computing a period of time prescribed or allowed by a statute or rule, the following rules apply:

A. if the period is expressed in days, the first day of the period is excluded and the last day is included;

B. if the period is expressed in weeks, the period ends on the day that is the same day of the concluding week as the day of the week on which an event determinative of the computation occurred;

C. if the period is expressed in months, the period ends on the day of the concluding month that is numbered the same as the day of the month on which an event determinative of the computation occurred, unless the concluding month has no such day, in which case the period ends on the last day of the concluding month;

D. if the period is expressed in years, the period ends on the day of the concluding month of the concluding year that is numbered the same as the day of the month of the year on which an event determinative of the computation occurred, unless the concluding month has no such day, in which case the period ends on the last day of the concluding month of the concluding year;

E. if the period is less than eleven days, a Saturday, Sunday or legal holiday is excluded from the computation;

F. if the last day of the period is a Saturday, Sunday or legal holiday, the period ends on the next day that is not a Saturday, Sunday or legal holiday;

G. a day begins immediately after midnight and ends at the next midnight;

H. if the period is determinable by the occurrence of a future event, the first day of the period is ascertained by applying the rules of Subsections A through G of this section backward from the last day of the period as if the event had occurred; and

I. in computing the time that a legislative session shall end, the word "day" means a twenty-four-hour period from 12:00 noon on one calendar day to 12:00 noon on the next calendar day.

History: Laws 1997, ch. 173, § 7.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

Period involving months. — A calendar month should run from the date of the court order triggering the right of redemption to the corresponding date of the subsequent month (or months, if the redemption period granted is more than one month). *U.S. Bank Nat'l Ass'n v. Martinez*, 2003-NMCA-151, 134 N.M. 665, 81 P.3d 608.

Eleven-day rule. — Subsection E of Section 12-2A-7E NMSA 1978 of the Uniform Statute and Rule Construction Act provides the same time computation guideline as Rule 12-308(A) NMRA for the less-than-eleven-days rule, but the act is not applicable to Section 39-3-3B(2) NMSA 1978 as it currently exists, because the act applies only to statutes enacted after its effective date. *State v. Fernandez*, 1999-NMCA-128, 128 N.M. 111, 990 P.2d 224.

Conflict with rule of procedure. — Paragraph A of Rule 1-006, which provides that if the last day of a statutory time period falls on a Saturday, Sunday, or legal holiday, the period runs until the next day which is not a Saturday, Sunday or legal holiday, supersedes Subsection G (now F) of this section, which only extends the time period to the following Monday if the last day falls on a Sunday. Therefore, a claim under the

Torts Claim Act was not barred by the two-year statute of limitations of Section 41-4-15 NMSA 1978 when the last day of the two-year period fell on a Saturday and the plaintiff filed her claim on the following Monday. *Dutton v. McKinley Cnty. Bd. of Comm'rs*, 1991-NMCA-130, 113 N.M. 51, 822 P.2d 1134.

Computation irrespective of nature of limitation. — Whether a limitation is considered procedural or substantive, or whether it is a limitation on the right and remedy or on only the remedy, is immaterial. *Keilman v. Dar Tile Co.*, 1964-NMSC-138, 74 N.M. 305, 393 P.2d 332.

Only case when Sunday is excluded. — Former 12-2-26 NMSA 1978 changed the common-law rule, and required the court to include intervening Sundays in computing time. It also provided the only case wherein Sunday is to be excluded. *Atchison, T. & S.F. Ry. Co. v. Solorzano*, 1916-NMSC-016, 21 N.M. 503, 156 P. 242 (decided under former law).

When Sunday last day for payment following Monday acceptable. — When last day for payment of rental under an oil and gas lease falls on Sunday, lessee may pay on following Monday. *Durell v. Miles*, 1949-NMSC-033, 53 N.M. 264, 206 P.2d 547.

Filing application. — Where sixth day after completion of canvass of election returns fell on Sunday, an application for recount filed in the district court the Monday following, and presented to the district judge promptly on his return after an absence of two days, was seasonable. *Sandoval v. Madrid*, 1930-NMSC-118, 35 N.M. 252, 294 P. 631.

Filing claim. — Filing of claim against estate one year and a day after issuance of letters testamentary was timely where the last day of the year fell on Sunday. *O'Brien v. Wilson*, 1921-NMSC-022, 26 N.M. 641, 195 P. 803.

Service and return at any hour of day. — Service at any hour on November 19th was sufficient for any hour of November 24th as a return day. *Pickering v. Justice of Peace*, 1911-NMSC-006, 16 N.M. 37, 113 P. 619.

Statute becomes effective at first moment of applicable day. — In calculating effective date of a new act, day of the event is to be excluded and last day of interim period is included, so that statute becomes effective at first moment of applicable day after the event, such as first moment of 90th day after adjournment of legislature. *Garcia v. J.C. Penney Co.*, 1948-NMSC-065, 52 N.M. 410, 200 P.2d 372.

Applicability to constitutional conventions. — The rule expressed in former Subsection H (now I) of Section 12-2-2 NMSA 1978 was limited to the computation of time for legislative sessions and did not apply when construing Laws 1969, ch. 134, § 15 (purporting to set a time limit on the constitutional convention). 1969 Op. Att'y Gen. No. 69-82.

Days counted consecutively. — The legislative rule of statutory construction assumed that in computing periods of time set forth in legislative enactments, it is intended that days be counted consecutively. 1969 Op. Att'y Gen. No. 69-82.

Any time during last day sufficient. — A lot sold for taxes at 10 o'clock in the forenoon on January 30, 1912, could be redeemed by the original owner, or by a person purchasing from the original owner, at any time before the close of January 30, 1915. 1915 Op. Att'y Gen. No. 15-1432.

12-2A-8. Prospective operation.

A statute or rule operates prospectively only unless the statute or rule expressly provides otherwise or its context requires that it operate retrospectively.

History: Laws 1997, ch. 173, § 8.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

Extending a statute of limitations. — Although the extension of a statute of limitations cannot revive a previously time-barred prosecution, it can extend an unexpired limitation period because such extension does not impair vested rights acquired under prior law, require new obligations, impose new duties or affix new disabilities to past transactions. Because capital felonies and first-degree violent felonies committed after July 1, 1982, were not time-barred as of the effective date of the 1997 amendment of Section 30-1-8 NMSA 1978, the legislature intended the 1997 amendment to apply to these crimes. *State v. Morales*, 2010-NMSC-026, 148 N.M. 305, 236 P.3d 24.

Presumption in favor of prospective operation unless clear intent otherwise. — It is presumed that statutes will operate prospectively only, unless an intention on the part of the legislature is clearly apparent to give them retrospective effect. *State v. Perea*, 2001-NMSC-026, 130 N.M. 732, 31 P.3d 1006; *State v. Padilla*, 1968-NMCA-004, 78 N.M. 702, 437 P.2d 163.

Retroactive operation not mandated by existence of facts prior to enactment. — A statute does not operate retroactively merely because some of the facts or conditions upon which its application depends came into existence prior to the enactment. *State v. Mears*, 1968-NMCA-098, 79 N.M. 715, 449 P.2d 85.

Clarification of existing law. — A statute which clarifies existing law may properly be regarded as having prospective effect. *Swink v. Fingado*, 115 N.M. 275, 850 P.2d 978 (1993).

As a general rule retrospective legislation is not favored. — As a general rule, retrospective or retroactive legislation is not looked upon with favor. For this reason, it is a well established and fundamental rule of statutory construction that all statutes are to be construed as having only a prospective operation. 1960 Op. Att'y Gen. No. 60-203.

Therefore all statutes operate prospectively and not retrospectively. — All statutes are to be construed as having only a prospective operation and not as operating retrospectively. 1957 Op. Att'y Gen. No. 57-261.

Clear intent is for retrospective effect. — Statutes are presumed to have only prospective effect unless there is strong and clear language of an intent for them to have a retrospective effect. 1960 Op. Att'y Gen. No. 60-192.

Intent controls retroactively but an emergency clause implies prospective effect. — Generally, statutes will not be given a retroactive interpretation, especially where the enactment is in derogation of a common-law right or where such interpretation would interfere with an existing contract or create a new liability in connection with a past transaction, invalidate a previously valid defense, or where such an interpretation would render a statute unconstitutional. However, if the intention that a law be retroactive is manifest, such intention will control even though not expressly stated. On the other hand, an emergency clause in the enactment is some indication that the law was not intended to have retroactive effect. 1957 Op. Att'y Gen. No. 57-127.

Statutes of limitation ordinarily will not be given retroactive effect unless it clearly appears that the legislature so intended. 1960 Op. Att'y Gen. No. 60-203.

New matter in amended statute has no retrospective effect. — A statute amending a prior one by declaring that it shall be amended so as to read in a given manner has no retrospective effect. The portion of the amended statute, which is merely copied without change, is not to be considered as repealed and again enacted, but to have been the law; and the new parts are not to be taken as to have been the law prior to the passage of the amended statute. 1957 Op. Att'y Gen. No. 57-20.

12-2A-9. Severability.

If a provision of a statute or rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute or rule that can be given effect without the invalid provision or application, and to this end the provisions of the statute or rule are severable.

History: Laws 1997, ch. 173, § 9.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173, § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

When valid portion of partially invalid statute remains in force. — A part of the law may be unconstitutional and the remainder of it valid, where the objectionable part may be properly separated from the other without impairing the force and effect of the portion which remains, and where the legislative purpose as expressed in such valid portion can be accomplished and given effect, independently of the void provisions, and where if the entire act is taken into consideration it cannot be said that the enacting power would not have passed the portion retained had it known that the void provisions must fall. *State v. Frawley*, 2007-NMSC-057, 143 N.M. 7, 172 P.3d 144; *Barber's Super Mkts., Inc. v. City of Grants*, 1969-NMSC-115, 80 N.M. 533, 458 P.2d 785.

Effect of partially invalid statute. — Before a partially invalid statute can be held to still be in force it must satisfy three tests: first, the invalid portion must be able to be separated from the other portions without impairing their effect; second, the legislative purpose expressed in the valid portion of the act must be able to be given effect without the invalid portion; and, thirdly, it cannot be said, on a consideration of the whole act, that the legislature would not have passed the valid part if it had known that the objectionable part was invalid. *State v. Spearman*, 1972-NMCA-150, 84 N.M. 366, 503 P.2d 649.

Interdependence of both valid and invalid provisions is controlling factor. — The invalidity of a portion of a legislative enactment does not operate to invalidate those portions of the act which are free from objection unless there is such interdependence of all provisions so as to make it reasonably certain that absent the part determined to be invalid, the legislature would not have enacted the valid portion. *Clovis Nat'l Bank v. Callaway*, 1961-NMSC-129, 69 N.M. 119, 364 P.2d 748.

Where saving clause used valid portion given effect, if possible. — Where a section has been incorporated expressly stating the legislative intent that the valid portion of the enactment should stand even though other parts may be determined to be invalid, there can be no question of legislative intent and if possible the portion of the legislation free from objection should be given effect. *Clovis Nat'l Bank v. Callaway*, 1961-NMSC-129, 69 N.M. 119, 364 P.2d 748.

12-2A-10. Irreconcilable statutes or rules.

A. If statutes appear to conflict, they must be construed, if possible, to give effect to each. If the conflict is irreconcilable, the later-enacted statute governs. However, an earlier-enacted specific, special or local statute prevails over a later-enacted general statute unless the context of the later-enacted statute indicates otherwise.

B. If an administrative agency's rules appear to conflict, they must be construed, if possible, to give effect to each. If the conflict is irreconcilable, the later-adopted rule governs. However, an earlier-adopted specific, special or local rule prevails over a later-adopted general rule unless the context of the later-adopted rule indicates otherwise.

C. If a statute is a comprehensive revision of the law on a subject, it prevails over previous statutes on the subject, whether or not the revision and the previous statutes conflict irreconcilably.

D. If a rule is a comprehensive revision of the rules on the subject, it prevails over previous rules on the subject, whether or not the revision and the previous rules conflict irreconcilably.

History: Laws 1997, ch. 173, § 10.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

I. GENERAL CONSIDERATION

Using legislative intent. — Where three acts were enacted to amend Section 66-8-102 NMSA 1978 at the same session of the legislature, were signed by the governor on different dates, and had different effective dates and did not conflict with each other, the language of the three enactments, in addition to their titles and purposes, indicated that the objective of the legislature was to make specific, independent improvements to the statute and permitted the three enactments to be construed harmoniously to give effect to each enactment. In the course of amending an existing law, if the legislature restates existing law to comply with Article IV, Section 18 of the New Mexico constitution, the courts are not obligated to read into that legislative act a repeal by implication of other legislation passed in the same session. A better rule is to make legislative intent paramount to the application of a mechanical rule. *State v. Smith*, 2004-NMSC-032, 136 N.M. 372, 98 P.3d 1022.

Amendment or repeal by implication not unconstitutional. — Fact that act may amend or repeal certain provisions of other statutes by implication does not offend against N.M. Const., art. IV, § 18, referring to amendments. *State ex rel. Taylor v. Mirabal*, 1928-NMSC-056, 33 N.M. 553, 273 P. 928.

Two statutes covering same subject matter should be harmonized. — When two statutes are enacted by the legislature covering the same subject matter, one of them in general terms and the other in a more detailed way, the two should be harmonized, if possible, and construed together. *State v. Rue*, 1963-NMSC-090, 72 N.M. 212, 382 P.2d 697.

If two statutes not absolutely irreconcilable both given effect. — Repeals of statutes by implication are not favored, and when two statutes cover in whole or in part the whole matter and are not absolutely irreconcilable, effect should be given if possible to both of them. *Waltom v. City of Portales*, 1938-NMSC-022, 42 N.M. 433, 81 P.2d 58; *White v. Board of Educ.*, 1938-NMSC-009, 42 N.M. 94, 75 P.2d 712; *State v. Moore*,

1936-NMSC-044, 40 N.M. 344, 59 P.2d 902; *Atchison, T. & S.F. Ry. v. Town of Silver City*, 1936-NMSC-036, 40 N.M. 305, 59 P.2d 351; *State v. Fidelity & Deposit Co.*, 1932-NMSC-022, 36 N.M. 166, 9 P.2d 700; *James v. Board of Comm'rs*, 1918-NMSC-106, 24 N.M. 509, 174 P. 1001; *Hagerman v. Meeks*, 1906-NMSC-032, 13 N.M. 565, 86 P. 801.

Where apparent conflict, without repeal statute will be reconciled. — Where there is an apparent conflict between two acts, without any repeal, the two will be reconciled. *State v. Moore*, 1936-NMSC-044, 40 N.M. 344, 59 P.2d 902.

Presumption that legislature knew existing law and did not intend inconsistency. — In interpreting a statute this court may presume that the legislature was informed as to existing law, and that the legislature did not intend to enact a law inconsistent with any existing law or not in accord with common sense or sound reasoning. *City Comm'n of Albuquerque v. State ex rel. Nichols*, 1965-NMSC-104, 75 N.M. 438, 405 P.2d 924.

Not construed together if repugnancy or unreasonableness would result. — Statutes relating to same subject should be construed together if possible, but this effect should not be accorded to statutes when it leads to contradiction or repugnancy, absurdity or unreasonableness. *In re Martinez' Will*, 1942-NMSC-026, 47 N.M. 6, 132 P.2d 422.

If two sections from same act conflict, last placed controls. — The sentence concerning requirement that directors be stockholders, contained in 51-2-14 (since repealed), is in § 5 and the one found in 51-6-1 (since repealed) is in § 8 of the 1927 amendment. If two provisions of the same statute are irreconcilable, the provision last placed will be deemed to repeal the other. The sentence quoted from 51-6-1 was the provision last placed and was controlling. *Great W. Constr. Co. v. N.C. Ribble Co.*, 1967-NMSC-085, 77 N.M. 725, 427 P.2d 246.

Penalty provisions of pari materia statutes are irreconcilable, later controlling. — Two statutes where they condemn the same act are in pari materia. The penalty provisions being different, they are irreconcilable, impliedly intending that the last expression of the legislature should control. *State v. Chavez*, 1966-NMSC-217, 77 N.M. 79, 419 P.2d 456.

II. GENERAL-SPECIFIC STATUTES.

Goal of general/specific statute rule. — The primary goal of the general/specific statute rule is to determine legislative intent in the context of potentially conflicting laws. The general/specific statute rule provides a method to resolve an otherwise irreconcilable conflict between statutes by treating the specific statute as an exception to the general statute. For criminal statutes, the rule has both a particular analytical framework and a particular result. In analysis, the court determines whether the general/specific statute rule applies to two criminal statutes by comparing the elements of the crimes and, if necessary, resorting to other indicia of legislative intent. *State v. Cleve*, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23.

Application of general/specific statute rule. — The general/specific rule applies to both civil and criminal statutes. *State v. Blevins*, 1936-NMSC-052, 40 N.M. 367, 60 P.2d 208.

General/specific statute rule in criminal cases. — The goal of the general/specific statute rule in the context of criminal law is to determine whether the legislature intends to punish particular criminal conduct under a specific statute instead of a general statute. Because this goal mirrors the purpose of the rule in general, there is no need to undertake a separate, duplicative inquiry under the label of preemption to determine whether the special criminal statute operates as an exception to the general criminal statute. As between two criminal statutes, the "exception" that is the relevant focus of the general/specific statute rule is a legislative intent that particular criminal conduct be prosecuted under one statute instead of another. *State v. Santillanes*, 2001-NMSC-018, 130 N.M. 464, 27 P.3d 456.

Conflicts between general and specific statutes are resolved by giving effect to specific statute. *Lopez ex rel. Lopez v. Barreras*, 1966-NMSC-209, 77 N.M. 52, 419 P.2d 251.

Specific statute superseding general statute considered exception to general statute. — A statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject matter supersedes a general statute which does not refer to that subject although broad enough to cover it as the specific statute is considered an exception to or qualification of the general statute. *Lopez ex rel. Lopez v. Barreras*, 1966-NMSC-209, 77 N.M. 52, 419 P.2d 251.

General provision relates to same subject specific controls. — It is well settled that a general provision is controlled by one that is special, the later being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject as against a general provision although the later standing alone would be broad enough to include the subject to which the more particular provision relates. *Cromer v. J.W. Jones Constr. Co.*, 1968-NMCA-027, 79 N.M. 179, 441 P.2d 219; *overruled on other grounds bySchiller v. Southwest Air Rangers, Inc.*, 1975-NMSC-018, 87 N.M. 476, 535 P.2d 1327.

III. REPEAL BY IMPLICATION.

Without repealing clause prior statute not abrogated unless inconsistency exists. — In absence of repealing clause expressly designating the prior enactment intended to be abrogated, no new statute will be allowed to sweep away existing legislation unless its terms are such that the new and the old cannot stand together consistently. *Wilburn v. Territory*, 1900-NMSC-028, 10 N.M. 402, 62 P. 968.

General words of repeal add nothing to effect of repealing clause. — Use, in repealing clause, of words "all acts and parts of acts in conflict herewith" adds nothing to the repealing effect of later legislation and repeals nothing which would not be

repealed by implication without those words. *Territory ex rel. City of Albuquerque v. Matson*, 1911-NMSC-016, 16 N.M. 135, 113 P. 816.

Repeals by implication are not favored, and will not be held to exist where any other reasonable construction can be placed upon two statutes. *State v. Davisson*, 1923-NMSC-045, 28 N.M. 653, 217 P. 240, error dismissed, 267 U.S. 574, 45 S. Ct. 229, 69 L. Ed. 795 (1925).

Repeals by implication are not to be favored; statutes should be construed together where the objects to be obtained by each can be preserved. *Territory ex rel. White v. Riggle*, 1911-NMSC-074, 16 N.M. 713, 120 P. 318.

Even in absence of repealing clause prior repugnant statute impliedly repealed. — Where later of two statutes having same object and relating to same subject is repugnant to earlier statute, earlier statute is impliedly repealed to extent of repugnancy, even in absence of a repealing clause. *Baca v. Board of County Comm'rs*, 1900-NMSC-031, 10 N.M. 438, 62 P. 979.

When wholly irreconcilable prior statute repealed by later. — A statute may be repealed without being referred to by a subsequent statute on the same subject, when the last statute is wholly irreconcilable with the former and both cannot stand together. *Nye v. Board of Comm'rs*, 1932-NMSC-009, 36 N.M. 169, 9 P.2d 1023; *Sandoval v. Board of County Comm'rs*, 1906-NMSC-028, 13 N.M. 537, 86 P. 427; *Geck v. Shepherd*, 1859-NMSC-010, 1 N.M. 346.

Statute repealed by implication when such intent is manifest. — A statute is repealed by implication, though such repeal is not favored, where the legislative intent that later statute supersede former is manifest; such intent is manifest where the legislature enacts a new and comprehensive body of law which is so inconsistent with and repugnant to the former law on the same subject as to be irreconcilable with it; especially does this result follow where later act expressly notices the former in such a way as to indicate an intention to abrogate. *Ellis v. New Mexico Constr. Co.*, 1921-NMSC-068, 27 N.M. 312, 201 P. 487.

When later statute is broad and comprehensive implied repeal results. — Though repeals by implication are not favored, yet courts declare them in cases where the last statute is so broad in its terms and so clear and explicit in its words as to show it was intended to cover the whole subject, and, therefore, to displace the prior statute. *Atchison, T. & S.F. Ry. v. Town of Silver City*, 1936-NMSC-036, 40 N.M. 305, 59 P.2d 351; *State ex rel. County Comm'rs v. Romero*, 1914-NMSC-023, 19 N.M. 1, 140 P. 1069.

No implied repeal unless new act is clearly repugnant or comprehensive. — If there is no express reference to existing statute or apparent intention to repeal the same, it is to be concluded that the legislature did not intend to abrogate the former law relating to the same matter, unless the later act is clearly repugnant to the prior one, or

completely covers and embraces the subject-matter thereof, or unless the reason for the prior act is removed. *Smith v. City of Raton*, 1914-NMSC-017, 18 N.M. 613, 140 P. 109.

Earlier law repealed by implication when irreconcilable with later law. — Repeal by implication is not favored, but an earlier law is necessarily repealed by implication when it is absolutely irreconcilable with a later law. *Territory v. Digneo*, 1909-NMSC-018, 15 N.M. 157, 103 P. 975.

Repealed by implication only to extent statutes are incompatible. — Later statute repeals earlier statute by implication only to extent that statutes are incompatible. *State v. Fidelity & Deposit Co.*, 1932-NMSC-022, 36 N.M. 166, 9 P.2d 700.

General statute not regarded as repealing particular or limited statute. — A general statute will not be regarded as repealing by implication a statute dealing with a particular matter and of limited scope. *Waltom v. City of Portales*, 1938-NMSC-022, 42 N.M. 433, 81 P.2d 58.

Repeal is necessary to give later general statute effect. — A subsequent statute treating a subject in general terms will not be held to repeal by implication an earlier statute treating the same subject specifically, unless such construction is absolutely necessary in order to give the subsequent statute effect. *State ex rel. Armijo v. Romero*, 1927-NMSC-008, 32 N.M. 178, 253 P. 20.

Unless subsequent general statute positively repugnant to specific. — General statute will not impliedly repeal prior local law or special statute or charter unless there is such a positive repugnance between the two that both cannot stand together or be consistently reconciled. *Atchison, T. & S.F. Ry. v. Town of Silver City*, 1936-NMSC-036, 40 N.M. 305, 59 P.2d 351.

Specific statutes control general regardless of priority of enactment. — The rule that a statute relating to a specific subject controls a general statute which includes the specific subject in the generality of its terms is not dependent upon the time of the enactment of such statutes. It prevails without regard to priority of enactment. 1962 Op. Att'y Gen. No. 62-13.

To extent of irreconcilability special or specific provision controls general. — As a general rule general or broad statutory provisions do not control, modify, limit, affect or interfere with special or specific provisions. To the contrary, to the extent of any irreconcilable conflict, the special or specific provision modifies, qualifies, limits, restricts, excludes, supersedes, controls and prevails over the general or broad provisions. 1962 Op. Att'y Gen. No. 62-13.

Strong showing of intent required to create exception to general rule. — In the face of two important canons of statutory construction (presumption against repeal by implication and rule that special act controls over general act to extent of any conflict), it

takes a strong showing of legislative intention to create an exception to the general rule. 1962 Op. Att'y Gen. No. 62-13.

If repugnant, former repealed to extent of repugnancy. — Although repeals by implication are not favored where two statutes have the same object and relate to the same subject, if the later is repugnant to the former, the former is repealed by implication to the extent of the repugnancy in the absence of a repealing clause in the later act. 1961 Op. Att'y Gen. No. 61-16.

When two statutes cannot be construed together last enacted survives. — Where two statutes cannot be construed so as to give effect to each without contradiction or repugnancy or absurdity or unreasonableness, the last enacted will survive. 1959 Op. Att'y Gen. No. 59-192.

If possible, unless conflict irreconcilable, court will keep both laws operative. — Repeal of statute by implication will not be indulged unless the later act is so repugnant to the earlier as to render the repugnancy or conflict between them irreconcilable, and a court will if possible adopt that conclusion which under the particular circumstances will permit both laws to be operative. 1959 Op. Att'y Gen. No. 59-192.

Specific enactment governs general when enacted at same legislature. — In the event of a conflict between two or more enactments of the same legislature, the special and not the general enactment will govern. 1957 Op. Att'y Gen. No. 57-184.

Former repugnant act repealed even in absence of repealing clause. — The doctrine that repeals by implication is not favored is firmly imbedded in law, but we are equally committed to the rule that where two statutes have the same object and relate to the same subject, if the later act is repugnant to the former, the former is repealed by implication to the extent of the repugnancy, even in the absence of the repealing clause in the later act. 1958 Op. Att'y Gen. No. 58-116.

When two statutes passed at same session are irreconcilable, later prevails. — The principle that repeals by implication are not favored needs no citation of authority. This principle is specially applicable as between two statutes passed at the same session of the legislature. However, if the enactments are irreconcilable, the one which is the later expression of the legislative intent ordinarily prevails over and impliedly repeals the other enactment. 1957 Op. Att'y Gen. No. 57-184.

Statute which is last in order of time or local position prevails over that which is first. 1957 Op. Att'y Gen. No. 57-184.

Well settled proposition that two statutes be construed together. — Repeals by implication are not favored, and wherever possible, two statutes will be construed together so that the objects to be attained by each will be preserved, if no contradiction, repugnancy, absurdity or unreasonableness will result. This proposition is well settled in New Mexico. 1958 Op. Att'y Gen. No. 58-241.

Contradictory statutes. — If two statutes appear in contradictory position, such interpretation as will reconcile the seeming contradiction will be favored. 1957 Op. Att'y Gen. No. 57-298.

Interpretation reconciling seemingly contradictory provisions is favored. — If two constitutional or statutory provisions are in seeming contradiction, if some interpretation can be drawn as will leave both provisions operative, such interpretation will be favored. 1957 Op. Att'y Gen. No. 57-204.

If statutes are cumulative or reconcilable all are given effect. — One or two affirmative statutes on the same subject matter does not repeal the other if both can stand, as where they are cumulative. The court will, if possible, give effect to all statutes covering, in whole or in part, the same subject matter where they are not absolutely irreconcilable and no purpose of repeal is clearly shown or indicated. 1957 Op. Att'y Gen. No. 57-95.

Insofar as conflict is concerned last enacted repeals first. — Wherever there is an irreconcilable conflict in two enactments of the legislature, the last in point of time will be deemed to have repealed the first enactment insofar as the conflict is concerned. 1956 Op. Att'y Gen. No. 56-6359.

General/specific rule applies when construing parts of same act. — In construing several parts of the same act together, it is the generally accepted rule that a specific power or provision governs where a general power or provision in the same act can be construed to cover the same area. 1955 Op. Att'y Gen. No. 55-6326.

General/specific rule does not apply where legislature intended otherwise. — Where general provisions, terms or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part, the particular provisions must govern or control as a clearer and more definite expression of the legislative will, unless the statute as a whole clearly shows a legislative intention to the contrary, or some other canon of statutory construction compels a contrary conclusion. 1955 Op. Att'y Gen. No. 55-6259.

Inconsistent statutes passed by same session of legislature. — Where two statutes are inconsistent and are passed by the same session of the legislature and both become effective at the same time, the supreme court has held that the law being last in place, position or sequence will govern and repeal by implication the earlier statute. 1955 Op. Att'y Gen. No. 55-6076.

Presumption that all laws consistent. — It is a maxim of statutory construction that an interpretation of a statute which creates an inconsistency should be avoided, and since all laws are presumed to be consistent with each other, every effort should be made to harmonize and reconcile them. 1953 Op. Att'y Gen. No. 53-5635.

12-2A-11. Enrolled and engrossed bill controls over subsequent publication.

If the text of an enrolled and engrossed bill differs from a later publication of the text, the enrolled and engrossed bill prevails.

History: Laws 1997, ch. 173, § 11.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

12-2A-12. Incorporation by reference.

A. A statute or rule that incorporates by reference another procedural statute of New Mexico incorporates a later enactment or amendment of the other statute.

B. A statute that incorporates by reference a rule of New Mexico does not incorporate a later adoption or amendment of the rule.

C. A rule that incorporates by reference another rule of New Mexico incorporates a later adoption or amendment of the other rule.

History: Laws 1997, ch. 173, § 12.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

12-2A-13. Headings and titles.

Headings and titles may not be used in construing a statute or rule unless they are contained in the enrolled and engrossed bill or rule as adopted.

History: Laws 1997, ch. 173, § 13.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

Legislative intent. — While a statutory heading cannot be used to produce ambiguity in a statute that is otherwise clearly drafted, a legislatively drafted section heading may

be useful in determining legislative intent. *Serrano v. State, Dep't of Alcoholic Beverage Control*, 1992-NMCA-015, 113 N.M. 444, 827 P.2d 159.

Headings not law. — The headings on each section of the statutes appearing in the 1953 statutes annotated are not part of the law. They were added by the editors and are merely descriptive and intended as aids in the use of the statutes. *City of Albuquerque v. Campbell*, 1960-NMSC-138, 68 N.M. 75, 358 P.2d 698.

Title of statute may be referred to for resolving doubts concerning statute's meaning. *State ex rel. Sedillo v. Sargent*, 1918-NMSC-042, 24 N.M. 333, 171 P. 790.

12-2A-14. Continuation of previous statute or rule.

A statute or rule that is revised, whether by amendment or by repeal and reenactment, is a continuation of the previous statute or rule and not a new enactment to the extent that it contains substantially the same language as the previous statute or rule.

History: Laws 1997, ch. 173, § 14.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

Reenactment of statute. — The amendment or reenactment of a statute in substantially the same language as that contained in the original enactment amounts to a continuation of the original statute and not a new enactment. *Rodgers v. City of Loving*, 1977-NMCA-132, 91 N.M. 306, 573 P.2d 240; *Granito v. Grace*, 1952-NMSC-088, 56 N.M. 652, 248 P.2d 210; *Dietz v. Hughes*, 1935-NMSC-055, 39 N.M. 349, 47 P.2d 417; *State v. Thompson*, 1933-NMSC-021, 37 N.M. 229, 20 P.2d 1030.

Reenactment of statute in substantially same language in which it was originally phrased constitutes the latter statute merely a continuation of the former. *State v. Thompson*, 1933-NMSC-021, 37 N.M. 229, 20 P.2d 1030.

12-2A-15. Repeal of repealing statute or rule.

The repeal of a repealing statute or rule does not revive the statute or rule originally repealed or impair the effect of a savings clause in the original repealing statute or rule.

History: Laws 1997, ch. 173, § 15.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

Rule set forth by former Section 12-2-6 NMSA 1978 was not retroactive; previously New Mexico followed the common-law rule. *Gallegos v. Atchison, T. & S.F. Ry.*, 1923-NMSC-032, 28 N.M. 472, 214 P. 579.

Former Section 12-2-6 NMSA 1978 was contrary to common law. — At common law, when an act was repealed which repealed a former act, such former act was thereby revived, and again became effective, without formal words to that effect, but that rule did not apply where new enactment, by which repealing statute was repealed, consisted of a revision or substitute for the original act. In such cases it was manifest that legislature did not intend to revive the original act, but to legislate anew upon the subject. *Gallegos v. Atchison, T. & S.F. Ry.*, 1923-NMSC-032, 28 N.M. 472, 214 P. 579.

Common-law rule inapplicable when last repealing section enacts new matter. — Common-law rule did not apply where new enactment, by which repealing statute was repealed, consisted of a revision or substitute for the original act, or where new legislation upon subject of original act was therein adopted. *Atlantic Oil Producing Co. v. Crile*, 1930-NMSC-040, 34 N.M. 650, 287 P. 696; *Gallegos v. Atchison, T. & S.F. Ry.*, 1923-NMSC-032, 28 N.M. 472, 214 P. 579.

Under former law nothing prohibited revival. — Prior to the adoption of the constitution, there was nothing in the Organic Act or in the laws of congress relating to the territory prohibiting the repeal of a repealing act and revival of the original law by such repeal. *State v. Elder*, 1914-NMSC-074, 19 N.M. 393, 143 P. 482 (construing acts passed before the passage of this section).

Three methods of revival. — There are three methods by which, under the law, a former law can be revived after being, as here, repealed. The first is the common law where the repealing statute is repealed prior to the enactment of this section. The second is by the annulment of a repealing statute under the provisions of the constitution. The third is by repealing the repealing act, and specifically providing for revival of the repealed legislation as provided in this section. 1966 Op. Att'y Gen. No. 66-04 (decided under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 Am. Jur. 2d Statutes §§ 378 to 399.

Unconstitutionality of later statute as affecting provision purporting specifically to repeal earlier statute, 102 A.L.R. 802.

Retroactive application of repeal of statute which operated as limitation of or exception to a substantive right or action in tort otherwise arising at common law, 120 A.L.R. 943.

Constitutionality and construction of repeal or modification by legislative action of teachers' tenure statute, as regards retrospective operation, 147 A.L.R. 293.

Power and duty of court where legislature repeals statute previously passed making constitutional mandate effectual, 153 A.L.R. 525.

Constitutional requirement that repealing statute refer to statute repealed as applicable to repeal by implication, 5 A.L.R.2d 1270.

82 C.J.S. Statutes § 307.

12-2A-16. Effect of amendment or repeal.

A. An amendment or repeal of a civil statute or rule does not affect a pending action or proceeding or a right accrued before the amendment or repeal takes effect.

B. A pending civil action or proceeding may be completed and a right accrued may be enforced as if the statute or rule had not been amended or repealed.

C. If a criminal penalty for a violation of a statute or rule is reduced by an amendment, the penalty, if not already imposed, must be imposed under the statute or rule as amended.

History: Laws 1997, ch. 173, § 16.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

Adoption of amendment evidences intent to change original law. — It is a familiar rule of statutory construction that the adoption of an amendment is evidence of an intention by the legislature to change the provision of the original law. *Cancienne, Inc. v. Southwest Cmty. Inns, Inc.*, 1969-NMSC-110, 80 N.M. 512, 458 P.2d 587; *Martinez v. Research Park, Inc.*, 1965-NMSC-146, 75 N.M. 672, 410 P.2d 200, *overruled on other grounds by Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, 109 N.M. 683, 789 P.2d 1250.

Amended act must be accepted as law upon subject embraced therein; the repealed act can be looked to only to interpret anything in which there is substantial doubt as to meaning of the language used. *Cortesy v. Territory*, 1893-NMSC-008, 7 N.M. 89, 32 P. 504.

Portion of amended section not reenacted, repealed. — A statute amending a section "so as to read as follows," repeals all that is not reenacted. *Sandoval v. Board of County Comm'rs*, 1906-NMSC-028, 13 N.M. 537, 86 P. 427.

Saving clause used to retain old statute for specific purposes. — In repealing or amending a statute the legislature may save the old statute for specified purposes by an

appropriate saving clause in the repealing or amending act. *Board of Educ. v. Citizens' Nat'l Bank*, 1917-NMSC-059, 23 N.M. 205, 167 P. 715.

Legislative intent embodied in this section indicates a policy decision to apply a reduced sentence if the penalty has not been imposed. *State v. Shay*, 2004-NMCA-077, 136 N.M. 8, 94 P.3d 8, cert. granted, 2004-NMCERT-006, 135 N.M. 788, 93 P.3d 1293, cert. quashed, 2005-NMCERT-002, 137 N.M. 266, 110 P.3d 74.

Section conflict with Section 30-1-2 NMSA 1978. — To the extent that this section, enacted in 1997, and Section 30-1-2 NMSA 1978, enacted in 1963, conflict, the latter enactment supercedes the prior. *State v. Shay*, 2004-NMCA-077, 136 N.M. 8, 94 P.3d 8, cert. granted, 2004-NMCERT-006, 135 N.M. 788, 93 P.3d 1293, cert. quashed, 2005-NMCERT-002, 137 N.M. 266, 110 P.3d 74.

Habitual Offender Act. — Article IV, Section 33, N.M. Const., does not apply to the 2002 amendment to Section 31-18-17 NMSA 1978 or to the interpretation of the amendment through this section. *State v. Shay*, 2004-NMCA-077, 136 N.M. 8, 94 P.3d 8, cert. granted, 2004-NMCERT-006, 135 N.M. 788, 93 P.3d 1293, cert. quashed, 2005-NMCERT-002, 137 N.M. 266, 110 P.3d 74.

Applying Subsection C of this section to the 2002 amendment to Section 31-18-17 NMSA 1978, the 2002 amendment effectively reduces the potential enhanced penalties for violating felony statutes by narrowing the definition of "prior felony conviction." *State v. Shay*, 2004-NMCA-077, 136 N.M. 8, 94 P.3d 8, cert. granted, 2004-NMCERT-006, 135 N.M. 788, 93 P.3d 1293, cert. quashed, 2005-NMCERT-002, 137 N.M. 266, 110 P.3d 74.

12-2A-17. Citation forms.

Citations in the following forms are adequate for all purposes:

A. session laws: "Laws 1995, Chapter 1, Section 1" or "L. 1995, Ch. 1, § 1"; and

B. annotated statutes: "§ 1-1-1 NMSA 1978" or "Section 1-1-1 NMSA 1978".

History: Laws 1997, ch. 173, § 17.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

12-2A-18. Principles of construction; presumption.

A. A statute or rule is construed, if possible, to:

(1) give effect to its objective and purpose;

(2) give effect to its entire text; and

(3) avoid an unconstitutional, absurd or unachievable result.

B. A statute that is intended to be uniform with those of other states is construed to effectuate that purpose with respect to the subject of the statute.

C. The presumption that a civil statute in derogation of the common law is construed strictly does not apply to a statute of this state.

History: Laws 1997, ch. 173, § 18.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

I. GENERAL CONSIDERATION.

Principles of statutory interpretation. — If a statute is ambiguous, then to ascertain the legislature's intent the court considers the legislative purpose behind the statute to effectuate the intent of the statute and accomplish its objectives and statutes concerning similar subject matter, relevant common law principles and public policy; and reads the provisions of the statute together with statutes pertaining to the same subject to achieve a harmonious whole. *Pub. Serv. Co. of N.M. v. Diamond D Constr. Co.*, 2001-NMCA-082, 131 N.M. 100, 33 P.3d 651, cert. quashed, 131 N.M. 221, 34 P.3d 610.

Absurd meaning to be avoided. — The court is not bound by a literal interpretation of the words of a statute if a strict interpretation would defeat the intended object of the legislature. Thus, words can be added, and words in a statute can be read as though they were omitted, if that is necessary to effectuate legislative intent and prevent an absurd and unreasonable meaning. *State v. Romero*, 2000-NMCA-029, 128 N.M. 806, 999 P.2d 1038.

Interest in uniformity. — Courts may consider other jurisdictions' interpretations of Uniform Health Care Decisions Act to effectuate the purpose of uniformity with other states that have likewise adopted the Uniform Act. Corum v. *Roswell Senior Living LLC*, 2010-NMCA-105, 149 N.M. 287, 248 P.3d 329, cert. denied, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146.

Constructive service of process is in derogation of common law; it is harsh; and a statute authorizing it is to be strictly construed. *Kalosha v. Novick*, 1973-NMSC-010, 84 N.M. 502, 505 P.2d 845.

Tort Claims Act in derogation of common-law rights. — A court must strictly construe the Tort Claims Act, since it is in derogation of one's common-law right to sue for negligence. *Wells v. County of Valencia*, 1982-NMSC-048, 98 N.M. 3, 644 P.2d 517.

Exemption statutes are liberally construed in favor of debtor. *Advance Loan Co. v. Kovach*, 1968-NMSC-154, 79 N.M. 509, 445 P.2d 386; *McFadden v. Murray*, 1927-NMSC-039, 32 N.M. 361, 257 P. 999.

Construction of "electors voting in the whole state". — To construe "electors voting in the whole state" (N.M. Const., art. XIX, § 1) to mean in effect, "all electors voting at the election," as distinguished from those voting on the particular amendment, would have the effect of making the "unamendable section" (N.M. Const., art. VII, § 1) even more unamendable than would otherwise be true. To so hold would in effect attribute to the membership of the convention, the congress of the United States and the electorate who ratified the constitution and the amendment to N.M. Const., art. XIX, § 1 the intention of incorporating provisions which ostensibly provide for amendment while in fact making it impossible. *State ex rel. Witt v. State Canvassing Bd.*, 1968-NMSC-017, 78 N.M. 682, 437 P.2d 143 (decided under prior law).

Use of "void" and "voidable". — The word "void" is not always used in an absolute or in its literal sense but may be and often is used in the sense of "voidable." Where an enactment has relation only to the benefit of particular persons, "void" will be understood as "voidable" only at the election of the person or persons for whose protection the enactment was made, provided they are capable of protecting themselves. "Absolutely void" is that which the law or nature of things forbids to be enforced at all, and that is "relatively void" which the law condemns as a wrong to individuals and refuses to enforce against them. *State ex rel. State Tax Comm'n v. Garcia*, 1967-NMSC-098, 77 N.M. 703, 427 P.2d 230.

Application of ejusdem generis. — The rule of statutory construction, ejusdem generis, is that general words in a statute, which follow a designation or enumeration of particular subjects, objects, things or classes of persons, will ordinarily be presumed to be restricted so as to embrace only subjects, objects, things or classes of the same general character, sort or kind, to the exclusion of all others. It arises from the presumption that, having enumerated a list of things or persons, the legislature must have had in mind no other kind. *Cardinal Fence Co. v. Comm'r of Bureau of Revenue*, 1972-NMCA-136, 84 N.M. 314, 502 P.2d 1004.

State of law when act passed may aid construction. — In the interpretation of a statute, changes made by the act in the previous state of the law may be given consideration. Indeed, one of the recognized rules of construction of statutes is to look to the state of the law when the statute was enacted in order to see for what is was intended as a substitute. *Bettini v. City of Las Cruces*, 1971-NMSC-054, 82 N.M. 633, 485 P.2d 967.

One guide is history and prior condition of law. — One guide in the construction of a statute that is most useful to the courts is the consideration of the history and prior condition of a particular law. *Munroe v. Wall*, 1959-NMSC-054, 66 N.M. 15, 340 P.2d 1069.

Severability clause an aid in construction. — The presence or absence of a severability clause merely provides one rule of construction which may be considered and may sometimes aid in determining legislative intent, "but it is an aid merely; not an inexorable command." *Bradbury & Stamm Constr. Co. v. Bureau of Revenue*, 1962-NMSC-078, 70 N.M. 226, 372 P.2d 808.

The plain meaning of the language contained in legislation is controlling. — Once legislation is enacted, the plain meaning of the language contained in the legislation is controlling regardless of a legislator's original intent, and once funds are appropriated by the legislature, those funds cannot be expended for any purpose that the legislature did not contemplate in the statute, and therefore, where a capital outlay funding request that was signed into law in 2019 unequivocally stated that the funds appropriated will be used to "plan, design, construct, equip and make improvements to Kearns field to comply with the federal American with Disabilities Act of 1990 in Milan in Cibola County" the appropriation cannot be utilized for any other purpose, regardless of the legislator's original intent in requesting the funding. *Legislative intent* (4/24/20), Att'y Gen. Adv. Ltr. 2020-05.

II. CONSTITUTIONAL VALIDITY.

Constitutional limitations are sole restraints upon legislature's prerogatives. — The legislature's prerogative in the matter of legislation is to be questioned solely from the standpoint of our federal or state constitutional limitations. The function of the courts in scrutinizing acts of the legislature is not to raise possible doubt nor to listen to captious criticism. The legislature possessing the sole power of enacting law, it will not be presumed that the people have intended to limit its power or practice by unreasonable or arbitrary restrictions. Every presumption is ordinarily to be indulged in favor of the validity and regularity of legislative acts and procedure. *State ex rel. Holmes v. State Bd. of Fin.*, 1961-NMSC-172, 69 N.M. 430, 367 P.2d 925.

Presumption that legislature kept within bounds of constitution. — In determining the constitutionality of an act of the legislature, the presumption is that the legislature has performed its duty and kept within the bounds fixed by the constitution, and that the judiciary will, if possible, give effect to the legislative intent, unless it clearly appears to be in conflict with the constitution. *Seidenberg v. N. M. Bd. of Med. Examiners*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Policy of court to construe statutes in light of presumed constitutionality. — The court will construe statutes in the light that they are presumed constitutional rather than unconstitutional. *State ex rel. City of Albuquerque v. Lavender*, 1961-NMSC-096, 69 N.M. 220, 365 P.2d 652.

Every presumption favoring constitutionality indulged. — In passing on issues of constitutionality of statutes the court must indulge every presumption in favor of validity of the enactment. *Board of Dirs. of Mem'l Gen. Hosp. v. County Indigent Hosp. Claims Bd.*, 1967-NMSC-042, 77 N.M. 475, 423 P.2d 994.

Statute should be construed so as to avoid conflict with constitution and give effect to statute whenever possible; all doubts should be resolved in favor of constitutionality of statute. *State ex rel. Sedillo v. Sargent*, 1918-NMSC-042, 24 N.M. 333, 171 P. 790.

Unless no other conclusion reasonable, acts not unconstitutional. — Legislative acts should not be held unconstitutional unless no other conclusion can reasonably be reached and all doubts must be resolved in favor of constitutionality. *Peyton v. Nord*, 1968-NMSC-027, 78 N.M. 717, 437 P.2d 716.

In any event, doubt is resolved in favor of constitutionality of statutes. *Daniels v. Watson*, 1966-NMSC-011, 75 N.M. 661, 410 P.2d 193.

Unconstitutionality must be proven beyond all reasonable doubt. — A statute will not be declared unconstitutional unless the court is satisfied beyond all reasonable doubt that the legislature went outside the constitution in enacting the challenged legislation. *City of Raton v. Sproule*, 1967-NMSC-141, 78 N.M. 138, 429 P.2d 336.

III. CRIMINAL STATUTES.

Ambiguity in criminal statute construed against the state. — Courts will not add words in the construction of a statute, except where it is necessary to do so to make the statute conform to the obvious intent of the legislature, or to prevent absurdity, and if there be any ambiguity or doubt concerning the meaning of a criminal statute, it will be construed against the state which enacted it and in favor of the accused. *State v. Ortiz*, 1967-NMCA-019, 78 N.M. 507, 433 P.2d 92.

Court will not change or limit wording in criminal statute in order to construe it against the accused. Penal statutes are strictly construed and should be of sufficient certainty so that a person will know his act is criminal when he does it. *State v. Collins*, 1969-NMSC-104, 80 N.M. 499, 458 P.2d 225.

Criminal statutes fairly and reasonably construed as to both sides. — The cardinal rule in the construction of a statute is to ascertain the intention of the legislature as it is expressed in the words of the statute, and for this purpose the whole act must be considered. The law, it is true, in its tenderness for life and liberty, requires that penal statutes shall be strictly construed, by which is meant that courts will not extend punishment to cases not plainly within the language used. At the same time such statutes are to be fairly and reasonably construed, and the courts will not by a narrow and strained construction exclude from its operation cases plainly within their scope of

meaning. *State v. Garcia*, 1971-NMCA-186, 83 N.M. 490, 493 P.2d 975, cert. denied, 83 N.M. 473, 493 P.2d 958 (1972).

Intendment not to broaden penal statutes. — Penal statutes must be strictly construed, and the definition of crimes therein contained is not to be broadened by intendment. *State v. Allen*, 1967-NMSC-029, 77 N.M. 433, 423 P.2d 867.

Penal statutes must be strictly interpreted with respect to offense. *State v. Shop Rite Foods, Inc.*, 1964-NMSC-048, 74 N.M. 55, 390 P.2d 437.

Criminal sentences must be imposed as prescribed by statute. *State v. Baros*, 1968-NMSC-001, 78 N.M. 623, 435 P.2d 1005.

Unless legislative intent indicates otherwise, criminal intent will be required. — Except where the legislature clearly indicates a desire to eliminate the requirement of criminal intent, criminal statutes will be construed in the light of the common law and criminal intent will be required, and failure to instruct on this required element will be considered jurisdictional. *State v. Fuentes*, 1973-NMCA-069, 85 N.M. 274, 511 P.2d 760, cert. denied, 85 N.M. 265, 511 P.2d 751.

Act prohibited only by statute construed in light of common law. — When an act is prohibited and made punishable by statute only, the statute is to be construed in the light of the common law and the existence of a criminal intent is to be regarded as essential, although the terms of the statute do not require it. *State v. Austin*, 1969-NMCA-095, 80 N.M. 748, 461 P.2d 230; *State v. Jordan*, 1972-NMCA-033, 83 N.M. 571, 494 P.2d 984.

Requirement of criminal intent is matter of construction. — Whether a criminal intent is to be regarded as essential is a matter of construction, to be determined from a consideration of the matters prohibited and the language of the statute, in the light of the common-law rule. *State v. Jordan*, 1972-NMCA-033, 83 N.M. 571, 494 P.2d 984.

Criminal intent is required unless it clearly appears legislature intended otherwise. — The legislature may forbid the doing of an act and make its commission criminal, without regard to the intent with which such act is done; but in such case it must clearly appear from the act, from its language or clear inference, that such was the legislative intent. *State v. Austin*, 1969-NMCA-095, 80 N.M. 748, 461 P.2d 230.

Requirement of criminal intent. — Intent is required unless it clearly appears that the legislature meant to eliminate intent as part of the offense. *State v. Pedro*, 1971-NMCA-145, 83 N.M. 212, 490 P.2d 470.

IV. TAX STATUTES.

One provision not to destroy another. — The established rule of construction of a statute is that, if possible, it will be construed to give effect to all of its provisions so that

one part will not destroy another. *State ex rel. Maloney v. Neal*, 1969-NMSC-095, 80 N.M. 460, 457 P.2d 708.

Giving effect to all parts of a statute. — A statute should be construed, if possible, to give effect to all of its provisions and so that one part will not destroy another. *Martinez v. Research Park, Inc.*, 1965-NMSC-146, 75 N.M. 672, 410 P.2d 200, *overruled on other grounds*, *Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, 109 N.M. 683, 789 P.2d 1250.

Meaning and effect given to every part of statute. — An appellate court construes statutes so that meaning and effect will be given to every part thereof. *State v. Herrera*, 1974-NMSC-037, 86 N.M. 224, 522 P.2d 76.

Each part construed to produce harmonious whole. — Particular words, phrases and provisions must be construed with reference to the leading idea or purpose derived from the whole statute. Thus, each part should be construed in connection with every other part so as to produce a harmonious whole. *State ex rel. Maloney v. Neal*, 1969-NMSC-095, 80 N.M. 460, 457 P.2d 708.

Statutes construed in a manner so as to prevent absurdity. 1960 Op. Att'y Gen. No. 60-61.

Statutes construed so that application is not absurd. — It is fundamental that statutes will be construed so that their application will be neither absurd nor unreasonable. *Midwest Video v. Campbell*, 1969-NMSC-034, 80 N.M. 116, 452 P.2d 185.

Intention to authorize a deduction must be clear. — The rule is that legislative intention to authorize a deduction must be clearly and unambiguously expressed in the statute. *Kaiser Steel Corp. v. Prop. Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

The legislature is presumed to have used no surplus words and each word should have attributed to it some meaning not within the plain signification of other language found in the act. *Cromer v. J.W. Jones Constr. Co.*, 1968-NMCA-027, 79 N.M. 179, 441 P.2d 219, *overruled on other grounds by Schiller v. Southwest Air Rangers, Inc.*, 1975-NMSC-018, 87 N.M. 476, 535 P.2d 1327.

No part of statute rendered superfluous. — It is fundamental that a statute should be so construed that no word, clause, sentence provision or part thereof shall be rendered surplusage or superfluous. *Cromer v. J.W. Jones Constr. Co.*, 1968-NMCA-027, 79 N.M. 179, 441 P.2d 219, *overruled on other grounds by Schiller v. Southwest Air Rangers, Inc.*, 1975-NMSC-018, 87 N.M. 476, 535 P.2d 1327.

All parts of act construed together. — In statutory construction all parts of an act relating to the same subject matter are to be construed together. *Kendrick v. Gackle Drilling Co.*, 1962-NMSC-127, 71 N.M. 113, 376 P.2d 176.

All of statute given effect. — In construing statute, effect is to be given to every clause and section of it, if possible. *Butts v. Woods*, 1888-NMSC-004, 4 N.M. (Gild.) 343, 16 P. 617.

Statutes construed to prevent absurdity, and to favor public convenience. — Statutes will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship or injustice; to favor public convenience, and to oppose all prejudice to public interests. 1956 Op. Att'y Gen. No. 56-6479.

An appellate court will not construe statutes to achieve an absurd result or to defeat the intended object of the legislature. *State v. Herrera*, 1974-NMSC-037, 86 N.M. 224, 522 P.2d 76.

Presumption in favor of validity and regularity of statutes. — Every presumption is to be indulged in favor of the validity and regularity of legislative enactments. *City of Raton v. Sproule*, 1967-NMSC-141, 78 N.M. 138, 429 P.2d 336.

When statute's application absurd construe according to obvious spirit. — If the language of a statute renders its application absurd or unreasonable, it will be construed according to its obvious spirit or reason. But where the meaning of the language is plain, it must be given effect, and there is no room for construction. *State v. Garcia*, 1971-NMCA-186, 83 N.M. 490, 493 P.2d 975, cert. denied, 83 N.M. 473, 493 P.2d 958 (1972).

If the language of a statute renders its application absurd or unreasonable, it will be construed according to its obvious spirit or reason, but where the meaning of the language is plain, it must be given effect, and there is no room for construction. *State v. Ortiz*, 1967-NMCA-019, 78 N.M. 507, 433 P.2d 92.

When tax statutes strictly construed. — Statutes imposing taxes and providing means for the collection of the same should be construed strictly insofar as they may operate to deprive the citizen of his property by summary proceedings or to impose penalties or forfeitures upon him; but otherwise tax laws ought to be construed with fairness, if not liberality, in order to carry out the intention of the legislature and further the important public interests which such statutes subserve. *NBS Corp. v. Valdez*, 1965-NMSC-027, 75 N.M. 379, 405 P.2d 224.

When ambiguity exists statute construed against taxing authority. — Where an ambiguity or doubt exists as to the meaning or applicability of a tax statute, it should be construed most strongly against the taxing authority and in favor of those taxed. *New Mexico Elec. Serv. Co. v. Jones*, 1969-NMCA-111, 80 N.M. 791, 461 P.2d 924.

Statute of exemption from taxation must receive a strict construction, and no claim of exemption should be sustained unless within the express letter or the necessary scope of the exempting clause. *Gibbons & Reed Co. v. Bureau of Revenue*, 1969-NMSC-096, 80 N.M. 462, 457 P.2d 710.

Tax and assessment contrasted. — An assessment is unlike a tax in that the proceeds must be expended in an improvement from which a benefit, clearly exceptive and plainly perceived, must enure to the property upon which it is imposed. There is a wide difference in law between a tax and an assessment. In the one case the taxes are assessed against the individual and become a charge upon his property generally. In the other, the assessment, being for benefits accruing to the specific property, becomes a charge only upon and against it, and liability for the charge is confined to the particular property benefited. *Leigh v. Hertzmark*, 1967-NMSC-064, 77 N.M. 789, 427 P.2d 668.

Fundamental law that statutes and regulations construed to make constitutional. — It is fundamental law that the courts will construe a statute, and for that matter a regulation, so as to make it constitutional and valid. 1961 Op. Att'y Gen. No. 61-85.

Proviso survives invalidity when disjunctive. — While it is the general rule that a proviso modifies or restricts only that part of a statute which immediately precedes it and therefore would fall when that part of the statute falls, there is an exception to this rule to the effect that the mere fact that a sentence begins "provided" does not of necessity make it a proviso and that it may, in fact, be used in the disjunctive and contain new matter rather than an exception to what has gone before. 1959 Op. Att'y Gen. No. 59-188.

Constitutional provisions must receive a reasonable and liberal construction to uphold the acts of the legislature to the extent that this can be done. 1958 Op. Att'y Gen. No. 58-85.

Statutes construed as beneficial and favoring public convenience. — It is a well-recognized rule of construction that statutes should be construed in a beneficial way in order to prevent absurdity, hardship, injustice and so as to favor public convenience. 1957 Op. Att'y Gen. No. 57-246.

"Remedial and humanitarian" statute is to be broadly construed, and exceptions thereto, in application, be narrowly construed. 1957 Op. Att'y Gen. No. 57-248.

Specific words control general words which follow. — Under well-settled rules of statutory construction, when general words are used, following the enumeration of specific classes of things, the general words are to be construed as applicable only to things of the same general nature as those enumerated. 1957 Op. Att'y Gen. No. 57-279, superseded by 2000 Op. Att'y Gen. No. 00-03 on other issues.

Maxim "expressio unius est exclusio alterius" is only an aid. — The legal maxim "expressio unius est exclusio alterius," while time honored, is only an aid to

construction. It is not a rule of law, and in any event is of limited application. 1958 Op. Att'y Gen. No. 58-18.

Statutes dealing with public assistance are to be liberally construed to carry out the intent and purpose of the legislation. 1953 Op. Att'y Gen. No. 53-5631.

When two constructions, court adopts constitutional one. — When a statute is before the court for construction, and the language of the act is reasonably susceptible to two constructions, one of which would render the act inoperative and in contravention of the constitution or law of the land, and the other would uphold the statute, it is the duty of the court to adopt the latter construction. 1953 Op. Att'y Gen. No. 53-5878.

12-2A-19. Primacy of text.

The text of a statute or rule is the primary, essential source of its meaning.

History: Laws 1997, ch. 173, § 19.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

12-2A-20. Other aids to construction.

A. In considering the text of a statute or rule in light of Sections 2 through 7 [12-2A-2 to 12-2A-7 NMSA 1978] and Sections 18 and 19 [12-2A-18 and 12-2A-19 NMSA 1978] of the Uniform Statute and Rules Construction Act, and the context in which the statute or rule is applied, the following aids to construction may be considered in ascertaining the meaning of the text:

(1) the meaning of a word or phrase may be limited by the series of words or phrases of which it is a part; and

(2) the meaning of a general word or phrase following two or more specific words or phrases may be limited to the category established by the specific words or phrases.

B. In addition to considering the text of a statute or rule in light of Sections 2 through 7 and Sections 18 and 19 of the Uniform Statute and Rules Construction Act, the context in which the statute or rule is applied and the aids to construction in Subsection A of this section, the following aids to construction may be considered in ascertaining the meaning of the text:

(1) a settled judicial construction in another jurisdiction as of the time a statute or rule is borrowed from the other jurisdiction;

(2) a judicial construction of the same or similar statute or rule of this or another state;

(3) an official commentary published and available before the enactment or adoption of the statute or rule;

(4) an administrative construction of the same or similar statute or rule of this state;

(5) a previous statute or rule, or the common law, on the same subject;

(6) a statute or rule on the same or a related subject, even if it was enacted or adopted at a different time; and

(7) a reenactment of a statute or readoption of a rule that does not change the pertinent language after a court or agency construed the statute or rule.

C. If, after considering the text of a statute or rule in light of Sections 2 through 7 and Sections 18 and 19 of the Uniform Statute and Rules Construction Act, the context in which the statute or rule is applied and the aids to construction in Subsections A and B of this section, the meaning of the text or its application is uncertain, the following aids to construction may be considered in ascertaining the meaning of the text:

(1) the circumstances that prompted the enactment or adoption of the statute or rule;

(2) the purpose of a statute or rule as determined from the legislative or administrative history of the statute or rule; and

(3) the history of other legislation on the same subject.

History: Laws 1997, ch. 173, § 20.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 173 § 22 made the Uniform Statute and Rule Construction Act effective July 1, 1997.

Decisions of other jurisdictions. — Courts may consider other jurisdictions' interpretations of Uniform Health-Care Decisions Act to effectuate the purpose of uniformity with other states that have likewise adopted the uniform act. *Corum v. Roswell Senior Living LLC*, 2010-NMCA-105, 149 N.M. 287, 248 P.3d 329, cert. denied, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146.

The fundamental rule in construing statutes is to ascertain and give effect to the intention of the legislature. *State v. Chavez*, 1966-NMSC-217, 77 N.M. 79, 419 P.2d 456.

Purpose of statutory construction. — The supreme court will construe a statute to give it its intended effect. *New Mexico State Hwy. Comm'n v. Ferguson*, 1982-NMSC-107, 98 N.M. 680, 652 P.2d 230.

Courts must interpret a statute so as to accomplish the ends sought by the legislature. *C. de Baca v. Baca*, 1964-NMSC-006, 73 N.M. 387, 388 P.2d 392.

Intent of legislature ascertained by statutory construction. — In construing a statute, a court must do so with the ultimate purpose of ascertaining and giving effect to the manifest intent of the legislature. *Wells v. County of Valencia*, 1982-NMSC-048, 98 N.M. 3, 644 P.2d 517.

Intent determined from language of statute. — Where there is ambiguity, interpretation is required, but that interpretation is for the purpose of determining legislative intent when it is to be determined primarily from the language used in the statute. *State v. McHorse*, 1973-NMCA-144, 85 N.M. 753, 517 P.2d 75.

Statement of legislators. — The statement of legislators, especially after the passage of legislation, cannot be considered competent evidence in establishing what the legislature intended in enacting a measure. *Regents of Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, 125 N.M. 401, 962 P.2d 1236.

When language plain, intention expressed given effect. — The intention, of course, must be the intention expressed in the statute, and where the meaning of the language employed is plain, it must be given effect. *State v. Ortiz*, 1967-NMCA-019, 78 N.M. 507, 433 P.2d 92.

Words given ordinary meaning unless intent indicates otherwise. — The court must view the legislative intent from the language of the act and the words will be given their ordinary meaning unless a different intent is clearly indicated. *Davis v. Comm'r of Revenue*, 1971-NMCA-129, 83 N.M. 152, 489 P.2d 660, cert. denied, 83 N.M. 151, 489 P.2d 659.

When words are added, rejected or substituted. — Courts will not add words except where necessary to make the statute conform to the obvious intent of the legislature, or to prevent its being absurd but where the language of the legislative act is doubtful or an adherence to the literal use of words would lead to injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason, even though this requires the rejection of words or the substitution of others. *State v. Nance*, 1966-NMSC-207, 77 N.M. 39, 419 P.2d 242, cert. denied, 386 U.S. 1039, 87 S. Ct. 1495, 18 L. Ed. 2d 605 (1967).

When words are transposed. — Words and phrases of statute may be transposed to carry out manifest intent of act. *State ex rel. Dresden v. District Court of Second Judicial Dist.*, 1941-NMSC-013, 45 N.M. 119, 112 P.2d 506.

Defined terms. — When a term, comprised of more than one word, is expressly defined in a statute and a shortened form of the term appears elsewhere in the statutes in context similar to the use of the long form, and when the statute includes no definition for the shortened form, the court will presume that the two terms have the same definition. *Regents of Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, 125 N.M. 401, 962 P.2d 1236.

Construction not to be absurd, literal interpretation yields to intent. — The legislative intent must be given effect by adopting a construction which will not render the statute's application absurd or unreasonable and the court will not be bound by a literal interpretation of the words if such strict interpretation would defeat the intended object of the legislature. *State v. Nance*, 1966-NMSC-207, 77 N.M. 39, 419 P.2d 242, cert. denied, 386 U.S. 1039, 87 S. Ct. 1495, 18 L. Ed. 2d 605 (1967).

The courts are committed to an acceptance of the intent of the language employed by the legislature rather than the precise definition of the words themselves. *State v. Nance*, 1966-NMSC-207, 77 N.M. 39, 419 P.2d 242, cert. denied, 386 U.S. 1039, 87 S. Ct. 1495, 18 L. Ed. 2d 605 (1967).

Entire provision read to give effect to all parts. — Statutes are to be given effect as written, and where free from ambiguity, there is no room for construction. Where there is ambiguity, however, and meaning is not clear, resort may be had to construction and interpretation and, even then, intent is to be determined primarily from the language used, and the entire provision is to be read together so that all parts are given effect in arriving at the intent of the drafters and promulgators. *Fort v. Neal*, 1968-NMSC-149, 79 N.M. 479, 444 P.2d 990.

All of statute and those in pari materia read together. — All of the provisions of a statute, together with other statutes in pari materia, must be read together to ascertain the legislative intent. *Allen v. McClellan*, 1965-NMSC-094, 75 N.M. 400, 405 P.2d 405, *overruled on other grounds by N.M. Livestock Bd. v. Dose*,1980-NMSC-022, 94 N.M. 68, 607 P.2d 606.

The purpose of the "pari materia" rule is to ascertain and carry into effect the legislature's intention. *State v. Chavez*, 1966-NMSC-217, 77 N.M. 79, 419 P.2d 456.

Consideration of contemporaneous documents. — Contemporaneous documents presented to and presumably considered by the legislature during the course of enactment of a statute may be considered by a court in attempting to glean legislative intent. *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, 117 N.M. 346, 871 P.2d 1352.

Act in violation of statute void, exception. — The general rule of law is that an act done in violation of a statutory prohibition is void and confers no right upon the wrongdoer; but this rule is subject to the qualification that when, upon a survey of the statute, its subject matter and the mischief sought to be prevented, it appears that the legislature intended otherwise, effect must be given to that intention. *State ex rel. State Tax Comm'n v. Garcia*, 1967-NMSC-098, 77 N.M. 703, 427 P.2d 230.

Statutes are to be interpreted with reference to their manifest object, and "if the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction." *Martinez v. Research Park, Inc.*, 1965-NMSC-146, 75 N.M. 672, 410 P.2d 200, *overruled on other grounds by Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, 109 N.M. 683, 789 P.2d 1250.

Evils to be corrected and purpose considered in construction. — The evils which the legislature intended to correct and the purpose of the legislation must be considered in construing a statute. It cannot be assumed that the legislature would do a futile thing. *Hayes v. Hagemeier*, 1963-NMSC-095, 75 N.M. 70, 400 P.2d 945.

Ordinary rules and intent are guides to construe penal statutes. — Penal statutes are not to be subjected to any strained or unnatural construction in order to work exemptions from their penalties, and such statutes must be interpreted by the aid of the ordinary rules for the construction of statutes, and with the cardinal object of ascertaining the intention of the legislature. *State v. Ortiz*, 1967-NMCA-019, 78 N.M. 507, 433 P.2d 92.

Presumption when one state adopts statute of another state. — Where one state adopts a statute of another state there is a presumption that it likewise adopts the construction of the statute by the courts of the state from which it was adopted. *Gray v. Armijo*, 1962-NMSC-082, 70 N.M. 245, 372 P.2d 821.

State court's construction of own statutes binds federal agencies and courts. — A state court has the function of declaring and construing its own statutes. Such determination is binding not only upon federal administrative agencies but upon federal courts as well. *Pan Am. Petroleum Corp. v. El Paso Natural Gas Co.*, 1966-NMSC-271, 77 N.M. 481, 424 P.2d 397.

Long-standing interpretations by agencies not lightly overturned. — Long-standing interpretations of a doubtful or uncertain statute by the administrative agency charged with administering the statute are persuasive and will not be lightly overturned by the courts. *Martinez v. Research Park, Inc.*, 1965-NMSC-146, 75 N.M. 672, 410 P.2d 200, *overruled on other grounds by Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, 109 N.M. 683, 789 P.2d 1250.

When factual issues similar administrative construction is highly persuasive. — A long-standing administrative construction of a statute in granting a tax exemption is

highly persuasive authority, however, such a rule is predicated upon the premise that the factual issues are similar. *Benevolent & Protective Order of Elks, Lodge No. 461 v. N.M. Prop. Appraisal Dep't*, 1971-NMCA-124, 83 N.M. 505, 494 P.2d 167, *aff'd*, 1972-NMSC-006, 83 N.M. 445, 493 P.2d 411.

Custom does not relieve party of clear-cut obligations of ordinance. *Sanchez v. J. Barron Rice, Inc.*, 1967-NMSC-077, 77 N.M. 717, 427 P.2d 240.

Legislative acquiescence is used only when direct interpretative methods fail. — Use of legislative acquiescence in exercise of power by an agency as evidence of legislative interpretation of a statute is to be resorted to only where meaning is doubtful, and when direct methods of interpretation have failed. *State ex rel. Lee v. Hartman*, 1961-NMSC-171, 69 N.M. 419, 367 P.2d 918.

Ascertainment of legislative intent. — The controlling consideration in construing a statute is ascertainment of the legislative intent, and such legislative intent is determined primarily from the language actually contained in the statute. 1962 Op. Att'y Gen. No. 62-65.

Matter may be implied to effect intent. — The spirit, as well as the letter of the statute, must be respected; and where the whole context of a law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid that intent. 1961 Op. Att'y Gen. No. 61-75.

Failure to disapprove of agency's interpretation is persuasive. — Where the legislature has met since the particular department placed its interpretation on a given statute, its failure to indicate that the administrative construction is not actually in accord with legislative intent is a persuasive argument that the legislative body approves of the administrative agency's construction. 1961 Op. Att'y Gen. No. 61-75.

When statutes void. — A statute may be void for vagueness where no ascertainable legislative intent is revealed. It may be equally void where there is more than one reasonable construction possible but there is no means of determining which construction was intended by the legislature. 1961 Op. Att'y Gen. No. 61-32.

Effect of construction prior to amendment. — When a statute has been construed and the legislature in amending the same substantially sets forth the section in language identical with that which has theretofore been construed, the legislature may be regarded as adopting the construction theretofore made. 1961 Op. Att'y Gen. No. 61-41.

ARTICLE 3
State Seal, Song and Symbols

12-3-1. [State seal; design.]

The coat of arms of the state shall be the Mexican eagle grasping a serpent in its beak, the cactus in its talons, shielded by the American eagle with outspread wings, and grasping arrows in its talons; the date 1912 under the eagles and, on a scroll, the motto: "Crescit Eundo." The great seal of the state shall be a disc bearing the coat of arms and having around the edge the words "Great Seal of the State of New Mexico."

History: Laws 1887, ch. 70, § 1; C.L. 1897, § 3798; Code 1915, § 5422; C.S. 1929, § 135-101; 1941 Comp., § 3-1301; 1953 Comp., § 4-14-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The seal below has not been amended or altered in any way.

The seal as described above was apparently selected by the commission named to provide a state seal according to Joint Resolution No. 11, March 13, 1913 (Laws 1913, p. 172). *See also* N.M. Const., art. XXII, § 9, providing for continuance of territorial seal until changed.

Use by anyone other than state prohibited. — Use of the great seal of the state by anyone other than by the state of New Mexico, for any purpose, is not permitted. 1952 Op. Att'y Gen. No. 52-5569.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 39.

12-3-2. [Adoption of flag for state of New Mexico.]

That a flag be and the same is hereby adopted to be used on all occasions when the state is officially and publicly represented, with the privilege of use by all citizens upon such occasions as they may deem fitting and appropriate. Said flag shall be the ancient Zia sun symbol of red in the center of a field of yellow. The colors shall be the red and yellow of old Spain. The proportion of the flag shall be a width of two-thirds its length. The sun symbol shall be one-third of the length of the flag. Said symbol shall have four groups of rays set at right angles; each group shall consist of four rays, the two inner rays of the group shall be one-fifth longer than the outer rays of the group. The diameter of the circle in the center of the symbol shall be one-third of the width of the symbol. Said flag shall conform in color and design described herein.

History: Laws 1925, ch. 115, § 1; C.S. 1929, § 128-101; 1941 Comp., § 3-1302; 1953 Comp., § 4-14-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

12-3-2.1. State flag; disposal.

A. If a New Mexico state flag is no longer used or useful as an emblem for display, the flag may be destroyed, preferably by burning, in a ceremony or in another dignified manner that emphasizes its honor as a fitting emblem of New Mexico.

B. The retirement of a New Mexico state flag may be a public ceremony under the direction of uniformed personnel representing a state or federal military service or a patriotic society or a private ceremony.

History: Laws 2025, ch. 110, § 1.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 110 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

12-3-3. Salute to state flag.

The official salute to the state flag is: "I salute the flag of the state of New Mexico, the Zia symbol of perfect friendship among united cultures."

History: 1953 Comp., § 4-14-2.1, enacted by Laws 1963, ch. 120, § 1.

ANNOTATIONS

Cross references. — For the Spanish language salute to the state flag, *see* 12-3-7 NMSA 1978.

12-3-4. State flower; state bird; state tree; state fish; state animal; state vegetables; state gem; state grass; state fossil; state cookie; state insect; state question; state answer; state nickname; state butterfly; state reptile; state amphibian; state aircraft; state historic railroad; state tie; state necklace; state aroma.

A. The yucca flower is adopted as the official flower of New Mexico.

B. The chaparral bird, commonly called roadrunner, is adopted as the official bird of New Mexico.

C. The nut pine or pinon tree, scientifically known as Pinus edulis, is adopted as the official tree of New Mexico.

D. The native New Mexico cutthroat trout is adopted as the official fish of New Mexico.

E. The native New Mexico black bear is adopted as the official animal of New Mexico.

F. The chile, the Spanish adaptation of the chilli, and the pinto bean, commonly known as the frijol, are adopted as the official vegetables of New Mexico.

G. The turquoise is adopted as the official gem of New Mexico.

H. The blue grama grass, scientifically known as Bouteloua gracillis, is adopted as the official grass of New Mexico.

I. The coelophysis is adopted as the official fossil of New Mexico.

J. The bizcochito is adopted as the official cookie of New Mexico.

K. The tarantula hawk wasp, scientifically known as Pepsis formosa, is adopted as the official insect of New Mexico.

L. "Red or green?" is adopted as the official question of New Mexico.

M. "Red and green or Christmas" is adopted as the official answer of New Mexico.

N. "The Land of Enchantment" is adopted as the official nickname of New Mexico.

O. The Sandia hairstreak is adopted as the official butterfly of New Mexico.

P. The New Mexico whiptail lizard, scientifically known as Cnemidophorus neomexicanus, is adopted as the official reptile of New Mexico.

Q. The New Mexico spadefoot toad, scientifically known as Spea multiplicata, is adopted as the official amphibian of New Mexico.

R. The hot air balloon is adopted as the official aircraft of New Mexico.

S. The Cumbres and Toltec scenic railroad is adopted as the official historic railroad of New Mexico.

T. The bolo tie is adopted as the official tie of New Mexico.

U. The Native American squash blossom necklace is adopted as the official necklace of New Mexico.

V. The aroma of green chile roasting is adopted as the official aroma of New Mexico.

History: Laws 1927, ch. 102, § 1; C.S. 1929, § 129-101; 1941 Comp., § 3-1303; Laws 1949, ch. 142, § 1; 1953 Comp., § 4-14-3; Laws 1955, ch. 245, § 1; 1963, ch. 2, § 1; 1965, ch. 20, § 1; 1967, ch. 51, § 1; 1967, ch. 118, § 1; 1973, ch. 95, § 1; 1981, ch. 123, § 1; 1989, ch. 8, § 1; 1989, ch. 154, § 1; 1999, ch. 266, § 1; 1999, ch. 271, § 1; 2003, ch. 182, § 1; 2005, ch. 4, § 1; 2005, ch. 254, § 1; 2007, ch. 10, § 1; 2007, ch. 179, § 1; 2011, ch. 52, § 1; 2023, ch. 31, § 1.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, declared a state aroma; added new Subsection V.

The 2011 amendment, effective June 17, 2011, designated the Native American squash blossom necklace as the official necklace of New Mexico.

The 2007 amendment, effective June 15, 2007, added Subsection M providing "red and green or Christmas" as the official answer.

The 2005 amendment, effective June 17, 2005, added the Cumbres and Toltec scenic railroad as the official historic railroad of New Mexico.

The 2003 amendment, effective June 20, 2003, added Subsections M, N, O and P.

The 1999 amendment, effective June 18, 1999, added "state question" to the end of the section heading and added Subsection L.

The 1989 amendment, added Subsections J and K.

12-3-5. [State song; adoption.]

That the words and music of the song written by Elizabeth Garrett, entitled, "O, Fair New Mexico," as follows:

Under a sky of azure, where balmy breezes blow;

Kissed by the golden sunshine, is Nuevo Mejico.

Home of the Montezuma, with fiery heart aglow,

State of the deeds historic, is Nuevo Mejico.

Chorus

O, fair New Mexico, we love, we love you so

Our hearts with pride o'erflow, no matter where we go,

O, fair New Mexico, we love, we love you so,

The grandest state to know, New Mexico.

Second Verse

Rugged and high sierras, with deep canyons below;

Dotted with fertile valleys, is Nuevo Mejico.

Fields full of sweet alfalfa, richest perfumes bestow,

State of apple blossoms, is Nuevo Mejico.

Chorus

Third Verse

Days that are full of heart-dreams, nights when the moon hangs low;

Beaming its benediction, o'er Nuevo Mejico.

Land with its bright manana, coming through weal and woe;

State of our esperanza, is Nuevo Mejico.

be and the same are hereby adopted and declared to be the state song for the state of New Mexico.

History: Laws 1917, ch. 108, § 1; C.S. 1929, § 136-101; 1941 Comp., § 3-1304; 1953 Comp., § 4-14-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Laws 1937, ch. 67, authorized the governor of the state of New Mexico to purchase the state song, including the copyright thereof, from its author, Elizabeth Garrett, paying the author an annuity of $50.00 per month, during her lifetime, in consideration for said copyright and the royalties accruing thereunder.

12-3-6. Spanish language state song.

The words and music of "Asi Es Nuevo Mejico," written by Amadeo Lucero, are declared to be the Spanish language state song subject to the state of New Mexico acquiring ownership and copyright of this song. The words are:

Un canto que traigo muy dentro del alma

Lo canto a mi estado - mi tierra natal.

De flores dorada mi tierra encantada

De lindas mujeres - que no tiene igual.

(Chorus)

Asi es Nuevo Mejico

Asi es esta tierra del sol

De sierras y valles de tierras frutales

Asi es Nuevo Mejico

Second Verse

El negro, el hispano, el anglo, el indio

Todos son tus hijos, todos por igual.

Tus pueblos y aldeas - mi tierra encantada

De lindas mujeres que no tiene igual.

(Chorus)

Third Verse

El Rio del Norte, que es el Rio Grande,

Sus aguas corrientes fluyen hasta el mar

Y riegan tus campos

Mi tierra encantada de lindas mujeres

Que no tiene igual.

(Chorus)

Fourth Verse

Tus campos se visten de flores de Mayo

De lindos colores

Que Dios les doto

Tus pajaros cantan mi tierra encantada

Sus trinos de amores

Al ser celestial.

(Chorus)

Fifth Verse

Mi tierra encantada de historia banada

Tan linda, tan bella - sin comparacion.

Te rindo homenaje, te rindo carino

Soldado valiente - te rinde su amor.

(Chorus)

History: 1953 Comp., § 4-14-4.1, enacted by Laws 1971, ch. 178, § 1.

12-3-7. Spanish language salute to the state flag.

The official Spanish language salute to the state flag is: Saludo la bandera del estado de Nuevo Mejico, el simbolo zia de amistad perfecta, entre culturas unidas.

History: 1953 Comp., § 4-14-4.2, enacted by Laws 1973, ch. 185, § 1.

ANNOTATIONS

Cross references. — For the English language salute to the state flag, *see* 12-3-3 NMSA 1978.

12-3-8. [State song; filing in office of secretary of state.]

A copy of said [state] song exhibited with this bill shall be filed with the secretary of the state to be by him lodged in the archives of his office.

History: Laws 1917, ch. 108, § 2; C.S. 1929, § 136-102; 1941 Comp., § 3-1305; 1953 Comp., § 4-14-5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — "This bill" refers to Laws 1917, ch. 108, compiled herein as 12-3-5, 12-3-8 NMSA 1978.

12-3-9. State slogan for business, commerce and industry.

The official state slogan for business, commerce and industry in New Mexico is: "Everybody is somebody in New Mexico."

History: 1953 Comp., § 4-14-6, enacted by Laws 1975, ch. 129, § 1.

12-3-10. State ballad.

The words and music of "Land of Enchantment - New Mexico", written by Michael Martin Murphy, Chick Raines and Don Cook, are declared to be the official state ballad. The words of the state ballad are as follows:

I met a lady in my drifting days

I quickly fell under the spell of her loving ways

A rose in the desert I loved her so

In the Land of Enchantment, New Mexico

As we watched the sunset by the Rio Grande

A mission bell rang farewell she took my hand

She said "come back amigo no matter where you go"

To the Land of Enchantment, New Mexico

From her arms I wandered, far across the sea

I often heard her gentle words haunting me

"Come back amigo, I miss you so"

To the Land of Enchantment, New Mexico

So come back amigo no matter where you go

To the Land of Enchantment, New Mexico.

History: Laws 1989, ch. 120, § 1.

12-3-11. State poem.

The poem "A Nuevo Mexico", written by Luis Tafoya in January 1911, is declared to be the official state poem. The poem, with its English translation, is as follows:

"Levanta, Nuevo Mexico, esa abatida frente

que anubla los encantos de tu serena faz,

y alborozado acoje corona refulgente,

simbolo de gloria y de ventura y paz.

Despues de tantos anos de lucha y de porfia,

tu suerte se ha cambiado y ganas la victoria,

llegando a ver por fin el venturoso dia

que es colmo de tu dicha y fuente de tu gloria.

Has sido un gran imperio, colmado de riqueza,

y grandes contratiempos tuviste que sufrir,

mas ahora triunfo pleno alcanza tu entereza,

y el premio a tu constancia pudiste conseguir.

Tu pueblo por tres siglos aislado y solitario,

de nadie tuvo ayuda, de nadie proteccion,

lucho por su existencia osado y temerario,

sellando con su sangre dominio y posesion.

Tras tan heroico esfuerzo por fin has merecido

el bien que procurabas con insistencia tanta

de que en la Union de Estados fueses admitido

con la soberania que al hombre libre encanta.

Obstaculos y estorbos del todo desaparecen,

y entrada libre tienes a la gloriosa Union,

en donde los ciudadanos prosperan y florecen,

con tantas garantias y tanta proteccion.

Por tan pasmosa dicha el parabien te damos,

a ti como a tus hijos, de honor tan senalado,

y que en tu nueva esfera de veras esperamos

que a fuer de gran imperio seras un gran estado.

TO NEW MEXICO

Lift, New Mexico, your tired forehead

That clouds the enchantment of your peaceful face,

And joyfully receive the bright crown,

Symbol of glory, venture, and peace.

After so many years of fight and persistence

Your luck has changed and you gain victory,

Reaching up to see your fortunate day at last

That is an overflow of happiness and the fountain of your glory.

You have been a great empire filled with riches,

And many mishaps you had to suffer,

But now complete triumph reach up to your integrity,

And reward for your constancy, you were able to achieve.

Your people for three centuries, isolated and lonely,

With help or protection from nobody,

They fought for their existence, reckless and daring

Sealing with their blood their dominion and possession.

After such heroic effort finally you deserve

The goodness with such an insistence you procure,

To be admitted in the state of the union

With the sovereignty that is a free man's enchantment.

Obstacles and hindrance for good they disappear,

And free admittance you have to the glorious union,

Where the people prosper and flourish

With so many guarantees and great protection.

For that marvelous satisfaction we welcome you,

You and your children such a deserved honor,

And in your new sphere we truly hope

That by dint of imperiousness a great state you will become".

History: Laws 1991, ch. 202, § 1.

12-3-12. State bilingual song.

A. The words and music of "New Mexico -- Mi Lindo Nuevo Mexico", written by Pablo Mares, are declared to be the state bilingual song. The words are:

I'm singing a song of my homeland

Most wonderful place that I've seen.

My song cannot fully describe it

I call it land of my dreams.

New Mexico,

Land of the sun

Where yucca blooms

The sunset sighs.

New Mexico,

Your starry nights,

Your music sweet as daylight dies.

My heart returns

It ever yearns

To hear the desert breezes blow,

Your snow, your rain, your rainbows' blend,

I'm proud of my New Mexico.

(Translation)

Yo canto de un pais lindo

Mas bello no he visto yo,

Mi cancion no puede decirlo,

Como mi corazon.

Nuevo Mexico,

Pais del sol

Palmillas floreciendo alli.

Nuevo Mexico,

Tus noches lindas

Traen recuerdos para mi.

Mi corazon

Llora por ti me dice a mi

Te quiero yo.

Tus sierras y tus valles

Son mi lindo Nuevo Mexico.

B. A copy of the state bilingual song exhibited with this bill shall be filed with the secretary of state to be lodged in the archives of his office.

History: Laws 1995, ch. 7, § 1.

12-3-13. Statuary hall designation.

Under the provisions of 40 U.S.C. Section 187, New Mexico designates Senator Dennis Chavez as an illustrious citizen of the state worthy of national commemoration and directs that a marble or bronze statue of his likeness be placed in national statuary hall in Washington.

History: Laws 1963, ch. 64, § 1.

ANNOTATIONS

Compiler's notes. — Although this section was enacted in 1963, it was not compiled in the 1953 Comp., and was not compiled in the NMSA 1978 until 1997.

12-3-14. Commission; funds.

There is created the "statuary hall commission" consisting of the governor as chairman and four other citizens of the state appointed by the governor. The commission shall raise not to exceed twenty thousand dollars ($20,000) by voluntary contributions and cause to be made a marble or bronze likeness of Dennis Chavez.

When completed and accepted by the commission, the likeness shall be placed in national statuary hall.

History: Laws 1963, ch. 64, § 2.

ANNOTATIONS

Compiler's notes. — Although this section was enacted in 1963, it was not compiled in the 1953 Comp., and was not compiled in the NMSA 1978 until 1997.

12-3-15. [Statuary hall] commission created.

The "statuary hall commission" is created. The commission shall be composed of no more than nine persons, the chairman of which shall be the governor and the membership of which shall include the state treasurer, the state cultural affairs officer, the executive director of the New Mexico office of Indian affairs [Indian affairs department] and no fewer than four members appointed by the governor from a list of names that have been submitted to him by the Indian nations, tribes or pueblos in New Mexico, containing names of members of those Indian nations, tribes or pueblos who would be appropriate to serve on the commission. Terms of the members shall extend until a second statue from New Mexico is emplaced in the national statuary hall in Washington, D.C. The governor shall fill any vacancy on the statuary hall commission within three months from the date that the vacancy occurs in the same manner as original members were appointed.

History: Laws 1997, ch. 177, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 24, § 17 provided that references to the "New Mexico office of Indian affairs" be changed to the "Indian affairs department" pursuant to an executive order issued in accordance with Laws 2003, Chapter 403.

Emergency clauses. — Laws 1997, ch. 177 § 4 contained an emergency clause and was approved April 10, 1997.

12-3-16. Duties.

The statuary hall commission shall:

A. meet at the call of the governor but shall meet no fewer than four times per year;

B. determine the process necessary for New Mexico to have a second statue placed in the national statuary hall;

C. develop procedures for the funding of the second statue and raise funds to commission the design, creation and transport of a statue to be placed in the national statuary hall through the creation of a foundation for the acceptance of gifts, donations, bequests and proceeds from appropriate fundraising events in accordance with the provisions of the act of July 2, 1864 (40 U.S.C. 187); and

D. commission the design and creation of a statue of the illustrious San Juan pueblo Indian strategist and warrior Pope, who was renowned, respected and revered by the Native Americans of New Mexico as the leader of the pueblo revolt of 1680 and who would be the second Native American to be honored with placement of a statue in the national statuary hall.

History: Laws 1997, ch. 177, § 2.

ANNOTATIONS

Emergency clauses. — Laws 1997, ch. 177 § 4 contained an emergency clause and was approved April 10, 1997.

12-3-17. Official balloon museum.

The Anderson-Abruzzo international balloon museum is the official balloon museum of New Mexico.

History: Laws 1999, ch. 2, § 1 and 1999, ch. 3, § 1.

ANNOTATIONS

Duplicate laws. — Laws 1999, ch. 2, § 1 and Laws 1999, ch. 3, § 1, both effective June 18, 1999, enacted identical provisions of law. The section was set out as enacted by Laws 1999, ch. 2, § 1. *See* 12-1-8 NMSA 1978.

12-3-18. Official state guitar.

The New Mexico sunrise guitar is adopted as the official guitar of New Mexico.

History: Laws 2009, ch. 27, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

12-3-19. State cowboy song.

The words and music of "Under New Mexico Skies", written by Syd Masters, are declared to be the official state cowboy song. The words of the state cowboy song are as follows:

"(first verse)

Where the Piñon Mesa rolls

And the campfire cures your woes

Watchin' the sly roadrunner flee

On the tail of an autumn breeze

I'm leanin' against a juniper bole

As the creek water takes a stroll

(chorus)

That's where you'll find me

Where the big back country lies

There the cowboy's free to ride

Out under New Mexico skies

(second verse)

Where the lean jack hops along

And the coyote sings his song

Up high the rocky spires shade

The sunny desert days

I'm leanin' against adobe walls of old

Their stories to be told

(chorus)

That's where you'll find me

Where the big back country lies

There the cowboy's free to ride

Out under New Mexico skies

(third verse)

Just me and a covey of gamblin' quail

Lopin' down the Turquoise Trail

(chorus)

That's where you'll find me

Where the big back country lies

There the cowboy's free to ride

Out under New Mexico skies."

History: Laws 2009, ch. 28, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 28 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

ARTICLE 4
Public Policy Regarding Communism

12-4-1. [Policy.]

That it is the public policy of the state of New Mexico that no communist organization, affiliate of the communist party or supporter or advocate of communistic doctrine or any person or organization which believes in, teaches or advocates the overthrow of the government of the United States or of the state of New Mexico by force or by any illegal or unconstitutional method or means, shall remain within the state and be unknown or unrecognized.

History: 1941 Comp., § 3-107, enacted by Laws 1951, ch. 157, § 1; 1953 Comp., § 4-15-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For employment of persons advocating sabotage, sedition or treason being prohibited, *see* 10-1-12 NMSA 1978.

Secretary's office is only for registration enforcement for local responsibility. — This article quite obviously contemplates that the secretary of state's office shall be merely the office of registration of such persons and organizations, and the secretary of state has no specific duty to enforce the registration of such persons and organizations. The obligation to require the persons defined in this article to register and to prosecute them for failure so to do would lie with the law enforcement authorities of the various districts in which those persons resided and with all law enforcement officials of this state. 1954 Op. Att'y Gen. No. 54-5925.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 Am. Jur. 2d Sedition, Subversive Activities and Treason §§ 101 to 110.

Right of witness to refuse to answer, on the ground of self-incrimination, as to membership in or connection with party, society, or similar organization or group, 19 A.L.R.2d 388.

Defamatory nature of statements reflecting on plaintiff's religious beliefs, standing, or activities, 33 A.L.R.2d 1196.

Libel and slander: public officer's privilege in connection with accusation that another has been guilty of sedition, subversion, espionage, or similar behavior, 33 A.L.R.3d 1330.

Imputation of allegedly objectionable political or social beliefs or principles as defamation, 62 A.L.R.4th 314.

12-4-2. [Registration.]

That to effectuate the public policy as set out in Section 1 [12-4-1 NMSA 1978] hereinabove every communist organization, affiliate of the communist party or supporter or advocate of communistic doctrine, or any person or organization which believes in, teaches or advocates the overthrow of the government of the United States or of the state of New Mexico by force or by any illegal or unconstitutional methods or means, shall register with the secretary of state of New Mexico. Such registration shall be accomplished in such manner and on such forms as may be prescribed by the secretary

of state. All organized groups or associations falling into the category required to register under this act [12-4-1 to 12-4-3 NMSA 1978], shall file a list of all of the members of such organization with the secretary of state, such list to show the names of all members, their addresses and designation of all officials of such organization. All individuals required by this act to register shall file their name [names], address [addresses] and the names of the organizations or associations to which they belong as members.

Registration under this act shall be completed within six calendar months after the passage of this act, and registrants shall reregister annually thereafter, such reregistration period to begin on April 1st and ending on May 1st of each year.

History: 1941 Comp., § 3-108, enacted by Laws 1951, ch. 157, § 2; 1953 Comp., § 4-15-2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The term "this act", referred to in this section, means Laws 1951, Chapter 157, which appears as 12-4-1 to 12-4-3 NMSA 1978.

Laws 1951, ch. 157 was approved March 15, 1951.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 46 C.J.S. Insurrection and Sedition § 2.

12-4-3. [Violations; penalties.]

That the officers of any organization, association, party or group which shall fail to register under the provisions of this act [12-4-1 to 12-4-3 NMSA 1978], or any person who shall knowingly fail to comply with the provisions of this act, shall be guilty of a felony and on conviction thereof shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or by imprisonment for not less than three (3) years nor more than ten (10) years, or by both such fine and imprisonment.

History: 1941 Comp., § 3-109, enacted by Laws 1951, ch. 157, § 3; 1953 Comp., § 4-15-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The term "this act", referred to in this section, means Laws 1951, Chapter 157, which appears as 12-4-1 to 12-4-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 46 C.J.S. Insurrection and Sedition § 2.

ARTICLE 5
Public Holidays

12-5-1. [Arbor Day; establishment; observance.]

The second Friday in March of each year shall be set apart and known as Arbor Day, to be observed by the people of this state in the planting of forest trees for the benefit and adornment of public and private grounds, places and ways, and in such other efforts and undertakings as shall be in harmony with the general character of the day so established; provided, that the actual planting of trees may be done on the day designated or at such other most convenient times as may best conform to local climatic conditions, such other time to be designated and due notice thereof given by the several county superintendents of schools for their respective counties.

The day as above designated shall be a holiday in all public schools of the state, and school officers and teachers are required to have the schools, under their respective charge, observe the day by planting of trees or other appropriate exercises.

Annually, at the proper season, the governor shall issue a proclamation, calling the attention of the people to the provisions of this section and recommending and enjoining its due observance. The respective county superintendents of schools shall also promote by all proper means the observance of the day, and the said county superintendents of schools shall make annual reports to the governor of the state of the action taken in this behalf in their respective counties.

History: Laws 1891, ch. 35, §§ 1-3; C.L. 1897, § 1625a; Code 1915, § 2726; C.S. 1929, § 65-101; 1941 Comp., § 59-101; 1953 Comp., § 56-1-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Legal holiday not necessarily state employee business holiday. — A statutory designation of legal holidays does not result in that day being a business holiday for state employees. 1961 Op. Att'y Gen. No. 61-18.

Unless statute, or governor, so directs. — A legal holiday need not be observed by state offices and agencies unless the language of the statute so directs, or unless the

governor designates such day as a holiday for state employees. 1961 Op. Att'y Gen. No. 61-18.

12-5-2. Legal holidays; designation.

Legal public holidays in New Mexico are:

A. New Year's day, January 1;

B. Martin Luther King, Jr.'s birthday, third Monday in January;

C. Washington's and Lincoln's birthday, President's day, third Monday in February;

D. Memorial day, last Monday in May;

E. Independence day, July 4;

F. Labor day, first Monday in September;

G. Indigenous Peoples' day, second Monday in October;

H. Armistice day and Veterans' day, November 11;

I. Thanksgiving day, fourth Thursday in November; and

J. Christmas day, December 25.

History: 1953 Comp., § 56-1-2, enacted by Laws 1969, ch. 114, § 1; 1971, ch. 98, § 1; 1975, ch. 13, § 1; 1987, ch. 3, § 1; 1987, ch. 309, § 1; 2019, ch. 123, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1969, ch. 114, § 1, repealed former 56-1-2, 1953 Comp., relating to the designation of November 11, Veterans' Day, as a legal holiday, and enacted a new 56-1-2, 1953 Comp.

The 2019 amendment, effective July 1, 2019, replaced Columbus day with Indigenous Peoples' day as a legal public holiday in New Mexico; in Subsection G, after the subsection designation, deleted "Columbus" and added "Indigenous Peoples'".

The 1987 Amendments. — Laws 1987, ch. 309, § 1, added the subsection designations, added Subsection B; in Subsection C, inserted "and Lincoln's" and "President's day"; and in Subsection D, substituted "last Monday in May" for "May 30".

Laws 1987, ch. 3, § 1, substituted "last Monday in May" for "May 30" in Subsection D.

Good Friday. — Although under this section, Good Friday is not listed as a designated legal holiday, Paragraph A of Rule 12-308, R. App. P., defines "legal holiday" for the purpose of the rules for appellate civil procedure. *Public Serv. Co. v. Catron*, 1982-NMSC-050, 98 N.M. 134, 646 P.2d 561.

State employees paid for day given as compensatory time. — State employees who were given a holiday by their department head on November 24, 1961, may be paid for this day, since the date constituted compensatory time for an officially declared holiday. 1961 Op. Att'y Gen. No. 61-121.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 Am. Jur. 2d Sundays and Holidays §§ 1 to 5.

40 C.J.S. Holidays §§ 1 to 3.

12-5-3. Legal holidays; Sundays; effect on commercial paper.

A. Whenever a legal public holiday falls on Sunday, the following Monday is a legal public holiday.

B. Any bill, check or note presentable for acceptance or payment on a legal public holiday or on a Sunday is payable and presentable for acceptance or payment on the next business day after the legal public holiday or Sunday.

History: 1953 Comp., § 56-1-3, enacted by Laws 1969, ch. 114, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1969, ch. 114, § 2, repealed 56-1-3, 1953 Comp., relating to the designation of October 12, Columbus Day, as a legal holiday, and enacted a new section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 10 Am. Jur. 2d Banks § 710; 11 Am. Jur. 2d Bills and Notes §§ 49, 732, 736; 73 Am. Jur. 2d Sundays and Holidays § 5.

10 C.J.S. Bills and Notes §§ 37, 208; 40 C.J.S. Holidays § 4.

12-5-4. [August 3rd designated Ernie Pyle Day.]

In appreciation of the splendid work as a writer and war correspondent, and the great credit reflected upon the state of New Mexico by Ernie Pyle, one of her outstanding citizens, his birthday, August 3rd, of each year, is hereby designated as Ernie Pyle Day, upon which appropriate ceremonies shall be held in his honor and in honor of all members of the armed forces of the United States serving so valiantly in the present world war [World War II].

History: 1941 Comp., § 59-107, enacted by Laws 1945, ch. 30, § 1; 1953 Comp., § 56-1-4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

12-5-5. [Onate Day.]

The governor shall designate for the benefit of the state of New Mexico in connection with an annual celebration held in the Espanola valley each year during the month of July, a day during said month to be known as Onate Day.

History: 1941 Comp., § 59-108, enacted by Laws 1949, ch. 85, § 2; 1953 Comp., § 56-1-5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — Laws 1949, ch. 85, § 1, was a preamble which stated that the heritage of the state of New Mexico benefited greatly from the Spanish Conquistadores and that it was proper to honor Juan de Onate, one of the conquistadores.

12-5-6. American History Month.

The month of February is designated "American History Month."

History: 1953 Comp., § 56-1-6, enacted by Laws 1971, ch. 10, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1969, ch. 114, § 3, repealed old 56-1-6, 1953 Comp., relating to the designation of February 12, Lincoln's birthday, as a legal holiday, and Laws 1971, ch. 10, § 1, enacted a new section.

12-5-7. Bataan Day.

In honor of the brave and patriotic New Mexicans composing the 200th and 515th Coast Artillery Regiments (anti-aircraft) who served in the Philippine Islands during World War Two, fighting insuperable odds and enduring every deprivation, and who, following surrender, entered upon a tragic "death march," the day of April 9 is designated "Bataan Day."

History: 1953 Comp., § 56-1-6.1, enacted by Laws 1971, ch. 63, § 1.

ANNOTATIONS

Compiler's notes. — Although this section was enacted as 56-1-6, 1953 Comp., by Laws 1971, ch. 63, § 1, the compiler classified it as 56-1-6.1, 1953 Comp., since Laws 1971, ch. 10, § 1 also enacted a section 56-1-6, 1953 Comp.

12-5-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 309, § 2 repealed 12-5-8 NMSA 1978, as enacted by Laws 1983, ch. 235, § 1, relating to Martin Luther King, Jr.'s birthday, effective June 19, 1987. For present comparable provisions, *see* 12-5-2 NMSA 1978.

12-5-9. American Indian day.

The first Friday of February of each year shall be set apart and be known as "American Indian day", in recognition of the many contributions of the American Indians to the economic and cultural heritage of all the citizens of the United States. This day shall be observed by the people of New Mexico in such efforts and undertakings as shall be in harmony with the general character of the day so established.

History: Laws 1987, ch. 24, § 1; 2005, ch. 261, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, changed the day set apart as American Indian Day from the first Tuesday to the first Friday of February of each year.

12-5-10. [Guadalupe-Hidalgo treaty day.]

February 2 of each year shall be set apart and known as "Guadalupe Hidalgo treaty day" in recognition and commemoration of the day in 1848 on which the Treaty of Peace, Friendship, Limits and Settlement, commonly known as the Treaty of Guadalupe Hidalgo, was executed between the United States and the Mexican Republic.

History: Laws 1997, ch. 77, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Effective dates. — Laws 1997, ch. 77 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 1997, 90 days after adjournment of the legislature.

Cross references. — For the Treaty of Guadalupe Hidalgo, *see* Treaty of Peace Between the United States and Mexico on *NMOneSource.com*.

12-5-11. Family day.

The governor shall proclaim the second Sunday in September of each year as "Family Day". Suitable exercises for the observance of the day shall be held in the state capitol and elsewhere as the governor designates.

History: Laws 1999, ch. 50, § 1.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1999, 90 days after adjournment of the legislature.

12-5-12. African-American day.

The second Friday of February of each year shall be set apart and be known as "African-American day", in recognition of the many contributions and sacrifices African-Americans have made to ensure the rights of all Americans, so that they may be free and equal citizens and full participants in the governing of the state and the nation. African-American day shall be observed by the people of New Mexico in efforts and undertakings that celebrate the diversity of the cultural heritage of New Mexicans, that recognize that February is Black history month and that are expressions in harmony with the general character of the day so established.

History: Laws 1999, ch. 66, § 1.

ANNOTATIONS

Effective dates. — Laws 1999, ch. 66 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1999, 90 days after adjournment of the legislature.

12-5-13. Hispanic culture day.

The second Tuesday of February of each odd-numbered year shall be known and celebrated as "Hispanic culture day" in recognition of the many contributions, sacrifices and accomplishments of Hispanic people from throughout the world who have built New Mexico into a beautiful and dynamic mosaic of cultural diversity. This day shall be

observed with celebrations that honor all past, present and future Hispanic citizens and leaders in ways that enhance relationships among all the people of New Mexico.

History: Laws 2001, ch. 193, § 1; 2003, ch. 3, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, inserted "odd-numbered" preceding "year" near the beginning of the first sentence.

12-5-14. Juneteenth Freedom Day established.

The "Juneteenth Freedom Day" is created. It shall be commemorated on the third Saturday in June of each year and be observed by:

A. reflecting on the history of African-American slavery in the United States; the experience of Africans brought to the United States in a five- to twelve-week journey across the Atlantic; the deaths of thousands of Africans who died in inhuman conditions of passage; the abuse of African-American slaves, including whipping, castration, branding and rape; the importance of the Thirteenth Amendment of the United States constitution abolishing slavery throughout the United States and its territories; and the significance of June 19, 1865, the day on which the message of freedom and abolition reached the western states; and

B. recognizing the importance of Americans of African descent as American citizens and New Mexico residents.

History: Laws 2006, ch. 68, § 1.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 68 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

12-5-15. Hemophilia Awareness Day.

The governor shall declare the second Monday in June of each year "Hemophilia Awareness Day".

History: Laws 2007, ch. 98, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 98, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

12-5-16. Firefighter Day of Remembrance.

September 11 of each year shall be set apart and known as "Firefighter Day of Remembrance", celebrating the important, brave and compassionate work of firefighters and honoring all firefighters who have fallen in the line of duty.

History: Laws 2007, ch. 241, § 1.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 242 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

12-5-17. New Mexico Youth Day.

The first Saturday of August of each year shall be set apart and known as "New Mexico Youth Day", celebrating the importance of children in New Mexico. This day shall be observed by the people of New Mexico with activities encouraging parents and guardians to spend time with their children.

History: Laws 2007, ch. 354, § 1 and Laws 2007, ch. 358, § 1.

ANNOTATIONS

Duplicate laws. — Laws 2007, ch. 354, § 1 and Laws 2007, ch. 358, § 1, effective June 15, 2007, enacted identical new sections. The section was set out as enacted by Laws 2007, ch. 358, § 1. *See* 12-1-8 NMSA 1978.

12-5-18. Bataan-Corregidor heritage month.

The month of April is designated "Bataan-Corregidor heritage month". The month shall be observed by the people of New Mexico in such efforts and undertakings as shall be in harmony with the general character of the month so established.

History: Laws 2013, ch. 2, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2013, ch. 2, § 2 contained an emergency clause and was approved February 4, 2013.

12-5-19. Rudolfo Anaya I Love to Read Day.

October 30 of each year shall be set apart and known as "Rudolfo Anaya I Love to Read Day" in recognition of the contributions made by Rudolfo Anaya to the culture and literature of New Mexico, of his commitment to the teaching of literature and of the critical need to improve the reading proficiency of New Mexicans, particularly children. "Rudolfo Anaya I Love to Read Day" is designated for the people of New Mexico to celebrate reading, strengthen literacy and undertake efforts and expressions in harmony with the general character of the day.

History: Laws 2019, ch. 166, § 1.

ANNOTATIONS

Effective dates. – Laws 2019, ch. 166, § 1, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

12-5-20. Asian American, Pacific Islander and Native Hawaiian Day.

The first Tuesday of February of each odd-numbered year shall be known and celebrated as "Asian American, Pacific Islander and Native Hawaiian Day" in recognition of the many cultural, economic and historic contributions and sacrifices Asian Americans, Pacific Islanders, Native Hawaiians, East Asians, Southeast Asians, South Asians and all other groups who have migrated from, have historical ties to or identify themselves as from Asia have made to New Mexico. This day shall be observed by the people of New Mexico in efforts and undertakings that celebrate the diversity of cultural and linguistic heritage in New Mexico; honor all past, present and future leaders in New Mexico who are Asian American, Pacific Islander, Native Hawaiian, East Asian, Southeast Asian and South Asian and all other groups who have migrated from, have historical ties to or identify themselves as from Asia; and are in harmony with the general character of the day so established.

History: Laws 2023, ch. 6, § 1.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

12-5-21. Dolores Huerta Day.

April 10 of each year shall be set apart and known as "Dolores Huerta Day", in recognition of the contributions made by labor activist Dolores Huerta, who was born in Dawson, New Mexico, in her work to improve social and economic conditions for farm

workers. Dolores Huerta Day is designated for the people of New Mexico to organize as a community and undertake efforts and expressions in harmony with the general character of the day.

History: Laws 2023, ch. 179, § 1.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 179 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

12-5-22. New Mexico red and green chile month.

August of each year shall be set apart and known as "Red and Green Chile Month" in recognition of the impact chile has in New Mexico. Chile represents the blending of cultures and traditions that have shaped New Mexico over centuries. The rise from its indigenous roots through its adoption by the Spanish settlers to the chile's current status as a culinary superstar in New Mexico symbolizes the status of New Mexico's unique identity. Furthermore, chile is a vital economic driver, supporting thousands of jobs and contributing significantly to the agricultural economy of New Mexico.

History: Laws 2025, ch. 134, § 1.

ANNOTATIONS

Effective dates. — Laws 2025, ch. 134 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

ARTICLE 6
Audit Act

12-6-1. Short title.

Sections 12-6-1 through 12-6-14 [12-6-15] NMSA 1978 may be cited as the "Audit Act."

History: 1953 Comp., § 4-31-1, enacted by Laws 1969, ch. 68, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2019, ch. 3, § 1 enacted a new section of the Audit Act that was compiled as 12-6-15 NMSA 1978, effective June 14, 2019.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d States § 65.

81A C.J.S. States §§ 134, 229.

12-6-2. Definitions.

As used in the Audit Act:

A. "agency" means:

(1) any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature;

(2) any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; and school districts;

(3) any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority; and

(4) every office or officer of any entity listed in Paragraphs (1) through (3) of this subsection; and

B. "local public body" means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district.

History: 1953 Comp., § 4-31-2, enacted by Laws 1969, ch. 68, § 2; 2003, ch. 273, § 17; 2009, ch. 283, § 2.

ANNOTATIONS

The 2009 amendment, effective July 1, 2010, in Paragraph (4) of Subsection A, changed the reference from Subsection A through C to Paragraphs (1) through (3) of Subsection A; and added Subsection B.

The 2003 amendment, effective July 1, 2003, designated the text of the former section as Subsections A, B and D; inserted "or metropolitan" following "district courts, magistrate" in Subsection A; deleted "but not limited to" following "source derived, including" in Subsection B; and added Subsection C.

Water and sanitation districts created pursuant to the Water and Sanitation District Act, 73-21-1 NMSA 1978 et seq., acequias and community ditch associations subject to

Section 73-2-1 NMSA 1978, et seq., and associations created pursuant to the Sanitary Projects Act, 3-29-1 NMSA 1978, et seq., are entities subject to audit under the Audit Act. 1990 Op. Att'y Gen. 90-30.

New Mexico municipal self-insurers' fund. — The New Mexico municipal self insurers' fund, formed under the provisions of Section 11-1-3 NMSA 1978, authorizing governing bodies to exercise joint powers, and Article 62, Chapter 3 NMSA 1978, governing municipal insurance, is an "agency," as defined in this section and is, therefore, subject to audit by the state auditor under Section 12-6-3 NMSA 1978. 1987 Op. Att'y Gen. No. 87-65.

A conservancy district is an agency subject to audit by the state auditor. 1989 Op. Att'y Gen. No. 89-07.

The New Mexico Military Institute Foundation, Inc., is not an "agency" and, therefore, is not subject to audit by the state auditor. 1988 Op. Att'y Gen. No. 88-79.

12-6-3. Annual and special audits; financial examinations.

A. Except as otherwise provided in Subsection B of this section, the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor. The comprehensive annual financial report for the state shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor. The audits shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.

B. The examination of the financial affairs of a local public body shall be determined according to its annual revenue each year. All examinations and compliance with agreed-upon procedures shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor. If a local public body has an annual revenue, calculated on a cash basis of accounting, exclusive of capital outlay funds, federal or private grants or capital outlay funds disbursed directly by an administrating agency, of:

(1) less than ten thousand dollars ($10,000) and does not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, it is exempt from submitting and filing quarterly reports and final budgets for approval to the local government division of the department of finance and administration and from any financial reporting to the state auditor;

(2) at least ten thousand dollars ($10,000) but less than fifty thousand dollars ($50,000), it shall comply only with the applicable provisions of Section 6-6-3 NMSA 1978;

(3) less than fifty thousand dollars ($50,000) and directly expends at least fifty percent of, or the remainder of, a single capital outlay award, it shall submit to the state auditor a financial report consistent with agreed-upon procedures for financial reporting that are:

(a) focused solely on the capital outlay funds directly expended;

(b) economically feasible for the affected local public body; and

(c) determined by the state auditor after consultation with the affected local public body;

(4) at least fifty thousand dollars ($50,000) but not more than two hundred fifty thousand dollars ($250,000), it shall submit to the state auditor, at a minimum, a financial report that includes a schedule of cash basis comparison and that is consistent with agreed-upon procedures for financial reporting that are:

(a) narrowly tailored to the affected local public body;

(b) economically feasible for the affected local public body; and

(c) determined by the state auditor after consultation with the affected local public body;

(5) at least fifty thousand dollars ($50,000) but not more than two hundred fifty thousand dollars ($250,000) and expends any capital outlay funds, it shall submit to the state auditor, at a minimum, a financial report that includes a schedule of cash basis comparison and a test sample of expended capital outlay funds and that is consistent with agreed-upon procedures for financial reporting that are:

(a) narrowly tailored to the affected local public body;

(b) economically feasible for the affected local public body; and

(c) determined by the state auditor after consultation with the affected local public body;

(6) at least two hundred fifty thousand dollars ($250,000) but not more than five hundred thousand dollars ($500,000), it shall submit to the state auditor, at a minimum, a compilation of financial statements and a financial report consistent with agreed-upon procedures for financial reporting that are:

(a) economically feasible for the affected local public body; and

(b) determined by the state auditor after consultation with the affected local public body; or

(7) five hundred thousand dollars ($500,000) or more, it shall be thoroughly examined and audited as required by Subsection A of this section.

C. In addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part.

D. Annual financial and compliance audits of agencies under the oversight of the financial control division of the department of finance and administration shall be completed and submitted by an agency and independent auditor to the state auditor no later than sixty days after the state auditor receives notification from the financial control division to the effect that an agency's books and records are ready and available for audit. The local government division of the department of finance and administration shall inform the state auditor of the compliance or failure to comply by a local public body with the provisions of Section 6-6-3 NMSA 1978.

E. In order to comply with United States department of housing and urban development requirements, the financial affairs of a public housing authority that is determined to be a component unit in accordance with generally accepted accounting principles, other than a housing department of a local government or a regional housing authority, at the public housing authority's discretion, may be audited separately from the audit of its local primary government entity. If a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity.

F. The state auditor shall notify the legislative finance committee and the public education department if:

(1) a school district, charter school or regional education cooperative has failed to submit a required audit report within ninety days of the due date specified by the state auditor; and

(2) the state auditor has investigated the matter and attempted to negotiate with the school district, charter school or regional education cooperative but the school district, charter school or regional education cooperative has not made satisfactory progress toward compliance with the Audit Act.

G. The state auditor shall notify the legislative finance committee and the secretary of finance and administration if:

(1) a state agency, state institution, municipality or county has failed to submit a required audit report within ninety days of the due date specified by the state auditor; and

(2) the state auditor has investigated the matter and attempted to negotiate with the state agency, state institution, municipality or county but the state agency, state

institution, municipality or county has not made satisfactory progress toward compliance with the Audit Act.

History: 1953 Comp., § 4-31-3, enacted by Laws 1969, ch. 68, § 3; 2003, ch. 273, § 18; 2007, ch. 240, § 1; 2009, ch. 273, § 1; 2009, ch. 283, § 3; 2011, ch. 106, § 6.

ANNOTATIONS

Compiler's notes. — During calendar years 1992 and 1993 the District Court for the First Judicial District entered three orders in Vigil v. King, SF 92-1487(C), prescribing the procedure to be followed for selecting independent auditors for state agencies and local public bodies. In summary, the court orders provided:

If a state agency or local public body is notified that it has been designated for audit to be conducted by an independent auditor, the state agency or local public body shall select and submit the name of an independent auditor to the state auditor. The state auditor may, within five days after receipt of the state agency's or local public body's selection, disapprove of the choice of the agency or local public body. A disapproval must be in writing and set forth the reason(s) for disapproval. A disapproval is subject to judicial review;

If the state auditor finds that a state agency or local public body audit is not being conducted in accordance with generally accepted auditing standards or pursuant to the auditing contract between the parties, the state auditor may either complete the audit or contract with another independent auditor to complete the audit. If the state auditor contracts with another independent auditor, the contract amount is limited to the remaining amount owed on the original auditor contract;

The state auditor, pursuant to the Procurement Code, may, under conditions specified in the order, contract with independent auditors to assist the state auditor in conducting any special audit pursuant to 12-6-3 NMSA 1978. The state agency being audited is not a party to this contract. The total cost of the contract entered into by the state auditor cannot exceed 25% of the contract amount provided in the agreement between the state auditor and the agency to be audited.

The 2011 amendment, effective July 1, 2012, required the state auditor to notify the legislative finance committee and the public education department if a school or educational cooperative has not made satisfactory progress to comply with the Audit Act and to notify the legislative finance committee and the secretary of finance and administration if a state agency, state institution, municipality or county has not timely submitted an audit report and has not made satisfactory progress to comply with the Audit Act.

The 2009 amendment, effective July 1, 2010, in Subsection A, at the beginning of the sentence, added "Except as otherwise provided in Subsection B of this section"; added Subsection B; and in Subsection D, added the last sentence.

Temporary provisions. — Laws 2009, ch. 283, § 4 provided that compliance of a local public body not in compliance with the Audit Act between January 1, 2007 and June 30, 2010 is waived for those years if the local public body complies with the applicable provisions of that act in effect on or after July 1, 2010, unless the local public body is required to receive a full financial and compliance audit pursuant to the provisions of that act in effect on or after July 1, 2010.

The 2007 amendment, effective June 15, 2007, added Subsection D.

The 2003 amendment, effective July 1, 2003, in Subsection A, inserted the second sentence and inserted "and rules issued by the state auditor" at the end; and added Subsection C.

No waiver of immunity under Tort Claims Act. — Because state auditor was acting within his scope of duty in commissioning a special audit and publishing the report, no waiver of immunity exists under the Tort Claims Act for claims of defamation. *Vigil v. State Auditor's Office*, 2005-NMCA-096, 138 N.M. 63, 116 P.3d 854, cert. denied, 2005-NMCERT-007, 138 N.M. 952, 117 P.3d 952.

Purely statutory duties of auditor may be transferred. — New Mexico Const., art. V, § 1, in designating the executive offices of state government, among which is the office of state auditor, is silent as to the duties appertaining to the office of state auditor. This being so, the legislature had power to transfer purely statutory duties of the office previously performed by the auditor to another officer of its own choosing. *Torres v. Grant*, 1957-NMSC-061, 63 N.M. 106, 314 P.2d 712.

The state auditor may examine nonfinancial information such as information technology systems of a state agency if the information directly bears on the agency's financial affairs and transactions and is required by generally accepted auditing practices. — The state auditor is tasked with the authority to audit the financial affairs and transactions of state agencies, and the state auditor is entitled to all documents necessary to perform a thorough audit of every governmental entity, in accordance with generally accepted auditing standards, and therefore, if documents bear upon the financial affairs of an entity, even if they are not financial records per se, the state auditor is permitted to examine them. Therefore, if an agency's information technology systems, or their integrity, bear upon an agency's financial affairs, and generally accepted auditing standards require their examination, the state auditor may examine them 2026 Op. Att'y Gen. No. 26-09.

Administrative agencies cannot extend the scope of their authority by rule. — A state administrative agency cannot go beyond the existing New Mexico statutes or case law it is charged with administering and claim the authority to modify this existing law or to create new law on its own, and therefore a state agency cannot extend 12-6-3 NMSA 1978, Subsection C's limitation on the state auditor's power to audit financial affairs and transactions via rule. 2026 Op. Att'y Gen. No. 26-09.

State auditor may accept federal audit at his option. — The state auditor is fully authorized by Subsection A of this section to accept the annual federal audit of employment security commission (now employment security division) funds as an approved independent audit. He is not, however, required to do so and may authorize an audit by personnel designated by him. 1970 Op. Att'y Gen. No. 70-33.

Section prevails over limitation on divulging information. — The legislature manifests a clear intent in this section that the state auditor have available to him all documents necessary to perform a thorough audit of every governmental entity in accordance with generally accepted auditing standards. The policy is expressed strongly enough so that this section must prevail over 3-38-8 NMSA 1978 (relating to divulging information) (repealed in 1981) to the extent of any repugnancy between the two provisions; therefore the state auditor is authorized to examine tax documents generated pursuant to 3-38-1 to 3-38-12 NMSA 1978 (now 3-38-1 to 3-38-6 NMSA 1978) insofar as such examination is required by generally accepted auditing standards. 1978 Op. Att'y Gen. No. 78-22.

Designation of agency to choose its own auditor. — The decision whether the state auditor's office will perform the audit or whether the agency may contract out rests within the state auditor's discretion. Once he has given his written approval to the agency's contract with an independent auditor and said contract has been enacted, however, he may not thereafter revoke the designation. 1987 Op. Att'y Gen. No. 87-54.

Auditor's revocation of designation of independent auditor. — If the state auditor revokes his designation of an agency to choose its own auditor, he may conduct the audit himself, through personnel of his office, or with the assistance of independent auditors under contract with his office. 1987 Op. Att'y Gen. No. 87-54.

Auditor's refusal of approval of independent auditor. — The state auditor may refuse to approve the choice of independent auditor by an agency for any of the reasons provided in SA Rule 87-2 (now 2.2.2.8 NMAC). He is limited to those reasons, because he has, by adopting that rule, committed himself to comply with it until it is changed; however, he is not required to disclose which reason or reasons formed the basis for his decision. 1987 Op. Att'y Gen. No. 87-54.

Directing agency to choose its own auditor. — In carrying out the requirement set forth in the Audit Act (12-6-1 to 12-6-14 NMSA 1978) to audit the financial affairs of each state agency on a yearly basis, the procedures employed by the State Auditor in creating a pool of independent auditors and then directing agencies to contract with auditors he designated from the pool violated the requirements of the Procurement Code (13-1-23 et seq. NMSA 1978). 1992 Op. Att'y Gen. No. 92-06 (but see compiler's notes) (decided under former law).

New Mexico municipal self-insurers' fund. — The New Mexico municipal self insurers' fund, formed under the provisions of Section 11-1-3 NMSA 1978, authorizing governing bodies to exercise joint powers, and Article 62, Chapter 3 NMSA 1978,

governing municipal insurance, is an "agency," as defined in this section and is, therefore, subject to audit by the state auditor under this section. 1987 Op. Att'y Gen. No. 87-65.

The New Mexico Military Institute Foundation, Inc., is not an "agency" and, therefore, is not subject to audit by the state auditor. 1988 Op. Att'y Gen. No. 88-79.

Sanitary Projects Act associations. — Associations created pursuant to the Sanitary Projects Act (3-29-1 NMSA 1978 et seq.) are subject to audit under this article. 1990 Op. Att'y Gen. No. 90-30.

Water and sanitation districts created by the Water and Sanitation District Act (73-21-1 NMSA 1978 et seq.) are subject to audit under this article. 1990 Op. Att'y Gen. No. 90-30.

Acequias under Sections 73-2-1 to 73-2-64 NMSA 1978 are subject to audit under this article. 1990 Op. Att'y Gen. No. 90-30.

State auditor and conservation district supervisors have statutory duty to audit district. — Both the state auditor and the soil and water conservation district supervisors have an express statutory duty to have district financial affairs audited: the primary responsibility for having the audits performed should be borne by the district supervisors, but the ultimate responsibility lies with the state auditor, who is responsible for ensuring that every agency's financial records are examined and audited. 1980 Op. Att'y Gen. No. 80-19.

Soil and Water Conservation Act creates exception to annual audit. — The apparent conflict between the annual auditing requirement in the Audit Act and the five-year audit exception in the Soil and Water Conservation District Act is easily resolved by applying the well-settled rule of statutory construction that, where there is no clear intention to the contrary, specific statutes prevail over general statutes, regardless of when enacted; consequently, the auditing requirements of the Soil and Water Conservation District Act, Section 73-20-41C(2) NMSA 1978 (now 73-20-41F(2)), apply since it is the more specific statute. 1980 Op. Att'y Gen. No. 80-19.

12-6-4. Auditing costs.

The reasonable cost of all audits shall be borne by the agency audited, except that:

A. a public housing authority other than a regional housing authority shall not bear the cost of an audit conducted solely at the request of its local primary government entity; and

B. the administrative office of the courts shall bear the cost of auditing the magistrate courts. A metropolitan court shall be treated as a single agency for the purpose of audit and shall be audited as a unit, and the cost of the audit shall be paid

from the appropriation to the metropolitan court. The district courts of all counties within a judicial district shall be treated as a single agency for the purpose of audit and shall be audited as a unit, and the cost of the audit shall be paid from the appropriation to each judicial district. The court clerk trust account and the state treasurer account of each county's district court shall be included within the scope of the judicial district audit.

History: 1953 Comp., § 4-31-4, enacted by Laws 1969, ch. 68, § 4; 2001, ch. 142, § 1; 2007, ch. 240, § 2.

ANNOTATIONS

Compiler's notes. — During calendar years 1992 and 1993 the District Court for the First Judicial District entered three orders in Vigil v. King, SF 92-1487(C), prescribing the procedure to be followed for selecting independent auditors for state agencies and local public bodies. In summary, the court orders provide:

If a state agency or local public body is notified that it has been designated for audit to be conducted by an independent auditor, the state agency or local public body shall select and submit the name of an independent auditor to the state auditor. The state auditor may, within five days after receipt of the state agency's or local public body's selection, disapprove of the choice of the agency or local public body. A disapproval must be in writing and set forth the reason(s) for disapproval. A disapproval is subject to judicial review;

If the state auditor finds that a state agency or local public body audit is not being conducted in accordance with generally accepted auditing standards or pursuant to the auditing contract between the parties, the state auditor may either complete the audit or contract with another independent auditor to complete the audit. If the state auditor contracts with another independent auditor, the contract amount is limited to the remaining amount owed on the original auditor contract;

The state auditor, pursuant to the Procurement Code, may, under conditions specified in the order, contract with independent auditors to assist the state auditor in conducting any special audit pursuant to 12-6-3 NMSA 1978. The state agency being audited is not a party to this contract. The total cost of the contract entered into by the state auditor cannot exceed 25% of the contract amount provided in the agreement between the state auditor and the agency to be audited.

The 2007 amendment, effective June 15, 2007, added Subsection A.

The 2001 amendment, effective July 1, 2001, deleted "and the cost of the annual audit of the state treasury shall be borne by special appropriations to the state board of finance" at the end of the first sentence, and inserted the second sentence concerning the audits of metropolitan courts.

The state auditor's practice of assigning contract auditor's to assist the state auditor in conducting agency audits illegally circumvents the legislature's decision to place the selection of such contract auditors and contract negotiations with the agencies themselves. 1992 Op. Att'y Gen. No. 92-06.

12-6-5. Reports of audits.

A. The state auditor shall cause a complete written report to be made of each annual or special audit and examination made. Each report shall set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination. Each report of a state agency shall include a list of individual deposit accounts and investment accounts held by each state agency audited. A copy of the report shall be sent to the agency audited or examined; five days later, or earlier if the agency waives the five-day period, the report shall become a public record, at which time copies shall be sent to:

(1) the secretary of finance and administration; and

(2) the legislative finance committee.

B. The state auditor shall send a copy of reports of state agencies to the department of finance and administration.

C. Within thirty days after receipt of the report, the agency audited may notify the state auditor of any errors in the report. If the state auditor is satisfied from data or documents at hand, or by an additional investigation, that the report is erroneous, the state auditor shall correct the report and furnish copies of the corrected report to all parties receiving the original report.

History: 1953 Comp., § 4-31-5, enacted by Laws 1969, ch. 68, § 5; 1977, ch. 247, § 33; 1983, ch. 26, § 4; 2009, ch. 140, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, deleted "as defined in Section 6-1-12 NMSA 1978"; deleted "the legislative accounting review committee and to"; after "audited or examined", changed "ten" to "five"; and after "five days later", added "or earlier if the agency waives the five-day period"; and in Subsection B, deleted "as defined in Section 6-1-12 NMSA 1978" and "office of the state cash manager", and added "department of finance and administration".

No waiver of immunity under Tort Claims Act. — Because state auditor was acting within his scope of duty in commissioning a special audit and publishing the report, no waiver of immunity exists under the Tort Claims Act for claims of defamation. *Vigil v. State Auditor's Office*, 2005-NMCA-096, 138 N.M. 63, 116 P.3d 854, cert. denied, 2005-NMCERT-007, 138 N.M. 952, 117 P.3d 952.

12-6-6. Criminal violations.

Immediately upon discovery of any violation of a criminal statute in connection with financial affairs, the state auditor shall report the violation to the proper prosecuting officer and furnish the officer with all data and information in his possession relative to the violation. An agency or independent auditor shall report a violation immediately to the state auditor.

History: 1953 Comp., § 4-31-6, enacted by Laws 1969, ch. 68, § 6; 2003, ch. 273, § 19.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, substituted "An agency or independent auditor shall report a violation immediately" for "Any independent auditor shall report a violation" near the end.

12-6-7. Shortages in accounts; sureties.

A. The state auditor shall notify the appropriate surety on the official bond whenever an audit discloses a shortage in the accounts of any agency. Failure to notify the surety, however, does not release the surety from any obligation under the bond.

B. Sureties upon official bonds of agencies are not released from liability on official bonds until the state auditor has certified to them that the accounts of the agency have been examined and found to be correct and a clearance of liability is given them.

C. When necessary, the state auditor may institute legal proceedings against sureties upon official bonds of officers and employees. In such proceedings, the officer or employee may set up as a defense that errors have been committed by the state auditor in making charges against him, or that he has been refused proper and legal credit by the state auditor, but the burden of proof is upon the officer or employee to show such facts.

History: 1953 Comp., § 4-31-7, enacted by Laws 1969, ch. 68, § 7.

12-6-8. Repayment of funds.

If restitution has not been made in thirty days from the receipt by an agency of a report of an audit reflecting a shortage of funds for which the agency is accountable under law, suit to enforce repayment or refund to the agency may be brought by the state auditor.

History: 1953 Comp., § 4-31-8, enacted by Laws 1969, ch. 68, § 8.

12-6-9. Public depositories.

The state auditor may:

A. require depositories of public money to furnish reconciliation sheets for the purpose of checking the deposits of public funds;

B. inspect the books and records of any depository concerning public funds; and

C. examine employees of a depository under oath concerning the correctness of the reconciliation or any entry upon the books or records of the depository relating to public funds.

History: 1953 Comp., § 4-31-9, enacted by Laws 1969, ch. 68, § 9.

12-6-10. Annual inventory.

A. The governing authority of each agency shall, at the end of each fiscal year, conduct a physical inventory of movable chattels and equipment costing more than five thousand dollars ($5,000) and under the control of the governing authority. This inventory shall include all movable chattels and equipment procured through the capital program fund under Section 15-3B-16 NMSA 1978, which are assigned to the agency designated by the director of the facilities management division of the general services department as the user agency. The inventory shall list the chattels and equipment and the date and cost of acquisition. No agency shall be required to list any item costing five thousand dollars ($5,000) or less. Upon completion, the inventory shall be certified by the governing authority as to correctness. Each agency shall maintain one copy in its files. At the time of the annual audit, the state auditor shall ascertain the correctness of the inventory by generally accepted auditing procedures.

B. The official or governing authority of each agency is chargeable on the official's or authority's official bond for the chattels and equipment shown in the inventory.

C. The general services department shall establish standards, including a uniform classification system of inventory items, and promulgate rules concerning the system of inventory accounting for chattels and equipment required to be inventoried, and the governing authority of each agency shall install the system. A museum collection list or catalogue record and a library accession record or shelf list shall constitute the inventories of museum collections and library collections maintained by state agencies and local public bodies.

D. No surety upon the official bond of any officer or employee of any agency shall be released from liability until a complete accounting has been had. All official bonds shall provide coverage of, or be written in a manner to include, inventories.

History: 1953 Comp., § 4-31-10, enacted by Laws 1969, ch. 68, § 10; 1979, ch. 195, § 1; 1983, ch. 303, § 1; 1984, ch. 53, § 1; 1985, ch. 115, § 1; 1987, ch. 35, § 1; 1999, ch. 230, § 1; 2005, ch. 237, § 1; 2013, ch. 115, § 9.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; in Subsection A, in the second sentence, and in Subsection B, deleted "property control" and added "facilities management" before the word "division"; and in Subsection A, in the sixth sentence, after "state auditor shall", deleted "satisfy himself as to" and added "ascertain".

The 2005 amendment, effective June 17, 2005, increased the value of state property that must be inventoried and listed from $1,000 to $5,000.

The 1999 amendment, effective June 18, 1999, in Subsection A, substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500)" in the first and fourth sentences.

The 1987 amendment, effective June 19, 1987, substituted "five hundred dollars" for "two hundred and fifty dollars" in the first and fourth sentences of Subsection A.

12-6-11. Oaths; subpoenas.

A. Oaths may be administered by the state auditor when necessary for an audit or examination.

B. When necessary for an audit or examination, the state auditor may apply to the district court of Santa Fe county for issuance of a subpoena to compel the attendance of witnesses and the production of books and records. Process under this section shall be served by any sheriff or deputy or by any member of the New Mexico state police without cost. Witnesses not then employed by an agency who are subpoenaed to appear shall receive the same compensation as that provided for witnesses subpoenaed before the district court, paid by the state auditor.

C. Any person subpoenaed under this section who fails to appear, refuses to testify or fails to produce the required books or records is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

History: 1953 Comp., § 4-31-11, enacted by Laws 1969, ch. 68, § 11.

12-6-12. Regulations.

The state auditor shall promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with generally accepted auditing standards. The regulations become effective upon filing in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1953 Comp., § 4-31-12, enacted by Laws 1969, ch. 68, § 12.

12-6-13. Audit fund; payment for audits; expenses of auditor.

A. There is created in the state treasury the "audit fund" into which the state auditor shall deposit all fees and costs received from agencies audited by him.

B. Payments for salaries and expenses of the state auditor shall be made from the audit fund, and the fund shall not revert at the end of any fiscal year.

History: 1953 Comp., § 4-31-13, enacted by Laws 1969, ch. 68, § 13.

ANNOTATIONS

Audit fund was not intended for deposit and appropriation of federal funds. 1980 Op. Att'y Gen. No. 80-40.

Provision of General Appropriation Act of 1980 ineffective in controlling federal funds. — Insofar as the language in the General Appropriation Act of 1980, Laws 1980, ch. 155, attempted to control the expenditure of federal funds received by the state auditor, it can be of no effect. 1980 Op. Att'y Gen. No. 80-40.

12-6-14. Contract audits.

A. The state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however, that a state-chartered charter school subject to oversight by the public education department or an agency subject to oversight by the higher education department shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section.

B. The state auditor or personnel of the state auditor's office designated by the state auditor shall examine all reports of audits of agencies made pursuant to contract. Based upon demonstration of work in progress, the state auditor may authorize progress payments to the independent auditor by the agency being audited under contract. Final payment for services rendered by an independent auditor shall not be made until a determination and written finding that the audit has been made in a competent manner

in accordance with the provisions of the contract and applicable rules by the state auditor.

History: 1953 Comp., § 4-31-14, enacted by Laws 1969, ch. 68, § 14; 2003, ch. 273, § 20; 2011, ch. 87, § 1.

ANNOTATIONS

Compiler's notes. — During calendar years 1992 and 1993 the District Court for the First Judicial District entered three orders in *Vigil v. King*, SF 92-1487(C), prescribing the procedure to be followed for selecting independent auditors for state agencies and local public bodies. In summary, the court orders provide:

If a state agency or local public body is notified that it has been designated for audit to be conducted by an independent auditor, the state agency or local public body shall select and submit the name of an independent auditor to the state auditor. The state auditor may, within five days after receipt of the state agency's or local public body's selection, disapprove of the choice of the agency or local public body. A disapproval must be in writing and set forth the reason(s) for disapproval. A disapproval is subject to judicial review;

If the state auditor finds that a state agency or local public body audit is not being conducted in accordance with generally accepted auditing standards or pursuant to the auditing contract between the parties, the state auditor may either complete the audit or contract with another independent auditor to complete the audit. If the state auditor contracts with another independent auditor, the contract amount is limited to the remaining amount owed on the original auditor contract;

The state auditor, pursuant to the Procurement Code, may, under conditions specified in the order, contract with independent auditors to assist the state auditor in conducting any special audit pursuant to 12-6-3 NMSA 1978. The state agency being audited is not a party to this contract. The total cost of the contract entered into by the state auditor cannot exceed 25% of the contract amount provided in the agreement between the state auditor and the agency to be audited.

The 2011 amendment, effective June 17, 2011, required charter schools that are subject to oversight by the public education department to obtain approval from the department before the school submits a recommendation for an independent auditor to the state auditor.

The 2003 amendment, effective July 1, 2003, redesignated former Subsections B and D as present Subsections A and B (the former section had no Subsection A or C); in Subsection A, inserted "provided, however, that an agency subject to oversight by the state department of public education or the commission on higher education shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice" in the first sentence and added the second sentence.

Use of contract auditors for agency audits. — The state auditor does not have the authority to contract with independent auditors to assist him in doing agency audits. The state auditor may designate an agency for audit by an independent auditor, but the designated agency is then authorized to contract with an independent auditor of its choice. Accordingly, the state auditor's practice of assigning contract auditors "to assist" him in conducting agency audits illegally circumvented the legislature's decision to place the selection of such contract auditors and the contract negotiations with the agencies themselves. 1992 Op. Att'y Gen. No. 92-06 (but see compiler's notes) (decided under prior law).

Selection of independent auditor. — It is a violation of the Procurement Code (13-1-23 NMSA 1978 et seq. [now 13-1-28 NMSA 1978 et seq.]) for the state auditor to direct an agency to enter into a contract with an independent auditor selected by him and paid for by the agency. 1992 Op. Att'y Gen. No. 92-06 (but see compiler's notes) (decided under prior law).

12-6-15. Annual financial audit report; state board of finance review.

Within six months after the report is due to the state auditor, each of the educational retirement board, the office of the state treasurer, the public employees retirement association and the state investment council shall present the agency's current annual financial audit report to the state board of finance for review.

History: Laws 2019, ch. 3, § 1.

ANNOTATIONS

Effective dates. – Laws 2019, ch. 3, § 1, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

ARTICLE 7
Board of Economic Development (Repealed.)

12-7-1 to 12-7-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 297, § 33, repealed 12-7-1 to 12-7-3 NMSA 1978, relating to the board of economic development, effective July 1, 1983. For present provisions, *see* 9-15-1 NMSA 1978 et seq.

ARTICLE 8
Administrative Procedures Act

12-8-1. Short title.

This act [12-8-1 to 12-8-25 NMSA 1978] may be cited as the "Administrative Procedures Act."

History: 1953 Comp., § 4-32-1, enacted by Laws 1969, ch. 252, § 1.

ANNOTATIONS

Cross references. — For applicability of act, *see* 12-8-23 NMSA 1978.

For public meetings of policy-making bodies, *see* 10-15-1 to 10-15-4 NMSA 1978.

Court of appeals lacks jurisdiction to review decisions of commissioner of revenue under the Administrative Procedures Act (12-8-1 NMSA 1978 et seq.), but does have jurisdiction to review such decisions under Section 7-1-25 NMSA 1978 of the Tax Administration Act (Chapter 7, Article 1 NMSA 1978). *Westland Corp. v. Comm'r of Revenue*, 1971-NMCA-083, 83 N.M. 29, 487 P.2d 1099, cert. denied, 83 N.M. 22, 487 P.2d 1092.

Presence of counsel during employee interviews. — Employees may request that counsel of their choosing be present during interviews by the environmental improvement division and such counsel may be company counsel, unless such counsel obstructs and impedes the division's investigation. *Kent Nowlin Constr., Inc. v. Envtl. Improvement Div.*, 1982-NMSC-094, 99 N.M. 294, 657 P.2d 621.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For survey, "Administrative Law," see 6 N.M. L. Rev. 401 (1976).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For note, "Administrative Law – Whole Record Review and the Real Story Behind Walck v. City of Albuquerque", see 23 N.M. L. Rev. 237 (1993).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For comment, "Survey of New Mexico Law: Administrative Law," see 15 N.M.L. Rev. 119 (1985).

For 1984-88 survey of New Mexico administrative law, see 19 N.M.L. Rev. 575 (1990).

For survey of 1988-89 Administrative Law, see 21 N.M.L. Rev. 481 (1991).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 1 et seq.

Appealability under "collateral order" doctrine of order staying or dismissing, or refusing to stay or dismiss, proceedings in United States District Court pending federal or state administrative determination, 40 A.L.R. Fed. 740.

73 C.J.S. Public Administrative Law and Procedure §§ 49 to 114; 73A C.J.S. Public Administrative Law and Procedure §§ 115 to 271.

12-8-2. Definitions.

As used in the Administrative Procedures Act:

A. "agency" means any state board, commission, department or officer authorized by law to make rules, conduct adjudicatory proceedings, make determinations, grant licenses, impose sanctions, grant or withhold relief or perform other actions or duties delegated by law, and which is specifically placed by law under the Administrative Procedures Act;

B. "adjudicatory proceeding" means a proceeding before an agency, including but not limited to ratemaking and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a trial-type hearing; but does not include a mere rulemaking proceeding, as provided in Section 3 [12-8-3 NMSA 1978] of the Administrative Procedures Act. It also includes the formation and issuance of any order, the imposition or withholding of any sanction and the granting or withholding of any relief, as well as any of the foregoing types of determinations or actions wherein no procedure or hearing provision has been otherwise provided for or required by law;

C. "license" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission required by law;

D. "licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, amendment, limiting, modifying or conditioning of a license;

E. "party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, whether for general or limited purposes;

F. "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;

G. "rule" includes the whole or any part of every regulation, standard, statement or other requirement of general or particular application adopted by an agency to implement, interpret or prescribe law or policy enforced or administered by an agency, if the adoption or issuance of such rules is specifically authorized by the law giving the agency jurisdiction over such matters. It also includes any statement of procedure or practice requirements specifically authorized by the Administrative Procedures Act or other law, but it does not include:

(1) advisory rulings issued under Section 9 [12-8-9 NMSA 1978] of the Administrative Procedures Act;

(2) regulations concerning only the internal management or discipline of the adopting agency or any other agency and not affecting the rights of, or the procedures available to, the public or any person except an agency's members, officers or employees in their capacity as such member, officer or employee;

(3) regulations concerning only the management, confinement, discipline or release of inmates of state penal, correctional, public health or mental institutions;

(4) regulations relating to the use of highways or streets when the substance of the regulations is indicated to the public by means of signs or signals; or

(5) decisions issued or actions taken or denied in adjudicatory proceedings;

H. "rulemaking" means any agency process for the formation, amendment or repeal of a rule;

I. "order" means the whole or any part of the final or interim disposition, whether affirmative, negative, injunctive or declaratory in form, by an agency in any matter other than rulemaking but including licensing;

J. "sanction" includes the whole or part of any agency:

(1) prohibition, requirement, limitation or other condition affecting the freedom of any person or his property;

(2) withholding of relief;

(3) imposition of any form of penalty;

(4) destruction, taking, seizure or withholding of property;

(5) assessment of damages, reimbursement, restitution, compensation, taxation, costs, charges or fees;

(6) requirement, revocation, amendment, limitation or suspension of a license; or

(7) taking or withholding of other compulsory, restrictive or discretionary action;

K. "relief" includes the whole or part of any agency:

(1) grant of money, assistance, license, authority, exemption, exception, privilege or remedy;

(2) recognition of any claim, right, interest, immunity, privilege, exemption or exception; or

(3) taking of any other action upon the application or petition of, and beneficial to, any person;

L. "agency proceedings" means any agency process in connection with rulemaking, orders, adjudication, licensing, imposition or withholding of sanctions or the granting or withholding of relief; and

M. "agency action" includes the whole or part of every agency, rule, order, license, sanction or relief, or the equivalent or denial thereof, or failure to act.

History: 1953 Comp., § 4-32-2, enacted by Laws 1969, ch. 252, § 2.

ANNOTATIONS

Cross references. — For applicability of act, *see* 12-8-23 NMSA 1978.

Act inapplicable to state corporation commission (now public regulation commission). — The Administrative Procedures Act applies, only to an agency "which is specifically placed by law under the Administrative Procedures Act." There is no provision in the law subjecting the state corporation commission (now public regulation commission) to the provisions of the APA. *In re Generic Investigation into Cable Television Servs.*, 1985-NMSC-087, 103 N.M. 345, 707 P.2d 1155.

Act inapplicable to workers' compensation administration. — The Administrative Procedures Act is not applicable to workers' compensation administration. *Bryant v. Lear Siegler Mgt. Servs. Corp.*, 1993-NMCA-052, 115 N.M. 502, 853 P.2d 753.

Act inapplicable to regents of museum of New Mexico. — The Administrative Procedures Act is not applicable to the actions of the board of regents of the museum of New Mexico since that act is applicable only to agencies specifically placed by law under the Administrative Procedures Act. *Livingston v. Ewing*, 1982-NMSC-110, 98 N.M. 685, 652 P.2d 235.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For survey, "Administrative Law," see 6 N.M. L. Rev. 401 (1976).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

For 1984-88 survey of New Mexico administrative law, see 19 N.M.L. Rev. 575 (1990).

12-8-3. Rulemaking requirements.

In addition to other rulemaking requirements imposed by law, each agency shall:

A. adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available;

B. set forth in written form all statements of general policy adopted as authorized by law, including a description of its central and field organization, statements of all delegations of authority and the extent thereof, together with a listing of the established places at which, and the methods whereby, the public may secure information or make submittals or requests;

C. provide written statements of the general course and method by which its functions are channeled and determined, as well as make available all required or suggested forms, together with proper instructions pertaining thereto; and make available for public inspection all rules and other written statements of policy or written interpretations formulated, adopted or used by the agency in the discharge of its functions;

D. except as otherwise provided by law, make available for public inspection all final orders, decisions and opinions issued after the effective date of the Administrative Procedures Act, together with all materials that were before the deciding officers at any time prior to the making of the decision;

E. provide a reasonable manner at a reasonable cost for interested persons to obtain copies of items set forth in this section; and

F. not act in any manner or in any matter except in strict conformity with the rules and other written statements or items required in this section, and no person shall in any manner be required to resort to any procedure or be otherwise affected by any agency action not in strict conformity with the requirements of this section.

History: 1953 Comp., § 4-32-3, enacted by Laws 1969, ch. 252, § 3.

ANNOTATIONS

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 152 et seq.

Estoppel doctrine as applicable against government and its governmental agencies, 1 A.L.R.2d 338.

Sunday or holiday, validity of administrative proceedings conducted on, 26 A.L.R.2d 996.

73 C.J.S. Public Administrative Law and Procedure §§ 87 to 114.

12-8-4. Rulemaking prerequisites.

A. Prior to the adoption, amendment or repeal of any rule, the agency shall, within the time specified by law, or if no time is specified, then at least thirty days prior to its proposed action:

(1) publish notice of its proposed action in the manner specified by law, or if no manner is specified, then in newspapers or trade, industrial or professional publications as will reasonably give public notice to interested persons; and

(2) notify any person specified by law, and, in addition, any person or group filing written request, the request to be renewed yearly as the agency directs by rule, for notice of proposed action which may affect that person or group, notification being by mail or otherwise to the last address specified by the person or group. The notice shall:

(a) give the time and place of any public hearing or state the manner in which data, views or arguments may be submitted to the agency by any interested person;

(b) either state the express terms or adequately describe the substance of the proposed action, or adequately state the subjects and issues involved; and

(c) include any additional matter required by any law, together with specific reference to the statutory authority under which the rule is proposed; and

(3) afford all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and examine witnesses, unless otherwise provided by law. If the agency finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule contested at hearing or otherwise, the agency shall issue a concise statement of its principal reasons for adoption of the rule and a statement of positions rejected in adopting the rule together with the reasons for the rejections. All persons heard or represented at any

hearing, or who submit any writing to be considered in connection with the proposed rule, shall promptly be given a copy of the decision, by mail or otherwise.

B. If the agency finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, or if the agency for good cause finds that observance of the requirements of notice and public hearing would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend or suspend the rule as an emergency. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency rule, amendment or suspension filed under Section 5 [12-8-5 NMSA 1978] of the Administrative Procedures Act. Upon adoption of an emergency rule, amendment or suspension which shall remain in effect for longer than sixty days, notice shall be given within seven days as required in this section for proposed rules.

History: 1953 Comp., § 4-32-4, enacted by Laws 1969, ch. 252, § 4.

ANNOTATIONS

Effect of failure to comply with statutory procedures. — Where the board of cosmetology failed to (1) comply with the repeal procedure of this section, in failing to give notice to interested parties and to hold a hearing prior to taking action, and (2) failed to file the record of its regulatory proceedings with the state records administrator as required by Section 14-4-5 NMSA 1978, the action of the board in repealing a licensing reciprocity regulation was contrary to law and the repeal was invalid. *Rivas v. Bd. of Cosmetologists*, 1984-NMSC-076, 101 N.M. 592, 686 P.2d 934.

Subsection B does not apply to the Savings and Loan Act (Article 10, Chapter 58 NMSA 1978). *State v. Grissom*, 1987-NMCA-123, 106 N.M. 555, 746 P.2d 661.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 152 et seq.

73 C.J.S. Public Administrative Law and Procedure §§ 103 to 110.

12-8-5. Filing of rules; when effective.

A. Each agency shall file each rule, amendment or repeal thereof, adopted by it, including all rules existing on the effective date of the Administrative Procedures Act, according to the State Rules Act [Chapter 14, Article 4 NMSA 1978] unless the rules have already been so filed.

B. Each rule hereafter adopted is effective fifteen days after filing, unless a longer time is provided by the rule, and compliance with other law.

History: 1953 Comp., § 4-32-5, enacted by Laws 1969, ch. 252, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure § 114.

12-8-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 110, § 11 repealed former 12-8-6 NMSA 1978, as enacted by Laws 1969, ch. 252, § 6, relating to the publication of agency rules, effective July 1, 1995. For provisions of former section, *see* 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* Chapter 14, Article 4 NMSA 1978.

12-8-7. Petitions for adoption, amendment or repeal of rules.

Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule and may accompany his petition with data, views and arguments he thinks pertinent. Within thirty days after the submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 4 [12-8-4 NMSA 1978] of the Administrative Procedures Act.

History: 1953 Comp., § 4-32-7, enacted by Laws 1969, ch. 252, § 7.

ANNOTATIONS

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 221 et seq.

12-8-8. Judicial review by declaratory judgment; granting relief not otherwise provided for.

A. Unless otherwise provided by law, the validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of Santa Fe county, if the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the interests, rights or privileges of the plaintiff. Any

representative association, including but not limited to trade associations, labor unions or professional organizations, may file the action if one or more of its members could qualify as a plaintiff. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

B. The district court of Santa Fe county may enter orders after reasonable notice and hearing upon any matter not otherwise provided for in the Administrative Procedures Act, including but not limited to procedural or substantive matters of law or equity. This right may be utilized at any stage of a proceeding, and failure to utilize the right until final decision, action or order shall not be deemed a waiver thereof. If such questions are raised upon review or appeal in the court of appeals, the court of appeals may enter any orders which could have been entered by the district court.

History: 1953 Comp., § 4-32-8, enacted by Laws 1969, ch. 252, § 8.

ANNOTATIONS

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 22A Am. Jur. 2d Declaratory Judgments §§ 89 to 91, 93, 96 to 98, 100, 120.

73 C.J.S. Public Administrative Law and Procedure §§ 44, 93.

12-8-9. Agency declaratory rulings.

Each agency shall by rule establish a system for declaratory rulings as to the applicability of any statutory provision, rule, decision or order. Such rulings shall be issued upon petition by one whose interests, rights or privileges are immediately at stake, except when the agency for good cause finds issuance of such a ruling undesirable. The rule shall permit the declaratory proceeding to be prosecuted by any party having the right to prosecute an action under Section 8 [12-8-8 NMSA 1978] of the Administrative Procedures Act. The agency shall prescribe in its rule the circumstances in which the rulings shall or shall not be issued. Declaratory rulings disposing of petitions have the same status as agency decisions or orders in adjudicatory proceedings and are subject to judicial review.

History: 1953 Comp., § 4-32-9, enacted by Laws 1969, ch. 252, § 9.

ANNOTATIONS

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

12-8-10. Adjudicatory proceedings.

A. In conducting adjudicatory proceedings, agencies shall afford all parties an opportunity for full and fair hearing. Unless otherwise provided by any law, agencies:

(1) may place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing;

(2) may make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement, consent order or default;

(3) may limit the issues to be heard or vary the procedures prescribed by Subsection B if the parties agree to the limitation or variation;

(4) shall allow any person showing that he will be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and may allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose the agency may order; and

(5) shall upon demand by any party require any or all parties, including the agency involved, to advise the names of witnesses it proposes to call at any adjudicatory hearing, together with the gist of testimony or type of testimony expected to be elicited from each witness. Any party shall likewise be required upon demand to advise of and produce for examination or copying any exhibits the party anticipates using. Such demanded information shall be made available at least ten days prior to the hearing. Other discovery or pre-trial conferences and procedures available in the district courts may also be utilized upon demand by any party.

B. In adjudicatory proceedings, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall include:

(1) a statement of the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short and plain statement of the matters of fact and law asserted so that all have sufficient notice of the issues involved to afford them reasonable opportunity to prepare. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare; and

(4) in instances in which private parties are the moving parties, other parties to the proceedings shall give prompt notice of issues controverted in fact or law, and in other instances, agencies may by rule require responsive pleadings by the parties.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

D. The record in adjudicatory proceedings shall include:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections and rulings thereon;

(5) proposed findings and conclusions; and

(6) any decision, opinion or report by the agency conducting the hearing.

E. The agency need not arrange to transcribe notes or sound recordings unless requested by a party. The cost of the transcript to parties shall not exceed the cost provided by law chargeable by official court reporters.

F. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.

History: 1953 Comp., § 4-32-10, enacted by Laws 1969, ch. 252, § 10.

ANNOTATIONS

Sound recordings. — Sound recordings are apparently acceptable under Administrative Procedures Act, 12-8-1 NMSA 1978 et seq. *State Dep't of Motor Vehicles v. Gober*, 1973-NMSC-082, 85 N.M. 457, 513 P.2d 391.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M. L. Rev. 1 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 261 et seq.

Right to statement of reasons, under Administrative Procedure Act (5 USCS § 555(e)), for denial of written application, petition, or other request of interested person made in connection with agency proceeding, 57 A.L.R. Fed. 765.

73A C.J.S. Public Administrative Law and Procedure §§ 115 to 171.

12-8-11. Procedures; evidence.

In adjudicatory proceedings:

A. irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil actions in the district courts shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. No greater exclusionary effect shall be given any rule or privilege than would obtain in an action in the district court. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

B. all evidence, including any records, investigation reports and documents in the possession of the agency, of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered, except as provided in Subsections C and D of this section. Documentary evidence may be received in evidence in the form of copies or excerpts, or by specific citation to page numbers in published documents;

C. every party may call and examine witnesses, introduce exhibits, cross-examine witnesses who testify and submit rebuttal evidence;

D. official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency, but whenever any officer or agency takes official notice of a fact, the noticed fact and its source shall be stated at the earliest practicable time, before or during the hearing, but before the final report or decision, and any party shall, on timely request, be afforded an opportunity to show the contrary;

E. the experience, technical competence and specialized knowledge of the agency and its staff may be utilized in the evaluation of the evidence;

F. any party may be represented by counsel licensed to practice law in the state or by any other person authorized by law;

G. if a person who has requested a hearing does not appear and no continuance has been granted, the agency may hear the evidence of witnesses who appear, and the agency may proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by the Administrative Procedures Act. Where because of accident, sickness or other good cause, a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the agency to reopen the proceeding, and the agency, upon finding the cause sufficient, shall immediately fix a time and place for hearing and give the person notice as required by Section 10 [12-8-10 NMSA 1978] of the Administrative Procedures Act. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing;

H. in fixing the times and places for hearings, due regard shall be given to the convenience of the parties or their representatives;

I. where relief or procedure is not otherwise provided for, rules of practice and procedure applicable to civil actions in the district courts may be utilized by the parties at any stage of any proceeding, and if refused by the agency, then upon application to any district court having jurisdiction of the places of residence of a private party for the entry of an order providing for such relief or procedure; and

J. prior to each recommended initial or tentative decision, or decision upon agency review at any later stage of any agency proceeding, the parties shall be afforded a reasonable opportunity to submit, for the consideration of the agency member or employee participating in the decisions, briefs including:

(1) proposed findings of fact and law, together with supporting reasons therefor including citations to the record and of law; and

(2) in all cases where recommended initial decisions or tentative decision is subject to further agency review, exceptions to the decisions or recommended decisions and supporting reasons for such exceptions.

The record shall include all briefs, proposed findings and exceptions and shall show the ruling upon each finding, exception or conclusion presented. All decisions at any stage of any proceeding become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all material issues of fact, law or discretion involved, together with the appropriate rule, order, sanction, relief or the denial thereof.

History: 1953 Comp., § 4-32-11, enacted by Laws 1969, ch. 252, § 11.

ANNOTATIONS

Evidence. — The rules of evidence are inapplicable or relaxed under the federal and the state Administrative Procedure Acts and certain otherwise objectionable evidence may be admitted, but both acts require the exclusion of irrelevant and immaterial evidence. The rules of evidence are inapplicable in order to facilitate rather than hinder discovery and to allow a full opportunity to prepare. The exclusion of irrelevant and immaterial evidence is not inconsistent with relaxation of the rules of evidence. *Archuleta v. Santa Fe Police Dep't*, 2005-NMSC-006, 137 N.M. 161, 108 P.3d 1019.

Standard for admissibility of evidence. — While standard for admissibility in an administrative hearing under this act is one of whether the evidence has any probative value, New Mexico courts require that an administrative action be supported by some evidence that would be admissible in a jury trial, a requirement referred to as the legal residuum rule. *Duke City Lumber Co. v. New Mexico Envtl. Improvement Bd.*, 1984-NMSC-042, 101 N.M. 291, 681 P.2d 717.

Discovery — There is no constitutional right to pre-trial discovery in administrative hearings. *Archuleta v. Santa Fe Police Dep't*, 2005-NMSC-006, 137 N.M. 161, 108 P.3d 1019.

Discovery of disciplinary records. — It was not error to deny department employee access to disciplinary records of fellow police officers in the employee's post-demotion hearing before the Santa Fe grievance review board. *Archuleta v. Santa Fe Police Dep't*, 2005-NMSC-006, 137 N.M. 161, 108 P.3d 1019.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 N.M. L. Rev. 103 (1979-80).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For note, "Administrative Law - Whole Record Review and the Real Story Behind Walck v. City of Albuquerque," see 23 N.M.L. Rev. 237 (1993).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 294 et seq.

Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 A.L.R.2d 552.

Administrative decision by officer not present when evidence was taken, 18 A.L.R.2d 606.

Hearsay evidence in proceedings before state administrative agencies, comment note on, 36 A.L.R.3d 12.

73A C.J.S. Public Administrative Law and Procedure §§ 125 to 142.

12-8-12. Decision.

No agency or member thereof shall:

A. participate in a final decision in an adjudicatory proceeding unless he has heard the evidence or read the record. A final decision or order in an adjudicatory proceeding shall be in writing or stated in the record. A final or tentative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules or practice or as authorized by the Administrative Procedures Act, a party submits proposed findings of fact and conclusions of law, the agency shall rule upon each proposed finding and conclusion. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision or order shall be delivered or mailed forthwith to each party or to his attorney of record; or

B. impose any sanction or substantive rule or order except within jurisdiction delegated to the agency and as authorized by law.

History: 1953 Comp., § 4-32-12, enacted by Laws 1969, ch. 252, § 12.

ANNOTATIONS

Service of agency decision. — The state engineer is not required to copy of his decision sustaining or denying a protest against an application for water use upon a party of record, where a copy of the decision has been sent by certified mail to a party's attorney of record. *In re Application of Metro. Invs., Inc.*, 1990-NMCA-070, 110 N.M. 436, 796 P.2d 1132, cert. denied, 110 N.M. 330, 795 P.2d 1022.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 365 et seq.

Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 A.L.R.2d 552.

Stare decisis doctrine as applicable to decisions of administrative agencies, 79 A.L.R.2d 1126.

73A C.J.S. Public Administrative Law and Procedure §§ 143 to 153.

12-8-13. Ex-parte consultations.

No party or representative of a party or any other person shall communicate off the record about the case with any agency member who participates in making the decision in any adjudicatory proceeding unless a copy of the communication is sent to all parties to the proceeding. No agency member or representative of the agency shall communicate off the record about the adjudicatory proceedings with any party or representative of a party or any other person unless a copy of the communication is sent to all parties in the proceeding.

History: 1953 Comp., § 4-32-13, enacted by Laws 1969, ch. 252, § 13.

ANNOTATIONS

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Propriety of ex parte communication made in connection with administrative proceeding by interested party or by member or employee of agency (5 USCS § 557(d)(1)), 58 A.L.R. Fed. 834.

12-8-14. Licenses.

A. Unless otherwise provided by law, no agency shall revoke, suspend or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with Sections 10, 11, 12, 13 and 15 [12-8-10 to 12-8-13 and 12-8-15 NMSA 1978] of the Administrative Procedures Act. Unless otherwise provided by law, if a licensee has, in accordance with any law and with agency regulations, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency. Any agency that has authority to suspend or revoke a license without first holding a hearing shall, upon exercising such authority, promptly afford the licensee an opportunity for hearing in conformity with Sections 10, 11, 12, 13 and 15 of the Administrative Procedures Act. The requirement of a hearing does not apply where the action taken by the agency is required by law and no discretion is vested in the agency.

B. Every applicant for a license, except applicants for reinstatement after revocation, shall be afforded an opportunity for hearing in conformity with Sections 10, 11, 12, 13 and 15 of the Administrative Procedures Act before any agency may take any action, the effect of which would be to deny:

(1) permission to take an examination for licensing for which application has been made;

(2) a license after examination for any cause other than failure to pass an examination; or

(3) a license for which application has been made on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification.

C. When an agency contemplates taking any action, contemplated in Subsection B of this section, it shall give to the applicant written notice as provided in Section 10 of the Administrative Procedures Act, which shall include a statement:

(1) that the applicant has failed to satisfy the agency of his qualifications to be examined or to be issued a license, as the case may be;

(2) that indicates in what respects the applicant has failed to satisfy the agency;

(3) that the applicant may secure a hearing before the agency by depositing in the mail, within twenty days after service of the notice, a certified letter addressed to the agency and containing a request for a hearing; and

(4) calling the applicant's attention to his rights under Sections 10 and 11 of the Administrative Procedures Act.

In any agency proceeding involving the denial of an application to take an examination or for a license on the basis of reciprocity or endorsement or a national certificate of qualification, or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the agency of the applicant's qualifications is upon the applicant.

History: 1953 Comp., § 4-32-14, enacted by Laws 1969, ch. 252, § 14.

ANNOTATIONS

Driver license revocation proceedings. — The Administrative Procedures Act does not apply to driver license revocation proceedings; thus, a driver had no statutory right to take depositions. *Dente v. State Taxation & Revenue Dep't*, 1997-NMCA-099, 124 N.M. 93, 946 P.2d 1104, cert. denied, 123 N.M. 626, 944 P.2d 274, *overruled on other grounds by State Taxation and Revenue Dep't v. Bargas*, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 538.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 246 et seq.

51 Am. Jur. 2d Licenses and Permits §§ 138 to 141.

53 C.J.S. Licenses §§ 43, 59 to 60.

12-8-15. Depositions; subpoenas; inspection of agency files; disqualifications.

A. The agency conducting proceedings under the Administrative Procedures Act may, subject to rules of privilege and confidentiality recognized by law, requiring [require] the furnishing of information, the attendance of witnesses and the production of books, records, papers or other objects necessary and proper for the purposes of the proceeding. The agency, in any proceeding, or any party to an adjudicatory proceeding before it, may take the depositions of witnesses, including parties, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in the district court, and they may be used in the same manner and to the same extent as permitted in the district court.

B. In furtherance of the powers granted by Subsection A of this section, agencies may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Agencies may administer oaths and affirmations, examine witnesses and receive evidence. The power to issue subpoenas may be exercised by any member of the agency or by any person or persons designated by the agency for the purpose.

C. The agency may prescribe the form of subpoena, but it shall adhere, insofar as practicable, to the form used in civil actions in the district court unless another manner is provided by any law. Witnesses summoned shall be paid the same fees for attendance and travel as in civil actions in the district court unless otherwise provided by any law.

D. Any party to an adjudicatory proceeding is entitled as of right to the issue of subpoenas in the name of the agency conducting the proceeding. Upon written application to the agency, it shall forthwith issue the subpoenas requested. However issued, the subpoena shall show upon its face the name and address of the party at whose request the subpoena was issued. Unless otherwise provided by any law, the agency need not pay fees for attendance and travel to witnesses summoned by a party.

E. Any witness summoned may petition the agency or the district court of the county where he resides or, in the case of a corporation, the county where it has its principal office, to vacate or modify a subpoena served on the witness. The agency shall give prompt notice to the party, if any, who requested issuance of the subpoena. After investigation the agency considers appropriate, it may grant the petition in whole or part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested or for any other reason that justice requires.

F. In case of disobedience to any subpoena issued and served under this section or to any lawful agency requirement for information, or for the refusal of any person to

testify to any matter regarding which he may be interrogated lawfully in a proceeding before an agency, the agency may apply to the district court in the county of the person's residence for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith, the district court shall cite the respondent to appear and shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unlawful, the district court shall enter an order requiring compliance in full or as modified. Disobedience of the court order shall be punished as contempt of the district court in the same manner and by the same procedure as provided for like conduct committed in the course of judicial proceedings.

G. Agency files and records, including but not limited to investigation reports, statements, memoranda, correspondence or other data pertaining to the matter under consideration scheduled for hearing or other agency action, shall be available for inspection and copying by any party of interest or other person affected by the pending matter, at all reasonable times prior to, during or after any hearing, proceeding or other proposed agency action. If the agency or any party asserts that any such information contained in the agency files and records should not be made available for any reason of confidentiality or privilege recognized by law, the question shall be determined by the district court of the county in which the requesting party resides, upon application by the party requesting the information and after hearing thereon following reasonable notice to the party asserting confidentiality or privilege.

H. No officer, employee or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision or agency review except as a witness or counsel in a public proceeding. Additionally, any hearing examiner, member of a review board or agency member shall withdraw from any proceedings in which he cannot accord a fair and impartial hearing or consideration. Any party may request a disqualification of any hearing examiner, member of a review board or agency member on the grounds of the person's inability to be fair and impartial by filing an affidavit promptly upon the discovery of the alleged grounds for disqualification, stating with particularity the grounds upon which it is claimed that the person cannot be fair and impartial. The disqualification shall be mandatory if sufficient factual basis is set forth in the affidavit of disqualification. The agency shall, by rule, provide for the appointment of a fair and impartial replacement for the person disqualified. If the replacement is disqualified, or in any case not otherwise provided for, a replacement shall be appointed by a justice of the supreme court.

History: 1953 Comp., § 4-32-15, enacted by Laws 1969, ch. 252, § 15.

ANNOTATIONS

Cross references. — For per diem and mileage for witnesses, *see* 38-6-4 NMSA 1978.

For privileges generally, *see* 38-6-6, 38-6-7 NMSA 1978 and Rules 11-501 to 11-514 NMRA.

For depositions generally, *see* Rules 1-026 to 1-032 NMRA.

For subpoenas, *see* Rule 1-045 NMRA.

Administrative Procedures Act demonstrates that depositions are permissible under administrative law, to assist the agency and other parties in obtaining a fair hearing. *In re Miller*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M 547, 555 P.2d 142.

Employers may be present at discovery proceedings conducted by the environmental improvement division. *Kent Nowlin Constr., Inc. v. Envtl. Improvement Div.*, 1982-NMSC-094, 99 N.M. 294, 657 P.2d 621.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 385 et seq.

Subpoenas: power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to agency's regulatory jurisdiction, 27 A.L.R.2d 1208.

Power of court under 5 USCS § 552(a)(4)(B) to examine agency records in camera to determine propriety of withholding records, 60 A.L.R. Fed. 416.

73A C.J.S. Public Administrative Law and Procedure §§ 124, 132.

12-8-16. Petition for judicial review.

Any party who has exhausted all administrative remedies available within the agency and who is adversely affected by a final order or decision in an adjudicatory proceeding may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 4-32-16, enacted by Laws 1969, ch. 252, § 16; 1998, ch. 55, § 23; 1999, ch. 265, § 23.

ANNOTATIONS

Cross references. — For statutory appeals to the district courts, *see* Rule 1-074 NMRA.

For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

Finality. — The determination of finality must be based on pragmatic consideration of the matters at issue and analysis of whether the administrative body has in fact finally resolved the issues. The court must determine whether certain issues will be revisited by the agency in its subsequent hearings and thus should be reserved for its initial discretionary determination; whether further fact finding will elicit more evidence illuminating the issues, whether further agency decisions may moot some of the contentions, and whether the parties will suffer imminently the effects of the final order. The ultimate question, however, is whether agency action is sufficiently final or definitive so that there is no judicial interest in awaiting a more concrete formulation of the issues. *N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n* (In re Ratemaking Methodology), 1991-NMSC-018, 111 N.M. 622, 808 P.2d 592.

An administrative order that is required to be submitted to a superior for approval is not a final order for purposes of review. *Harris v. Revenue Div. of Taxation and Revenue Dep't*, 1987-NMCA-034, 105 N.M. 721, 737 P.2d 80.

Only those agencies specifically placed by law under Administrative Procedures Act are subject to its provisions. Since public employees retirement board had not been placed under the act, nor subjected to its provisions, court of appeals did not have jurisdiction to review decisions of that agency. *Mayer v. Pub. Employees Ret. Bd.*, 1970-NMCA-005, 81 N.M. 64, 463 P.2d 40.

Court of appeals lacks jurisdiction to review decisions of commissioner of revenue under the Administrative Procedures Act (Section 12-8-1 NMSA 1978 et seq.), but does have jurisdiction to review such decisions under Section 7-1-25 NMSA 1978 of the Tax Administration Act. *Westland Corp. v. Comm'r of Revenue*, 1971-NMCA-083, 83 N.M. 29, 487 P.2d 1099, cert. denied, 83 N.M. 22, 487 P.2d 1092.

Section not applicable to determinations of labor commissioner. — This section does not allow a judicial appeal of determinations of the labor commissioner, since the Administrative Procedures Act applies only to an agency made subject to the act by agency rule or regulation, if permitted by law, or an agency specifically placed by law under the act, and the labor commissioner is not such an agency. *Eastern Indem. Co. of Md. v. Heller*, 1984-NMCA-125, 102 N.M. 144, 692 P.2d 530.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For article, "Habeas Corpus in New Mexico," see 11 N.M.L. Rev. 291 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 415 et seq.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appellate review, 61 A.L.R.2d 482.

Applicability of stare decisis doctrine to decisions of administrative agencies, 79 A.L.R.2d 1126.

73A C.J.S. Public Administrative Law and Procedure §§ 172 to 201.

12-8-17. to 12-8-22. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 12-8-17 through 12-8-22 NMSA 1978 as enacted by Laws 1969, ch. 252, §§ 17 through 22, relating to intervention, stay of enforcement of agency decision, record of proceeding, additional evidence, conduct of review, and scope of review, effective September 1, 1998. For provisions of former sections, *see* 1997 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 12-18-16 NMSA 1978.

12-8-23. Applicability of act.

The provisions of the Administrative Procedures Act apply to agencies made subject to its coverage by law, or by agency rule or regulation if permitted by law.

In the event of any conflict between any existing law and the provisions of the Administrative Procedures Act, the provisions of the Administrative Procedures Act control unless specific exceptions are enumerated in the law or rule which makes an agency subject to the provisions of the Administrative Procedures Act, or unless a later law provides specific exceptions.

History: 1953 Comp., § 4-32-23, enacted by Laws 1969, ch. 252, § 23.

ANNOTATIONS

Quasi-judicial role of agency. — An administrative agency acts in its quasi-judicial role when it investigates or ascertains the existence of facts, holds hearings and draws conclusions from them. *Southworth v. Santa Fe Servs., Inc.*, 1998-NMCA-109, 125 N.M. 489, 963 P.2d 566.

Only those agencies as are specifically placed by law under Administrative Procedures Act are subject to its provisions. Since public employees retirement board had not been placed under the act, nor subjected to its provisions, court of appeals did not have jurisdiction to review decisions of that agency. *Mayer v. Pub. Employees Ret. Bd.*, 1970-NMCA-005, 81 N.M. 64, 463 P.2d 40

Court of appeals lacks jurisdiction to review decisions of commissioner of revenue under the Administrative Procedures Act (Sections 12-8-1 to 12-8-25 NMSA 1978), but does have jurisdiction to review such decisions under Section 7-1-25 NMSA 1978 of the Tax Administration Act. *Westland Corp. v. Comm'r of Revenue*, 1971-NMCA-083, 83 N.M. 29, 487 P.2d 1099, cert. denied, 83 N.M. 22, 487 P.2d 1092.

Driver license revocation proceedings. — The Administrative Procedures Act does not apply to driver license revocation proceedings; thus, a driver had no statutory right to take depositions. *Dente v. State Taxation & Revenue Dep't*, 1997-NMCA-099, 124 N.M. 93, 946 P.2d 1104, cert. denied, 123 N.M. 626, 944 P.2d 274, *overruled on other grounds by State Taxation and Revenue Dep't v. Bargas*, 2000-NMCA-103, 129 N.M. 800, 14 P.3d 538. .

Section not applicable to determinations of labor commissioner. — This section does not allow a judicial appeal of determinations of the labor commissioner, since the Administrative Procedures Act applies only to an agency made subject to the act by agency rule or regulation, if permitted by law, or an agency specifically placed by law under the act, and the labor commissioner is not such an agency. *Eastern Indem. Co. of Md. v. Heller*, 1984-NMCA-125, 102 N.M. 144, 692 P.2d 530.

Act inapplicable to regents of museum of New Mexico. — The Administrative Procedures Act is not applicable to the actions of the board of regents of the museum of New Mexico since that act is applicable only to agencies specifically placed by law under the Administrative Procedures Act. *Livingston v. Ewing*, 1982-NMSC-110, 98 N.M. 685, 652 P.2d 235.

Applicability of state records administrator's duties. — The state records administrator's duties under former Section 12-8-6 NMSA 1978 apply to rules filed by agencies subject to the Administrative Procedures Act (APA), regardless of whether his or her employer, the state commission of public records, is made subject to the APA under this section. 1993 Op. Att'y Gen. No. 93-03.

Law reviews. — For article, "How to Stand Still Without Really Trying: A Critique of the New Mexico Administrative Procedures Act," see 10 Nat. Resources J. 840 (1970).

For article, "A Survey of the Securities Act of New Mexico," see 2 N.M. L. Rev. 1 (1972).

For article, "Mandamus in New Mexico," see 4 N.M. L. Rev. 155 (1974).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

12-8-24. Amending and repealing.

The provisions of the Administrative Procedures Act may be amended, repealed or superseded by another act of the legislature only by direct reference to the section or sections of the Administrative Procedures Act being amended, repealed or superseded.

History: 1953 Comp., § 4-32-24, enacted by Laws 1969, ch. 252, § 24.

12-8-25. Purpose of act; liberal interpretation.

The legislature expressly declares its purpose in enacting the Administrative Procedures Act is to promote uniformity with respect to administrative procedures and judicial review of administrative decisions, and the Administrative Procedures Act shall be liberally construed to carry out its purpose.

History: 1953 Comp., § 4-32-25, enacted by Laws 1969, ch. 252, § 25.

ARTICLE 8A
Governmental Dispute Prevention and Resolution

12-8A-1. Short title.

Chapter 12, Article 8A NMSA 1978 may be cited as the "Governmental Dispute Prevention and Resolution Act".

History: Laws 2000, ch. 65, § 1; 2007, ch. 206, § 1.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed the statutory reference and added "Prevention" to the title of the act .

12-8A-2. Definitions.

As used in the Governmental Dispute Prevention and Resolution Act:

A. "agency" means the state and its agencies, departments, boards, instrumentalities or institutions that are insured by the division;

B. "alternative dispute resolution" means a process other than litigation used to prevent or resolve disputes, including mediation, facilitation, regulatory negotiation,

settlement conferences, binding and nonbinding arbitration, fact-finding, conciliation, early neutral evaluation and policy dialogues;

C. "council" means the alternative dispute prevention and resolution advisory council;

D. "department" means the general services department;

E. "division" means the risk management division of the department;

F. "interested party" means a person having or anticipating a dispute with any agency, or a representative of that person;

G. "neutral party" means a person who is trained to provide services as a mediator, arbitrator, facilitator, fact-finder or conciliator who aids parties to prevent or resolve disputes;

H. "office" means the bureau known as the office of alternative dispute prevention and resolution in the division; and

I. "public facilitation" means collaboration with identified stakeholders concerning public policy issues, including policy dialogues and other techniques to seek consensus, reconcile differences or prevent disputes from arising in the development or implementation of public administration issues.

History: Laws 2000, ch. 65, § 2; 2007, ch. 206, § 2.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, eliminated political subdivisions of the state from the definition of "agency", added Subsections C through F and H and I, and defined "neutral party" as a person who is trained to provide dispute prevention and resolution services.

12-8A-3. Alternative dispute resolution; authorization; procedures; agency coordinators.

A. An agency shall provide interested parties with access to alternative dispute resolution procedures to prevent or resolve any dispute, issue or controversy involving any of the agency's operations, policies, programs or functions, including formal and informal adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy development and contract administration. Alternative dispute resolution procedures are voluntary and may be initiated at the request of the agency or an interested party to a dispute. Either party may decline to participate in a requested or offered alternative dispute resolution activity.

B. An agency that participates in alternative dispute resolution shall develop a written agreement to be signed by interested parties that:

(1) provides for the appointment of neutral parties, consultants or experts agreed upon by all parties and serving at the will of all parties. A neutral party, consultant or expert shall have no official, financial or personal conflict of interest with any issue or party in controversy unless the conflict of interest is fully disclosed in writing to all of the parties and all parties agree that the person may continue to serve;

(2) specifies any limitation periods applicable to the commencement or conclusion of formal administrative or judicial proceedings and, if applicable, specifies any time periods that the parties have agreed to waive;

(3) contains provisions for alternative dispute resolution that conform with rules promulgated by the division; and

(4) sets forth how costs and expenses of the procedure chosen shall be equitably apportioned among the parties.

C. An agreement, developed pursuant to Subsection B of this section, may be included in an enforcement order, stipulation, contract, permit or other document entered into or issued by the agency.

D. The administrative head of an agency may designate an employee as the alternative dispute resolution coordinator for that agency. The coordinator shall:

(1) make recommendations to the agency's executive staff on issues and disputes that are suitable for alternative dispute resolution;

(2) analyze the agency's enabling statutes and rules to determine whether they contain impediments to the use of alternative dispute resolution or inconsistencies with rules promulgated by the office and suggest any modifications;

(3) monitor the agency's use of alternative dispute resolution;

(4) arrange for training of agency staff in alternative dispute resolution;

(5) respond to inquiries from the office or council concerning the agency's use of alternative dispute resolution;

(6) make recommendations to the office and council concerning development and implementation of rules, standards and educational materials;

(7) serve as the agency's liaison with the office and the council; and

(8) provide information about the office's rules and the agency's alternative dispute resolution procedures to the agency's staff and to the public.

History: Laws 2000, ch. 65, § 3; 2007, ch. 206, § 3.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, required agencies to provide dispute prevention and resolution services; permitted parties to decline to participate in an alternative dispute resolution activity; and added Paragraphs (5) through (7) of Subsection D.

12-8A-4. Agency budgets; contracts for services.

A. An agency shall take fiscal actions necessary to achieve the objectives of the Governmental Dispute Prevention and Resolution Act and pay for costs incurred in taking those actions, including reasonable fees for training, policy review, system design, evaluation and the use of impartial third parties. Unless specifically prohibited by law, an agency may request category transfers pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978 for the purpose of paying the necessary costs incurred in meeting the objectives of the Governmental Dispute Prevention and Resolution Act.

B. An agency may contract with another agency or with a private entity for any service necessary to meet the objectives of the Governmental Dispute Prevention and Resolution Act.

History: Laws 2000, ch. 65, § 4; 2007, ch. 206, § 4.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed the name of the act and required agencies to take fiscal actions to achieve the objectives of the act.

12-8A-5. Effect on other laws.

Nothing in the Governmental Dispute Prevention and Resolution Act and rules, agreements and procedures developed pursuant to that act:

A. limits other dispute prevention or resolution procedures available to an agency;

B. denies a person a right granted under federal or other state law, including a right to an administrative or judicial hearing;

C. waives immunity from suit or affects a waiver of immunity from suit contained in any other law;

D. waives immunity granted under the eleventh amendment to the constitution of the United States;

E. authorizes or prohibits binding arbitration as a method of alternative dispute resolution when mutually agreed to in writing by the interested parties;

F. authorizes or requires an agency to take any action that is inconsistent or contrary to any law or rule;

G. authorizes or requires any meeting, otherwise required to be open to the public, to be closed;

H. authorizes or requires any record, otherwise open to public inspection, to be sealed; or

I. shall be interpreted to create an additional layer of administrative process or to discourage or impede the use of alternative dispute resolution.

History: Laws 2000, ch. 65, § 5; 2007, ch. 206, § 5.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, added Subsection I.

12-8A-6. Alternative dispute prevention and resolution advisory council created.

A. The "alternative dispute prevention and resolution advisory council" is created in the division. The council consists of nine voting members as follows:

(1) the secretary of general services;

(2) the secretary of finance and administration;

(3) the director of the state personnel office;

(4) the superintendent of regulation and licensing;

(5) the cabinet secretary or agency head of four other executive branch agencies to be appointed by the governor from among the ten agencies with the highest occurrence of public liability claims per authorized number of staff, no more than two of whom are cabinet secretaries; and

(6) the director of the division, who shall serve as chair of the council.

B. An agency head may designate a representative to serve on the council.

C. The council shall meet at least twice each year.

History: Laws 2007, ch. 206, § 6.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 206, § 10 made Laws 2007, ch. 206, § 6 effective July 1, 2007.

12-8A-7. Alternative dispute prevention and resolution advisory council; duties.

The council shall:

A. review information about the use of alternative dispute resolution, including referrals, and make recommendations to the office to improve the effectiveness of alternative dispute resolution programs;

B. develop strategies to encourage and expand the use of public facilitation in government operations;

C. recommend to the division appropriate training standards and schedules for neutral parties and agency managers and supervisors;

D. review and recommend standards and rules to the division to foster participation in alternative dispute resolution and minimize conflict in the discussion of issues under consideration by interested parties; and

E. present an annual report to the department, the governor and the legislature by December 1 of each year on the use, cost and success of alternative dispute resolution programs.

History: Laws 2007, ch. 206, § 7.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 206, § 10 made Laws 2007, ch. 206, § effective July 1, 2007.

12-8A-8. Office of alternative dispute prevention and resolution; created; powers; duties.

A. The "office of alternative dispute prevention and resolution" is created as a bureau of the division.

B. In order to promote alternative dispute resolution, the office shall:

(1) organize and manage alternative dispute resolution programs for agencies, employees, vendors, businesses regulated by governmental entities and other interested parties;

(2) coordinate the use of neutral parties to facilitate alternative dispute resolution for interested parties and training for agency staff;

(3) implement development and use of alternative dispute resolution strategies;

(4) provide staff support for the council;

(5) maintain information and educate government officials about training and use of alternative dispute resolution and referrals; and

(6) prepare an annual report for review and presentation by the council on the use, cost and success of alternative dispute resolution programs.

History: Laws 2007, ch. 206, § 8.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 206, § 10 made Laws 2007, ch. 206, § 8 effective July 1, 2007.

ARTICLE 9
Sunset Act

12-9-1 to 12-9-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 241, § 35, repealed 12-9-1 to 12-9-10 NMSA 1978, relating to the New Mexico Sunset Law, effective April 8, 1981. For present provisions, *see* 12-9-11 to 12-9-21 NMSA 1978.

12-9-11. Short title.

Sections 1 through 11 [12-9-11 to 12-9-21 NMSA 1978] of this act may be cited as the "Sunset Act."

History: Laws 1981, ch. 241, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 2 Am. Jur. 2d Administrative Law § 24 et seq.

73 C.J.S. Administrative Law and Procedure § 9.

12-9-12. Findings of fact.

The legislature finds that state government actions have produced a substantial increase in numbers of programs and a proliferation of rules and regulations and that the whole process has developed in a haphazard, piecemeal fashion resulting in overlapping and duplication without regulatory accountability or a system of checks and balances. The legislature further finds that by establishing a system for periodic review of certain separate administratively attached and adjunct agencies, it will be in a better position to evaluate the need for the continued existence of the regulatory agencies covered by the Sunset Act [12-9-11 to 12-9-21 NMSA 1978].

History: Laws 1981, ch. 241, § 2.

12-9-13 to 12-9-16.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1996, ch. 51, § 19 repealed §§ 12-9-13 to 12-9-16.1 NMSA 1978, as enacted by Laws 1981, ch. 241, §§ 3 to 6 and Laws 1990, ch. 16, § 1 and as amended by Laws 1983, ch. 295, § 5 and Laws 1993, ch. 197, § 10, relating to termination of agencies, effective March 5, 1996. For provisions of the former sections, *see* the 1995 NMSA 1978 on *NMOneSource.com*.

12-9-17. Wind-up period.

If no action is taken by the legislature to amend the delayed repeal of an agency and its related laws by the date of termination, the agency shall continue until the date of the delayed repeal for the purpose of winding up its affairs. During the wind-up period, the termination shall not reduce or otherwise limit the powers or authority of the agency.

History: Laws 1981, ch. 241, § 7.

ANNOTATIONS

Cross references. — For existing claims and rights, *see* 12-9-20 NMSA 1978.

12-9-18. Renewal of agency life.

The life of any agency scheduled for termination under the Sunset Act [12-9-11 to 12-9-21 NMSA 1978] may be continued by the legislature for periods set by the legislature in such manner that the termination occurs on July 1 of an odd-numbered year, and the delayed repeal of the statutes creating the agency and related statutes becomes effective on July 1 of the next following even-numbered year.

History: Laws 1981, ch. 241, § 8.

ANNOTATIONS

Cross references. — For effect of repeal of repealing act, *see* 12-2A-15 NMSA 1978.

12-9-19. Legislative hearing; action.

A. Prior to the termination of any agency pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978], the legislative finance committee shall hold a public hearing, receive testimony from the public and the head of the regulatory agency involved and make a recommendation to the next session of the legislature for the termination or continuance of the agency. In such hearing, the agency shall have the burden of demonstrating a public need for its continued existence and the extent to which an amendment of the agency's basic statute may increase the efficiency of the administration or operation of the agency.

B. In making its recommendation to the legislature, the legislative finance committee shall take into consideration all or applicable parts of the following:

(1) the extent to which the agency has permitted qualified applicants to serve the public;

(2) the extent to which the agency has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures and practices and by budgetary, resources [resource] and personnel matters;

(3) the extent to which the agency has recommended statutory changes to the legislature which would benefit the public as opposed to the persons it regulates;

(4) the extent to which persons regulated by the agency have exercised control over the policies and actions of the agency and the extent to which the agency requires the persons it regulates to report to it concerning the impact of rules and decisions of the agency regarding improved service, economy of service and availability of service;

(5) the extent to which persons regulated by the agency have been required to assess problems in their industry which affect the public;

(6) the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;

(7) the efficiency with which formal public complaints filed with the agency concerning persons subject to regulation have been processed to completion by the agency; and

(8) the extent to which changes are necessary in the enabling laws of the agency to adequately comply with the above factors.

C. The legislative finance committee shall submit legislation for continuation of the agency as an amendment to the delayed repeal section covering the creation of the agency and its related statutes.

History: Laws 1981, ch. 241, § 9.

ANNOTATIONS

Cross references. — For effect of repeal of repealing act, *see* 12-2A-15 NMSA 1978.

12-9-20. Existing claims and rights.

The Sunset Act [12-9-11 to 12-9-21 NMSA 1978] shall not cause the dismissal of any claim or right of a citizen against any agency specified therein or any claim or right of such agency terminated pursuant to that act which is subject to litigation. The claims and rights of such agency shall be assumed by the department of finance and administration. Nothing in the Sunset Act shall interfere with the legislature otherwise considering legislation on any agency mentioned therein.

History: Laws 1981, ch. 241, § 10.

ANNOTATIONS

Cross references. — For constitutional prohibition against ex post facto laws, *see* U.S. Const., art. I, § 10 and N.M. Const., art. II, § 19.

12-9-21. Inspection functions; assignment.

The governor may by executive order assign any safety or health inspection function repealed under the terms of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978] to any other appropriate state department or agency within the executive department of state government.

History: Laws 1981, ch. 241, § 11.

12-9-22. Regulation review.

Each agency subject to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978] shall review its rules and regulations periodically and, as a result of that review, update its rules and regulations at least once every three years. Each agency subject to the provisions of the Sunset Act shall submit to the department of finance and administration and the legislative finance committee each year a status report on actions the agency took on its rules and regulations during the last fiscal year.

History: Laws 1989, ch. 288, § 1.

ARTICLE 9A
Sunrise Act

12-9A-1. Short title.

This act [12-9A-1 to 12-9A-6 NMSA 1978] may be cited as the "Sunrise Act".

History: Laws 1993, ch. 257, § 1.

12-9A-2. Purpose.

The purpose of the Sunrise Act is to assure that an unregulated profession or occupation that is not under the authority of an existing agency and that seeks to create a new board or commission for the public health, safety or welfare complies with the provisions of the Sunrise Act.

History: Laws 1993, ch. 257, § 2.

12-9A-3. Criteria for licensure and regulation.

In determining whether to enact legislation to create a new board or commission to provide for licensure or regulation of a profession or occupation that is currently not subject to state licensure or regulation, the legislature shall consider whether the following criteria are met:

A. unregulated practice of the profession or occupation will clearly harm or endanger the health, safety or welfare of the public, and the potential for harm is easily recognizable and not remote;

B. regulation of the profession or occupation does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners or otherwise create barriers to service that are not consistent with the public welfare or interest;

C. existing protections available to the consumer are insufficient, no alternatives to regulation will adequately protect the public and this licensure or regulation will provide that protection and mitigate the problems;

D. functions and tasks of the occupation or profession are clearly defined and the occupation or profession is clearly distinguishable from others already licensed or regulated;

E. the occupation or profession requires possession of knowledge, skills and abilities that are both teachable and testable and the practitioners operate independently and make decisions of consequence;

F. the public needs and can reasonably be expected to benefit from the assurance from the state of initial and continuing professional competence; and

G. the public cannot be effectively protected by other means in a more cost-effective manner.

History: Laws 1993, ch. 257, § 3.

12-9A-4. Initial review; application fee.

Any group seeking licensure or regulation of a profession or occupation through creation of a new board or commission shall, upon payment of an application fee not to exceed one thousand dollars ($1,000), request a review and evaluation of such proposed licensure or regulation from the regulation and licensing department and the department shall conduct such a review and evaluation and provide a report to the legislative finance committee so it may conduct a hearing or consider action on the proposed licensure or regulation. In conducting a review and evaluation, the department shall consider the criteria in Section 3 [12-9A-3 NMSA 1978] of the Sunrise Act and may require and use any information listed in Section 5 [12-9A-5 NMSA 1978] of that act.

History: Laws 1993, ch. 257, § 4.

12-9A-5. Required information.

If the legislative finance committee recommends creation of a new board or commission to license or regulate a profession or occupation, the following information shall be included with its recommendation:

A. the number of individuals or businesses that would be subject to licensure or regulation;

B. the names of all appropriate professional or occupational associations and a copy of each association's code of ethics or conduct;

C. a list of states that regulate the profession or occupation together with the descriptions and dates of enactment of each state's licensing or regulatory scheme;

D. a documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation;

E. a list and description of complaints that have been lodged against practitioners of the profession or occupation in this state during the preceding three years;

F. a list and description of existing laws that affect the profession or occupation and which may protect the public;

G. a copy of any federal law mandating or necessitating licensure or regulation;

H. the reasons that other types of less restrictive regulation would not effectively protect the public;

I. the fiscal impact of the proposed licensure or regulation, including the indirect cost to consumers, and the proposed method of financing the licensure or regulation; and

J. the extent to which the proposed licensure or regulation will affect the number and distribution of members of the profession or occupation in the state.

History: Laws 1993, ch. 257, § 5.

12-9A-6. Rulemaking authority.

The regulation and licensing department may adopt and promulgate rules to implement the provisions of the Sunrise Act and assess costs among boards covered by the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

History: Laws 1993, ch. 257, § 6.

ARTICLE 9B
Emergency Powers Code

12-9B-1. Short title.

Chapter 12, Articles 10, 10A, 11 and 12 NMSA 1978 may be cited as the "Emergency Powers Code".

History: Laws 2005, ch. 22, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 22, § 5 made Laws 2005, ch. 22, § 1 effective July 1, 2005.

ARTICLE 10
All Hazard Emergency Management

12-10-1. Short title.

Sections 12-10-1 through 12-10-10 NMSA 1978 may be cited as the "All Hazard Emergency Management Act".

History: 1953 Comp., § 9-13-15, enacted by Laws 1959, ch. 190, § 1; 1973, ch. 247, § 1; 2007, ch. 291, § 9.

ANNOTATIONS

Compiler's notes. — Following the 1978 recompilation of NMSA the scope of the State Civil Emergency Preparedness Act, as defined in this section, read "Sections 12-10-1 through 12-10-10 NMSA 1978".

Laws 2002, ch. 83, §§ 2 to 4 purported to enact three new sections of the Uniform Licensing Act in Chapter 61. These sections were reassigned to appear as 12-10-11, 12-10-12 and 12-10-13 NMSA 1978 for more logical placement. Sections 12-10-11, 12-10-12 and 12-10-13 NMSA 1978 are not part of the State Civil Emergency Preparedness Act.

Laws 2007, ch. 291, § 9 changed the name of the State Civil Emergency Preparedness Act to the All Hazard Emergency Management Act, effective July 1, 2007.

The 2007 amendment, effective July 1, 2007, changed the statutory reference and title of the act from the "State Civil Emergency Preparedness Act" to the "All Hazard Emergency Management Act".

12-10-2. Purpose.

The purpose of the All Hazard Emergency Management Act [12-10-1 to 12-10-10 NMSA 1978] is to:

A. authorize the creation of local offices of emergency management in the political subdivisions of the state;

B. confer upon the governor and upon the governing bodies of the state all hazard emergency management powers;

C. provide an emergency operations plan for the protection of life and property adequate to cope with disasters resulting from acts of war or sabotage or from natural or man-made causes other than acts of war;

D. provide for coordination of all hazard emergency management functions of this state with the comparable functions of the federal government and other states and localities and of private agencies;

E. initiate programs to render aid in the emergency restoration of facilities, utilities and other installations essential to the safety and general welfare of the public; and

F. provide for assistance and care for persons displaced, left homeless or otherwise victims of disaster or war conditions.

History: 1953 Comp., § 9-13-16, enacted by Laws 1959, ch. 190, § 2; 1973, ch. 247, § 2; 1977, ch. 258, § 6; 1989, ch. 204, § 12; 2007, ch. 291, § 10.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed the title of the act to the All Hazard Emergency Management Act and provided that the purpose of the act is emergency management.

The 1989 amendment, effective July 1, 1989, substituted "emergency planning and coordination bureau of the department of public safety" for "civil emergency preparedness division of the office of military affairs" in Subsection A.

Division authority not dependent upon local school authorities. — Though close cooperation with school authorities is advisable and not to be discouraged whenever the protection of pupils may be served, the duties and responsibilities of the office of civil defense (now all hazard emergency management department) are in no way dependent on or limited by those of the schools. 1970 Op. Att'y Gen. No. 70-09.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53A Am. Jur. 2d Military, and Civil Defense § 447 et seq.

93 C.J.S. War and National Defense § 62.

12-10-3. Emergency planning and coordination.

The state director of homeland security and emergency management shall be responsible for carrying out the program for all hazard emergency management authorized by law and shall serve as the governor's authorized representative at the discretion of the governor. The state director shall direct and coordinate the all hazard emergency management activities of all state departments, agencies and political

subdivisions and shall maintain liaison with and cooperate with all hazard emergency management agencies and organizations of other states and of the federal government.

History: 1953 Comp., § 9-13-17, enacted by Laws 1969, ch. 33, § 1; 1973, ch. 247, § 3; 1977, ch. 258, § 7; 1989, ch. 204, § 13; 2007, ch. 291, § 11.

ANNOTATIONS

Repeals and reenactments. — Laws 1969, ch. 33, § 1, repealed 9-13-17, 1953 Comp., relating to the creation and administration of a state office of civil and defense mobilization, and enacted a new section.

The 2007 amendment, effective July 1, 2007, changed the references from the "emergency planning and coordination bureau" to the "state director of homeland security and emergency management" responsible for all hazard emergency management.

The 1989 amendment, effective July 1, 1989, substituted the present section heading for "Civil emergency preparedness division"; substituted all of the language of Subsection A beginning with "'emergency'" for "'civil emergency preparedness division' of the office of military affairs"; and in Subsection B rewrote the first sentence, which formerly read: "The adjutant general shall be the director of the civil emergency preparedness division and shall be responsible to the governor for carrying out the program for civil emergency preparedness authorized by law", and substituted "emergency planning and coordination bureau chief" for "director" in the second sentence.

12-10-4. All hazard emergency management; powers of the governor.

A. The governor shall have general direction and control of the activities of the homeland security and emergency management department and shall be responsible for carrying out the provisions of the All Hazard Emergency Management Act [12-10-1 to 12-10-10 NMSA 1978] and, in the event of any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state, shall exercise direction and control over any and all state forces and resources engaged in emergency operations or related all hazard emergency management functions within the state.

B. In carrying out the provisions of the All Hazard Emergency Management Act, the governor is authorized to:

(1) cooperate with the federal government and agree to carry out all hazard emergency management responsibilities delegated in accordance with existing federal laws and policies and cooperate with other states and with private agencies in all matters relating to the all hazard emergency management of the state and nation;

(2) issue, amend or rescind the necessary orders, rules and procedures to carry out the provisions of the All Hazard Emergency Management Act;

(3) provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control, including the provision, on a temporary, emergency basis, of lodging, sheltering, health care, food, transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare;

(4) prepare a comprehensive emergency operations plan and program and to integrate the state emergency operations plan and program with the emergency operations plans and programs of the federal government and other states and to coordinate the preparation of emergency operations plans and programs by the political subdivisions of this state;

(5) procure supplies and equipment, to institute training programs and public information programs and to take all necessary preparatory actions, including the partial or full mobilization of state and local government forces and resources in advance of actual disaster, to ensure the furnishing of adequately trained and equipped emergency forces of government and auxiliary personnel to cope with disasters resulting from enemy attack or other causes; and

(6) enter into mutual aid agreements with other states and to coordinate mutual aid agreements between political subdivisions of the state.

History: 1953 Comp., § 9-13-19, enacted by Laws 1959, ch. 190, § 5; 1973, ch. 247, § 4; 1977, ch. 258, § 8; 1989, ch. 204, § 14; 1999, ch. 140, § 2; 2007, ch. 291, § 12.

ANNOTATIONS

Cross references. — For Disaster Succession Acts, *see* Chapter 12, Article 11 NMSA 1978.

The 2007 amendment, effective July 1, 2007, provided that the governor is responsible for the direction and control of the homeland security and emergency management department and carrying out the All Hazard Emergency Management Act.

The 1999 amendment, effective June 18, 1999, substituted "any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state" for "disaster beyond local control" in Subsection A, added Subsection B(3), and redesignated the remaining subsections accordingly.

The 1989 amendment, effective July 1, 1989, substituted "emergency planning and coordination bureau" for "civil emergency preparedness division" in Subsection A.

12-10-5. Local emergency management.

The governing bodies of the political subdivisions of the state are responsible for the all hazard emergency management of their respective jurisdictions. Each political subdivision is authorized to establish, by ordinance or resolution, a local office of emergency management as an agency of the local government and responsible to the governing body, in accordance with the state emergency operations plan and program. Every local coordinator of emergency management shall be appointed by the governing body, subject to the approval of the state director of homeland security and emergency management, and the local coordinator shall have direct responsibility for carrying out the all hazard emergency management program of the political subdivision. The state director shall coordinate the emergency management activities of all local governmental departments and agencies and shall maintain liaison with and cooperate with emergency management agencies and organizations of other political subdivisions and of the state government. Each local organization shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized.

History: 1953 Comp., § 9-13-20, enacted by Laws 1959, ch. 190, § 6; 1973, ch. 247, § 5; 2007, ch. 291, § 13.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed references to the "civil emergency preparedness" to the "all hazard emergency management".

12-10-6. Mutual aid agreements.

Each political subdivision may, in cooperation with other public and private agencies within the state, enter into mutual aid agreements for reciprocal emergency management aid and assistance. The agreements shall be consistent with the state emergency operations plan, and in time of emergency it shall be the duty of each local emergency management organization to render assistance within its capabilities and in accordance with the provisions of the program and plan promulgated by the homeland security and emergency management department.

History: 1953 Comp., § 9-13-21, enacted Laws 1959, ch. 190, § 7; 1973, ch. 247, § 6; 1977, ch. 258, § 9; 2007, ch. 291, § 14.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, provided for mutual aid agreements for emergency management aid to be consistent with the emergency operations plan of the homeland security and emergency management department.

Division authority not dependent upon local school authorities. — Though close cooperation with school authorities is advisable and not to be discouraged whenever the protection of pupils may be served, the duties and responsibilities of the office of civil defense (now all hazard emergency management department) are in no way dependent on or limited by those of the schools. 1970 Op. Att'y Gen. No. 70-09.

12-10-7. Authority to make appropriations and accept aid.

A. Each political subdivision of the state shall have the power to make appropriations in the manner prescribed by law, and subject to the limitations of the law, for the payment of expenses of emergency management.

B. Whenever the federal government or any agency or officer thereof shall offer to the state or any political subdivision thereof services, equipment, supplies, materials or funds by way of gift, grant or loan for purposes of emergency management, the state, acting through the governor, or the political subdivision, acting with the consent of the governor, may accept the offer and may authorize any officer of the state or of the political subdivision to receive the aid and assistance.

C. Whenever any private person, firm or corporation shall offer to the state or to any political subdivision thereof any aid or assistance for emergency management, the state or the political subdivision shall be authorized to accept the aid or assistance, subject to the provisions of this section.

History: 1953 Comp., § 9-13-22, enacted by Laws 1959, ch. 190, § 8; 1973, ch. 247, § 7; 2007, ch. 291, § 15.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed references to the "civil emergency preparedness" to the "all hazard emergency management".

If aid from federal government allowable, county may accept. — This section authorizes each political subdivision of the state to make appropriations for the payment of expenses of civil and defense mobilization (now all hazard emergency management) and further authorizes the political subdivision with the consent of the governor to accept federal aid. Thus, if the aid from the federal government is allowable, a city, with the consent of the governor may accept it. 1959 Op. Att'y Gen. No. 59-143.

No separate checking account when county treasurer disbursing agent. — Where the county treasurer is the disbursing agent for normal transactions handled by a local county civil defense agency (now all local hazard emergency management agencies), the latter may not maintain a separate checking account for public funds of such agency. 1965 Op. Att'y Gen. No. 65-51.

12-10-8. Civil liability; limited.

Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege or otherwise permits the designation or use of the whole or any part of the person's real estate or premises for the purpose of sheltering persons during an actual or impending enemy attack or other disaster shall, together with the person's successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any person on or about the real estate or premises or for the loss of or damage to the property of such person, providing the premises have been approved either in whole or in part by the proper all hazard emergency management authorities for such purpose.

History: 1953 Comp., § 9-13-22.1, enacted by Laws 1963, ch. 193, § 1; 1973, ch. 247, § 8; 2007, ch. 291, § 16.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed references to the "civil emergency preparedness" to the "all hazard emergency management".

12-10-9. Existing services and facilities to be used by agency.

The governor, the homeland security and emergency management department and the governing bodies of the political subdivisions of the state are directed to use, in carrying out the provisions of the All Hazard Emergency Management Act [12-10-1 to 12-10-10 NMSA 1978], the services, equipment, supplies and facilities of existing departments, offices and agencies of the state and its political subdivisions to the maximum extent practicable, and the officers and personnel of all departments, offices and agencies of the state and its political subdivisions are directed to cooperate with and extend their services and facilities to the governor or to the department or to the local coordinators of all hazard emergency management throughout the state upon request.

History: 1953 Comp., § 9-13-23, enacted by Laws 1959, ch. 190, § 9; 1973, ch. 247, § 9; 1989, ch. 204, § 15; 2007, ch. 291, § 17.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed references from the "department of public safety" to the "homeland security and emergency management department".

The 1989 amendment, effective July 1, 1989, inserted "of the technical and emergency support division of the department of public safety" near the beginning of the section, substituted "offices" for "officers" near the middle of the section, and deleted "state" preceding "director" near the end of the section.

12-10-10. Enforcement of executive orders and rules.

A. It is the duty of all political subdivisions of the state and their coordinators of the all hazard emergency management programs appointed pursuant to the provisions of the All Hazard Emergency Management Act [12-10-1 to 12-10-10 NMSA 1978] to comply with and enforce all executive orders and rules made by the governor or under the governor's authority pursuant to law.

B. Political subdivisions shall meet all state and federal requirements before becoming eligible to participate in state and federal all hazard emergency management assistance programs. They must comply with all state and federal rules and procedures and shall be removed from participation in the assistance programs by the state director of homeland security and emergency management for failure to comply with the rules and procedures or to maintain their eligibility in accordance with prescribed requirements.

History: 1953 Comp., § 9-13-24, enacted by Laws 1959, ch. 190, § 10; 1973, ch. 247, § 10; 2007, ch. 291, § 18.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, changed references to the "civil emergency preparedness" to the "all hazard emergency management".

12-10-10.1. Short title.

Sections 12-10-11 through 12-10-13 NMSA 1978 may be cited as the "Emergency Licensing Act".

History: Laws 2005, ch. 22, § 2.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 22, § 5 made Laws 2005, ch. 22, § 2 effective July 1, 2005.

12-10-11. Out-of-state license holders; powers; duties.

During an emergency, a person who holds a license, certificate or other permit that is issued by a state or territory of the United States and that evidences the meeting of qualifications for professional, mechanical or other skills may be credentialed, if appropriate and approved by the department of health or the homeland security and emergency management department, to render aid involving those skills to meet an emergency, subject to limitations and conditions as the governor may prescribe by executive order or otherwise. A person shall be considered a public employee for the purposes of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] when approved to perform those duties.

History: Laws 2002, ch. 83, § 2; 2007, ch. 291, § 19.

ANNOTATIONS

Compiler's notes. — Laws 2002, ch. 83, § 2 was originally enacted as part of the Uniform Licensing Act in Chapter 61 but was reassigned to appear as this section.

Cross references. — For definition of "emergency", *see* 61-1-2 NMSA 1978.

The 2007 amendment, effective July 1, 2007, changed references to the "civil emergency preparedness" to the "all hazard emergency management".

12-10-11.1. Business and employee status during disaster response period.

A. An out-of-state business that conducts operations within the state for purposes of performing disaster- or emergency-related work in response to a declared state disaster or emergency during the disaster response period shall not be considered to have established a level of presence that would require that business to be subject to any state licensing or registration requirements, including any state or local business licensing or registration requirements or public regulation commission or secretary of state licensing and regulatory requirements.

B. An out-of-state employee performing disaster- or emergency-related work during the disaster response period shall not be subject to any state licensing or registration requirements.

C. As used in this section:

(1) "critical infrastructure" means property, equipment and related support facilities that service multiple customers or residents, including real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment that is owned or used by:

(a) communications networks;

(b) electric generation, transmission and distribution systems;

(c) natural gas and natural gas liquids gathering, processing, storage, transmission and distribution systems;

(d) crude oil and refined product pipelines; and

(e) water pipelines;

(2) "declared state disaster or emergency" means a disaster or emergency event for which:

(a) a governor's state-of-emergency proclamation has been issued;

(b) a presidential declaration of a federal major disaster or emergency has been issued; or

(c) another authorized official of the state receives notification from a registered business of a disaster or emergency and that official designates the event as a declared state disaster or emergency, thereby invoking the provisions of this section;

(3) "disaster- or emergency-related work" means repairing, renovating, installing, building, rendering services or conducting other business activities that relate to critical infrastructure that has been damaged, impaired or destroyed by a declared state disaster or emergency;

(4) "disaster response period" means a period that begins ten days prior to the first day of the governor's proclamation, the president's declaration or the designation by another authorized official of the state of a declared state disaster or emergency and that extends sixty calendar days after the declared state disaster or emergency;

(5) "out-of-state business" means a business entity that, except for disaster- or emergency-related work, has no presence in the state and that conducts no business in the state and whose services are requested by a registered business or by a state or local government for purposes of performing disaster- or emergency-related work in the state. "Out-of-state business" includes a business entity that is affiliated with a registered business in the state solely through common ownership and that has no registrations or tax filings or nexus in the state other than disaster- or emergency-related work during the tax year immediately preceding the declared state disaster or emergency;

(6) "out-of-state employee" means an employee who does not work in the state, except for disaster- or emergency-related work during the disaster response period; and

(7) "registered business in the state" means a business entity that is currently registered to do business in the state prior to the declared state disaster or emergency.

History: Laws 2016, ch. 59, § 3.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 59 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

12-10-12. Application.

The provisions of Section 12-10-11 NMSA 1978 apply to a person from any state or territory whether or not a party to the Emergency Management Assistance Compact [12-10-14, 12-10-15 NMSA 1978].

History: Laws 2002, ch. 83, § 3; 2007, ch. 291, § 20.

ANNOTATIONS

Compiler's notes. — Laws 2002, ch. 83, § 3 was originally enacted as part of the Uniform Licensing Act in Chapter 61 but was reassigned to appear as this section.

The 2007 amendment, effective July 1, 2007, changed the statutory reference to Section 12-10-11 NMSA 1978.

12-10-13. In-state license holders; powers; duties.

During an emergency, a person who holds a license, certificate or other permit that is issued by the state and that evidences the meeting of qualifications for professional, mechanical or other skills may be credentialed, if appropriate and approved by the department of health or the homeland security and emergency management department, to render aid involving those skills to meet a declared emergency, and shall be considered a public employee for the purposes of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] when approved to perform those duties.

History: Laws 2002, ch. 83, § 4; 2007, ch. 291, § 21.

ANNOTATIONS

Compiler's notes. — Laws 2002, ch. 83, § 4 was originally enacted as part of the Uniform Licensing Act in Chapter 61 but was reassigned to appear as this section.

Cross references. — For definition of "emergency", *see* 61-1-2 NMSA 1978.

The 2007 amendment, effective July 1, 2007, changed references from the "department of public safety" to the "homeland security and emergency management department".

12-10-14. Short title.

This act [12-10-14, 12-10-15 NMSA 1978] may be cited as the "Emergency Management Assistance Compact".

History: 1978 Comp., § 11-15-1, enacted by Laws 1999, ch. 87, § 1, recompiled as § 12-10-14 by Laws 2005, ch. 22, § 4.

12-10-15. Compact entered into.

The Emergency Management Assistance Compact [12-10-14 and 12-10-15 1978] is enacted into law and entered into with all other jurisdictions legally joining therein in accordance with its terms, in a form substantially as follows:

"EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE 1 - PURPOSE AND AUTHORITIES

A. The Emergency Management Assistance Compact is made and entered into by and between the participating member states that enact that compact.

B. As used in the Emergency Management Assistance Compact:

(1) "party states" means the participating member states to the compact; and

(2) "state" means the several states, the Commonwealth of Puerto Rico, the District of Columbia and all United States territorial possessions.

C. The purpose of the Emergency Management Assistance Compact is to provide for mutual assistance between the party states in managing any emergency or disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency or enemy attack.

D. The Emergency Management Assistance Compact shall also provide for mutual cooperation in emergency-related exercises, testing or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance pursuant to that compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE 2 - GENERAL IMPLEMENTATION

A. Each party state entering into the Emergency Management Assistance Compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies

under that compact. Each state further recognizes that there will be emergencies that require immediate access and will present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

B. The prompt, full and effective use of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of the Emergency Management Assistance Compact shall be understood.

C. On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement the Emergency Management Assistance Compact.

ARTICLE 3 - PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency or enemy attack;

(2) review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(3) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(4) assist in warning communities adjacent to or crossing the state boundaries;

(5) protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue and critical life-line equipment, services and resources, both human and material;

(6) inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

(7) provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the responsibilities delineated in this subsection.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

(1) a description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services and search and rescue;

(2) the amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and

(3) the specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans and resource records relating to emergency capabilities.

ARTICLE 4 - LIMITATIONS

A. Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by the Emergency Management Assistance Compact in accordance with the terms of the compact; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

B. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of the Emergency Management Assistance Compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or

disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving states, whichever is longer.

ARTICLE 5 - LICENSES AND PERMITS

Whenever any person holds a license, certificate or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE 6 - LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to the Emergency Management Assistance Compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to that compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE 7 - SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the party states, the Emergency Management Assistance Compact contains elements of a broad base common to all states, and nothing in that compact shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

ARTICLE 8 - COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to the Emergency Management Assistance Compact in the

same manner and on the same terms as if the injury or death were sustained within its own state.

ARTICLE 9 - REIMBURSEMENT

Any party state rendering aid in another party state pursuant to the Emergency Management Assistance Compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article 8 of that compact shall not be reimbursable under this provision.

ARTICLE 10 - EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant shall be worked out and maintained between the party states and the emergency management directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees; the number of evacuees to be received in different areas; the manner in which food, clothing, housing, and medical care will be provided; the registration of the evacuees; the providing of facilities for the notification of relatives or friends; and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE 11 - IMPLEMENTATION

A. The Emergency Management Assistance Compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, the Emergency Management Assistance Compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from the Emergency Management Assistance Compact by enacting a statute repealing that compact, but no such withdrawal shall

take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of the Emergency Management Assistance Compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE 12 - VALIDITY

This section shall be construed to effectuate the purposes stated in Article 1 of the Emergency Management Assistance Compact. If any provision of that compact is declared unconstitutional, or its applicability to any person or circumstances is held invalid, the constitutionality of the remainder of the compact and its applicability to other persons and circumstances shall not be affected.

ARTICLE 13 - ADDITIONAL PROVISIONS

Nothing in the Emergency Management Assistance Compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

ARTICLE 14 - REPORTING TO THE LEGISLATURE

The secretary of public safety shall, by January, 2000, provide to the legislative finance committee copies of all mutual aid plans and procedures promulgated, developed or entered into after the effective date of this section. The secretary shall annually thereafter provide the legislative finance committee with copies of all new or amended mutual aid plans and procedures by January of each calendar year."

History: 1978 Comp., § 11-15-2, enacted by Laws 1999, ch. 87, § 2, recompiled as 12-10-15 by Laws 2005, ch. 22, § 4.

12-10-16. Short title.

This act [12-10-16 to 12-10-21 NMSA 1978] may be cited as the "Riot Control Act."

History: 1953 Comp., § 40A-20-4.1, enacted by Laws 1969, Ch. 281, § 1; 1978 Comp., § 30-20-4, recompiled as § 12-10-16 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes sufficiently violent, tumultuous, forceful, aggressive, or terrorizing conduct to establish crime of riot in state courts, 38 A.L.R.4th 648.

77 C.J.S. Riot; Insurrection § 25 et seq.

12-10-17. Proclamation of emergency.

Upon request of the mayor of a municipality or the sheriff of a county or a majority of the members of the governing body of the municipality or county having jurisdiction and after finding that a public disorder, disaster or emergency which affects life or property exists in the state, the governor may proclaim a state of emergency in the area affected. The proclamation becomes effective immediately upon its signing by the governor, but the governor shall give public notice of its contents through the public press and other news media.

History: 1953 Comp., § 40A-20-4.2, enacted by Laws 1969, ch. 281, § 2; 1978 Comp., § 30-20-5, recompiled as § 12-10-17 by Laws 2005, ch. 22, § 4.

12-10-18. Emergency restrictions.

A. During the existence of a state of emergency, the governor may, by proclamation, prohibit:

(1) any person being on the public streets, in the public parks or at any other public place during the hours proclaimed by the governor to be a period of curfew;

(2) any designated number of persons from assembling or gathering on the public streets, public parks or other open areas, either public or private, or in any public building;

(3) the manufacture, transfer, use, possession or transportation of any device or object designed to explode or produce uncontained combustion;

(4) the transportation, possession or use of combustible, flammable or explosive materials in a glass or uncapped container of any kind except in connection with the normal operation of motor vehicles, normal home use or legitimate commercial use;

(5) the possession of firearms or any other deadly weapon by a person in any place other than his place of residence or business, except for peace officers;

(6) the sale, purchase or dispensing of alcoholic beverages or other commodities or goods designated by the governor;

(7) the use of certain streets or highways by the public; and

(8) other activities the governor reasonably believes should be prohibited to help maintain life, property or the public peace.

B. Any proclamation issued under this section becomes effective immediately upon its signing by the governor, but the governor shall give public notice of its contents through the public press and other news media. The restrictions may be imposed during times, upon conditions, with exceptions and in areas of the state designated by proclamation of the governor from time to time.

History: 1953 Comp., § 40A-20-4.3, enacted by Laws 1969, ch. 281, § 3; 1978 Comp., § 30-20-6, recompiled as § 12-10-18 by Laws 2005, ch. 22, § 4.

12-10-19. Termination of emergency.

Any state of emergency proclaimed under the Riot Control Act [12-10-16 to 12-10-21 NMSA 1978], along with any restrictions imposed for control of that emergency, terminates automatically at noon on the third day after it becomes effective unless sooner terminated by proclamation of the governor.

History: 1953 Comp., § 40A-20-4.4, enacted by Laws 1969, ch. 281, § 4; 1978 Comp., § 30-20-7, recompiled as § 12-10-19 by Laws 2005, ch. 22, § 4.

12-10-20. Penalty.

Any person who, during a state of emergency, fails to comply with restrictions imposed by proclamation of the governor under the Riot Control Act [12-10-16 to 12-10-21 NMSA 1978] is guilty of a misdemeanor, and upon conviction of a second or subsequent offense under this section is guilty of a fourth degree felony.

History: 1953 Comp., § 40A-20-4.5, enacted by Laws 1969, ch. 281, § 5; 1978 Comp., § 30-20-8, recompiled as § 12-10-20 by Laws 2005, ch. 22, § 4.

12-10-21. Governor's powers not limited.

The Riot Control Act [12-10-16 to 12-10-21 NMSA 1978] does not limit any other power to maintain the public peace and safety which is vested in the governor.

History: 1953 Comp., § 40A-20-4.6, enacted by Laws 1969, ch. 281, § 6; 1978 Comp., § 30-20-9, recompiled as § 12-10-21 by Laws 2005, ch. 22, § 4.

ARTICLE 10A
Public Health Emergency Response

12-10A-1. Short title.

Chapter 12, Article 10A NMSA 1978 may be cited as the "Public Health Emergency Response Act".

History: Laws 2003, ch. 218, § 1; 2007, ch. 291, § 22.

ANNOTATIONS

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

The 2007 amendment, effective July 1, 2007, changed the statutory reference to the act.

12-10A-2. Purposes of act.

The purposes of the Public Health Emergency Response Act are to:

A. provide the state of New Mexico with the ability to manage public health emergencies in a manner that protects civil rights and the liberties of individual persons;

B. prepare for a public health emergency; and

C. provide access to appropriate care, if needed, for an indefinite number of infected, exposed or endangered people in the event of a public health emergency.

History: Laws 2003, ch. 218, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-3. Definitions.

As used in the Public Health Emergency Response Act:

A. "attorney general" means the New Mexico attorney general;

B. "court" means the district court for the judicial district where a public health emergency is occurring, the district court for Santa Fe county or, in the event that a

district court cannot adequately provide services, a district court designated by the New Mexico supreme court;

C. "director" or "state director" means the state director of homeland security and emergency management or the state director's designee;

D. "health care supplies" means medication, durable medical equipment, instruments, linens or any other material that the state may need to use in a public health emergency, including supplies for preparedness, mitigation and recovery;

E. "health facility" means:

(1) a facility licensed by the state pursuant to the provisions of the Public Health Act;

(2) a nonfederal facility or building, whether public or private, for-profit or nonprofit, that is used, operated or designed to provide health services, medical treatment, nursing services, rehabilitative services or preventive care;

(3) a federal facility, when the appropriate federal entity provides its consent; or

(4) the following properties when they are used for, or in connection with, health-related activities:

(a) laboratories;

(b) research facilities;

(c) pharmacies;

(d) laundry facilities;

(e) health personnel training and lodging facilities;

(f) patient, guest and health personnel food service facilities; and

(g) offices or office buildings used by persons engaged in health care professions or services;

F. "isolation" means the physical separation for possible medical care of persons who are infected or who are reasonably believed to be infected with a threatening communicable disease or potential threatening communicable disease from non-isolated persons, to protect against the transmission of the threatening communicable disease to non-isolated persons;

G. "public health emergency" means the occurrence or imminent threat of exposure to an extremely dangerous condition or a highly infectious or toxic agent, including a threatening communicable disease, that poses an imminent threat of substantial harm to the population of New Mexico or any portion thereof;

H. "public health official" means the secretary of health or the secretary's designee, including a qualified public individual or group or a qualified private individual or group, as determined by the secretary of health;

I. "quarantine" means the precautionary physical separation of persons who have or may have been exposed to a threatening communicable disease or a potentially threatening communicable disease and who do not show signs or symptoms of a threatening communicable disease, from non-quarantined persons, to protect against the transmission of the disease to non-quarantined persons;

J. "secretary of health" means the secretary or the secretary's designee;

K. "secretary of public safety" means the secretary or the secretary's designee; and

L. "threatening communicable disease" means a disease that causes death or great bodily harm that passes from one person to another and for which there are no means by which the public can reasonably avoid the risk of contracting the disease. "Threatening communicable disease" does not include acquired immune deficiency syndrome or other infections caused by the human immunodeficiency virus.

History: Laws 2003, ch. 218, § 3; 2007, ch. 291, § 23.

ANNOTATIONS

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

The 2007 amendment, effective July 1, 2007, defined "director" as the state director of the homeland security and emergency management.

Governor’s emergency orders addressing gun violence and drug abuse did not exceed the scope of the governor’s authority. — Where Petitioners, including New Mexico legislators, Bernalillo County gun and gun shop owners, two political parties, retired law enforcement officers, and a national advocacy group, petitioned for a Writ of Mandamus, arguing that the governor’s emergency orders addressing gun violence and drug abuse as public health emergencies exceed the proper scope of the Public Health Emergency Response Act, the proper scope of the police power, and the separation-of-powers doctrine, Petitioners failed to meet their burden of showing the emergency orders violate the challenged scope of the PHERA, because the emergency orders were consistent with the plain language of the PHERA, which supports that the

legislature intended for the PHERA to be a broad statute under which the executive can declare and address crises of different form and scope as public health emergencies. *Amador v. Grisham*, 2025-NMSC-024.

12-10A-4. Enhanced public health advisory.

A. The governor, after consultation with the secretary of health, may issue an enhanced public health advisory if the governor has reasonable cause to believe that a public health emergency may occur.

B. The secretary of health may use powers and duties conferred under the Public Health Act [Chapter 24, Article 1 NMSA 1978] to investigate the conditions leading to the issuance of the enhanced public health advisory.

C. The enhanced public health advisory shall be broadly disseminated in English, Spanish and other appropriate languages to the impacted population.

History: Laws 2003, ch. 218, § 4.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-5. Declaring a state of public health emergency; terminating the emergency.

A. A state of public health emergency may be declared by the governor upon the occurrence of a public health emergency. Prior to a declaration of a state of public health emergency, the governor shall consult with the secretary of health. The governor shall authorize the secretary of health, the secretary of public safety and the director to coordinate a response to the public health emergency.

B. A state of public health emergency shall be declared in an executive order that specifies:

(1) the nature of the public health emergency;

(2) the political subdivisions or geographic areas affected by the public health emergency;

(3) the conditions that caused the public health emergency;

(4) the expected duration of the public health emergency, if less than thirty days;

(5) the public health officials needed to assist in the coordination of a public health emergency response; and

(6) any other provisions necessary to implement the executive order.

C. A declaration of a state of public health emergency shall not abrogate any disease-reporting requirements set forth in the Public Health Act [Chapter 24, Article 1 NMSA 1978].

D. A declaration of a state of public health emergency shall be terminated:

(1) by the governor, after consultation with the secretary of health, upon determining that there is no longer a public health emergency; or

(2) automatically after thirty days, unless renewed by the governor after consultation with the secretary of health.

E. Upon the termination of a state of public health emergency, the secretary of health shall consult with the secretary of public safety and the director to ensure public safety during termination procedures.

History: Laws 2003, ch. 218, § 5.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

Valid enforcement of public health emergency orders. — Where governor Michelle Lujan Grisham issued an executive order that a public health emergency existed in New Mexico due to the spread of COVID-19, invoked her powers under the All Hazard Emergency Management Act (AHEMA), §§ 12-10-1 to 12-10-10 NMSA 1978, and declared a public health emergency under the Public Health Emergency Response Act (PHERA), §§ 12-10A-1 to 12-10A-19 NMSA 1978, pursuant to 12-10A-5 NMSA 1978, and where the secretary of the New Mexico department of health, citing the governor's executive orders, the PHERA, the Public Health Act (PHA), §§ 24-1-1 to 24-1-41 NMSA 1978, the Department of Health Act, §§ 9-7-1 to 9-7-18 NMSA 1978, and inherent constitutional powers, issued a series of public health emergency orders which restricted mass gatherings and the operations of certain businesses, requiring some to

close entirely, and where approximately fourteen small businesses and business owners, the real parties in interest, filed suit against petitioners seeking declaratory relief to the effect that the secretary of health's emergency orders during the COVID-19 crisis are not authorized by the PHERA, and therefore the PHERA's penalty provision, 12-10A-19 NMSA 1978, is inapplicable, and where petitioners filed a petition for writ of superintending control and stay to resolve whether the emergency orders temporarily restricting business operations in response to the COVID-19 pandemic are authorized by and enforceable under the PHERA, the New Mexico supreme court granted the writ of superintending control, concluding that the legislature, through the PHERA, authorized petitioners to respond to a public health emergency through measures including the secretary of health's emergency orders temporarily restricting business operations, and petitioners may therefore utilize the PHERA's civil administrative penalty provision to enforce the secretary of health's emergency orders restricting business operations. *Grisham v. Reeb*, 2021-NMSC-006.

Public health order was not ultra vires or arbitrary and capricious. — Where, following the secretary of the department of health's (secretary) reinstatement of a ban on indoor dining, pursuant to an emergency health order issued to combat the spread of the coronavirus in New Mexico, six food and drink establishments (real parties in interest) filed an application in the district court seeking a temporary restraining order (TRO) and a preliminary and permanent injunction against governor Lujan Grisham and the secretary, claiming that the indoor dining ban is ultra vires and not enforceable and is unreasonable, arbitrary and capricious, and where the district court issued a temporary restraining order restraining governor Lujan Grisham and the secretary from enforcing the restrictions imposed upon restaurants and breweries, and where petitioners filed an emergency petition for a writ of superintending control and stay of the TRO, the New Mexico supreme court, taking judicial notice of the serious health risks posed by COVID-19, a highly contagious and potentially fatal disease, the disease's transmission within New Mexico, and the emergency orders issued by governor Lujan Grisham and the secretary, held that it was within the secretary's statutory authority to issue the public health order banning indoor dining, because the public health order does not infringe on the legislative branch by imposing through executive order substantive policy changes in an area of law reserved to the legislature, and the unique risks of indoor dining and the increased COVID-19 cases among New Mexico restaurant staff during the time period when indoor dining restrictions were relaxed show a real and substantial relation between the public health order's temporary prohibition and object of controlling and suppressing the spread of COVID-19. *Lujan Grisham v. Romero*, 2021-NMSC-009.

Governor’s emergency orders addressing gun violence and drug abuse did not exceed the scope of the governor’s authority. — Where Petitioners, including New Mexico legislators, Bernalillo County gun and gun shop owners, two political parties, retired law enforcement officers, and a national advocacy group, petitioned for a Writ of Mandamus, arguing that the governor’s emergency orders addressing gun violence and drug abuse as public health emergencies exceed the proper scope of the Public Health Emergency Response Act, the proper scope of the police power, and the separation-of-

powers doctrine, Petitioners failed to meet their burden of showing the emergency orders violate the challenged scope of the PHERA, because the emergency orders were consistent with the plain language of the PHERA, which supports that the legislature intended for the PHERA to be a broad statute under which the executive can declare and address crises of different form and scope as public health emergencies. *Amador v. Grisham*, 2025-NMSC-024.

Authority to regulate private businesses during a public health emergency. — The Public Health Emergency Response Act, 12-10A-1 to 12-10A-19 NMSA 1978, provides a grant of authority to the governor to declare a state of public health emergency upon the occurrence of a public health emergency, which then authorizes the department of health, under the Public Health Act, 24-1-3 to 24-1-40 NMSA 1978, to order the closure of public places, including privately owned businesses generally open to the public, and to forbid large gatherings when necessary for the protection of the public, and therefore, when the governor of New Mexico, in 2020, declared a state of emergency due to the COVID-19 pandemic, the public health orders issued by the department of health, limiting mass gatherings and implementing other restrictions with the stated purpose of minimizing the spread and adverse impacts of COVID-19 in New Mexico, were statutorily authorized and a reasonable exercise of the police powers vested in the department of health. *Governor's Authority during a Public Health or Other Emergency* (3/23/20), Att'y Gen. Adv. Ltr. 2020-03.

12-10A-6. Special powers during a public health emergency.

A. In order to protect the health, safety and welfare of the people in the state during a public health emergency, the secretary of health, in coordination with the secretary of public safety and the director, may:

(1) utilize, secure or evacuate health care facilities for public use; and

(2) inspect, regulate or ration health care supplies as provided in Subsection B of this section.

B. If a public health emergency results in a statewide or regional shortage of health care supplies, the secretary of health may control, restrict and regulate the allocation, sale, dispensing or distribution of health care supplies.

C. The state medical investigator, after consultation with the secretary of health, the secretary of public safety, the director and the chair of the board of funeral services, may implement and enforce measures to provide for the safe disposal of human remains that may be reasonable and necessary to respond to a public health emergency. The measures may include special provisions for embalming, burial, cremation, interment, disinterment, transportation and disposal of human remains. To the extent possible, the religious, cultural, family and individual beliefs of a deceased person or of the family of a deceased person shall be considered when disposing of human remains.

History: Laws 2003, ch. 218, § 6; 2012, ch. 48, § 1.

ANNOTATIONS

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

The 2012 amendment, effective July 1, 2012, changed the name of the board of thanatopractice to the board of funeral services and in Subsection C, in the first sentence, after "chair of the board of", deleted "thanatopractice" and added "funeral services".

12-10A-7. Procedures for isolation or quarantine of persons.

A. Except as provided in Section 9 [12-10A-9 NMSA 1978] of the Public Health Emergency Response Act, before isolating or quarantining a person during a declared public health emergency, the secretary of health shall apply for and obtain a written, ex parte order from a court that authorizes the isolation or quarantine. Notice of the application for the ex parte order shall be given, unless it clearly appears from specific facts shown that immediate and irreparable injury, loss or damage will result before an affected person can be heard in opposition to the application. The evidence or testimony in support of the application may be presented or taken by telephone, facsimile transmission, video equipment or other method of electronic communication. The court shall grant the application for an ex parte order upon finding that clear and convincing evidence exists to believe isolation or quarantine is warranted to respond to the public health emergency.

B. The ex parte order shall:

(1) state the specific facts justifying isolation or quarantine;

(2) state the persons, group or class of persons affected by the ex parte order;

(3) state that the persons being isolated or quarantined have a right to a court hearing under the Public Health Emergency Response Act and a right to be represented by counsel at the hearing; and

(4) be served as soon as practicable to persons isolated or quarantined.

C. The secretary of health shall coordinate with the secretary of public safety and the director regarding execution of the ex parte order. The ex parte order shall be posted in a public and accessible place. If individual notice is not feasible, the secretary of health, the secretary of public safety and the director shall use the best means

available to ensure that a person subject to the ex parte order is informed of the order and his rights.

D. A person who is isolated or quarantined may request a court hearing pursuant to Section 10 [12-10A-10 NMSA 1978] of the Public Health Emergency Response Act at any time before the expiration of the ex parte order. A person shall not be isolated or quarantined pursuant to an ex parte order for longer than five days without a court hearing to determine whether isolation or quarantine should continue.

E. The isolation or quarantine of a person shall terminate automatically on the expiration date of a court order authorizing isolation or quarantine, or before the expiration date of the court order, upon notice to the court, if the secretary of health determines that isolation or quarantine is no longer necessary to protect the public.

History: Laws 2003, ch. 218, § 7.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-8. Isolation or quarantine authorized; protection of a person isolated or quarantined.

A. The secretary of health may isolate or quarantine a person as necessary during a public health emergency, using the procedures set forth in the Public Health Emergency Response Act.

B. The secretary of health, the secretary of public safety, the director and anyone acting under the secretaries' or the director's authority, when isolating or quarantining a person during a public health emergency, shall ensure that:

(1) isolation or quarantine shall be by the least restrictive means necessary to protect against the spread of a threatening communicable disease or a potentially threatening communicable disease to others and may include confinement to a private home or other private or public premises;

(2) isolated persons are confined separately from quarantined persons;

(3) the health status of an isolated or quarantined person is monitored regularly to determine if he requires continued isolation or quarantine. To adequately address emergency health situations, an isolated or quarantined person shall be given a

reliable means to communicate twenty-four hours a day with health officials and to summon emergency health services;

(4) if a quarantined person subsequently becomes infected or is reasonably believed to be infected with a threatening communicable disease or a potentially threatening communicable disease, he shall be isolated pursuant to the provisions of the Public Health Act [Chapter 24, Article 1 NMSA 1978] or the Public Health Emergency Response Act;

(5) the needs of a person isolated or quarantined be addressed in a systematic and orderly manner, including the provision of adequate food, clothing, shelter, sanitation, and to the extent of available resources, appropriate medication and treatment, medical care and mental health care;

(6) there are methods of communication available to a person placed in isolation or quarantine so that he may communicate with others, including family members, household members, legal representatives, advocates and the media. Accommodations shall also be made for religious worship or practice and updates on the status of the public health emergency, as available;

(7) the premises used for isolation or quarantine are maintained in a safe and hygienic manner and are designed to minimize the likelihood of further transmission of infection or other injury to other persons who are isolated or quarantined; and

(8) to the extent feasible, forms are provided to a person in isolation or quarantine that document the person's consent or objection to the isolation or quarantine.

C. A person isolated or quarantined pursuant to the provisions of the Public Health Emergency Response Act has the right to refuse medical treatment, testing, physical or mental examination, vaccination, specimen collections and preventive treatment programs. A person who has been directed by the secretary of health to submit to medical procedures and protocols because the person is infected with, reasonably believed to be infected with, or exposed to a threatening communicable disease and who refuses to submit to the procedures and protocols may be subject to continued isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act.

D. A person not authorized by the secretary of public safety, the secretary of health or the director shall not enter an isolation or quarantine area. If, by reason of an unauthorized entry into an isolation or quarantine area, a person poses a danger to public health, the person may be subject to isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act.

E. A household or family member of a person isolated or quarantined has a right to choose to enter an isolation or quarantine area. The secretary of public safety, the

secretary of health or the director shall permit the household or family member entry into the isolation or quarantine area if the household or family member signs a consent form stating that the member has been informed of the potential health risks, isolation and quarantine guidelines and the consequences of entering the area. The household or family member shall not hold the state of New Mexico responsible for any consequences by reason of entry into the isolation or quarantine area. A household or family member who enters the area, at the discretion of the public health official, may be subject to isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act.

History: Laws 2003, ch. 218, § 8.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-9. Temporary hold upon secretary's order.

A. If the secretary of health makes a finding that a delay in isolating or quarantining a person will significantly jeopardize the secretary's ability to prevent or limit the transmission of a threatening communicable disease, then the secretary of health may, by public health order, isolate or quarantine a person without first obtaining a written, ex parte order from a court.

B. Following the imposition of isolation or quarantine pursuant to Subsection A of this section, the secretary of health, within twenty-four hours of the imposition, shall apply for an ex parte order that authorizes the isolation or quarantine and shall follow the procedures and meet the standards set forth in Sections 7, 8 and 10 [12-10A-7, 12-10A-8, 12-10A-10 NMSA 1978] of the Public Health Emergency Response Act.

C. In a subsequent application to a court, the secretary of health shall present facts in support of the need to issue a temporary hold before obtaining the ex parte order from the court that authorizes the isolation or quarantine.

History: Laws 2003, ch. 218, § 9.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-10. Court hearing to contest isolation or quarantine.

A. A person who is isolated or quarantined under a temporary hold, ex parte order or court order may petition the court to contest the temporary hold, ex parte order or court order at any time prior to the expiration of the temporary hold, ex parte order or court order. If a petition is filed, the court shall hold a hearing within three business days after the date of the filing. The filing of a petition for a hearing does not stay an order of isolation or quarantine. At the hearing, the secretary of health shall offer clear and convincing evidence that the isolation or quarantine is warranted to respond to a public health emergency.

B. If the secretary of health wishes to extend an order for isolation or quarantine past the period of time stated in the temporary hold, ex parte order or court order, the secretary of health shall petition the court for an extension. Notice of the hearing shall be served to every person who is isolated or quarantined at least three days prior to the hearing. If it is not feasible to provide individual notice to every person isolated or quarantined, a copy of the notice shall be posted in a public and accessible place, using the best means available to ensure that every person subject to the order is informed of the order and their rights.

C. The hearing notice shall contain:

(1) the date, time and place of the hearing;

(2) the grounds upon which continued isolation or quarantine is sought;

(3) the person's right to appear at the hearing; and

(4) the person's right to counsel, including the right, if indigent, to be represented by counsel designated by the court.

D. The court may order an extension of the isolation or quarantine if it finds, by clear and convincing evidence, that there is an imminent health threat to others if the isolation or quarantine is terminated.

E. In no case shall the isolation or quarantine continue longer than thirty days from the date of a court order, unless the secretary of health petitions the court for an extension pursuant to the standards and procedures set forth in this section.

F. Upon notice to a court by the secretary of health that the conditions warranting isolation or quarantine no longer exist, the court shall issue an order terminating the isolation or quarantine.

History: Laws 2003, ch. 218, § 10.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-11. Hearing on conditions of isolation and quarantine.

A. A person who is isolated or quarantined may request a hearing in court, as provided in Section 10 [12-10A-10 NMSA 1978] of the Public Health Emergency Response Act, for remedies regarding treatment or the terms and condition of the isolation or quarantine.

B. Upon receiving a request for a hearing pursuant to this section, the court shall fix a date for a hearing within seven days of the court's receipt of the request.

C. A request for a hearing does not alter an order for isolation or quarantine. If the court finds that the isolation or quarantine of a person is not in compliance with the provisions of the Public Health Emergency Response Act, the court may fashion remedies appropriate to the circumstances of the public health emergency.

History: Laws 2003, ch. 218, § 11.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-12. Medical examination and testing.

A. During a state of public health emergency, medical examinations or tests may be performed by a qualified person authorized by the secretary of health to provide medical examinations or tests.

B. The secretary of health may isolate or quarantine a person whose refusal of medical examination or testing results in uncertainty regarding whether the person has

been exposed to or is infected with a threatening communicable disease or otherwise reasonably poses a danger to public health.

History: Laws 2003, ch. 218, § 12.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-13. Vaccination and treatment.

A. During a state of public health emergency, a qualified person authorized by the secretary of health may vaccinate persons to prevent infection by a threatening communicable disease and to protect against the spread of that disease.

B. To protect against the spread of a threatening communicable disease, the secretary of health may isolate or quarantine a person who is unable or unwilling for reasons of health, religion or conscience to undergo vaccination pursuant to the standards and procedures set forth in the Public Health Emergency Response Act.

C. A qualified person authorized by the secretary of health may vaccinate a minor less than eighteen years of age, unless the minor or the minor's duly authorized representative presents a certificate issued by a duly licensed physician or an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice that states that the minor's physical condition is such that the vaccination would seriously endanger the minor's life or health.

D. During a state of public health emergency, in order to provide treatment to a person who is exposed to or infected with a threatening communicable disease:

(1) treatment may be administered by a public health official;

(2) treatment shall be approved pursuant to appropriate regulations promulgated by the federal food and drug administration; and

(3) the secretary of health may isolate or quarantine a person who is unable or unwilling, for reasons of health, religion or conscience, to undergo treatment pursuant to the standards and procedures set forth in the Public Health Emergency Response Act.

History: Laws 2003, ch. 218, § 13; 2015, ch. 116, § 2.

ANNOTATIONS

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

The 2015 amendment, effective June 19, 2015, amended the Public Health Emergency Response Act to allow certain health care professionals other than licensed physicians who may authorize a minor's exemption from vaccination by certifying that vaccination would endanger the minor's life or health; in Subsection C, after "the minor or", deleted "his" and added "the minor's", after "duly licensed physician", added "or an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice", and after "seriously endanger", deleted "his" and added "the minor's".

Temporary provisions. — Laws 2015, ch. 116, § 16 provided that by January 1, 2016, every cabinet secretary, agency head and head of a political subdivision of the state shall update rules requiring an examination by, a certificate from or a statement of a licensed physician to also accept such examination, certificate or statement from an advanced practice registered nurse, certified nurse-midwife or physician assistant working within that person's scope of practice.

12-10A-14. Immunity.

During a state of public health emergency, the state, its political subdivisions, the governor, the secretary of health, the secretary of public safety, the director or any other state or local officials or personnel who assist during the public health emergency are liable for the death of a person, injury to a person or damage to property, only to the extent permitted in the Tort Claims Act [41-4-1 to 41-2-27 NMSA 1978], as a result of complying with the provisions of the Public Health Emergency Response Act or a rule adopted pursuant to that act.

History: Laws 2003, ch. 218, § 14.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-15. Compensation.

A. The state shall pay just compensation to the owner of health care supplies, a health facility or any other property that is lawfully taken or appropriated by the secretary of health, the secretary of public safety or the director for temporary or permanent use during a public health emergency. The amount of compensation due shall be calculated in the same manner as compensation due for taking of property pursuant to nonemergency eminent domain procedures, as provided by the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978]; provided that the amount of compensation calculated shall include lost revenues and expenses incurred due to the taking or appropriating of property, including a health facility.

B. The attorney general shall make a preliminary determination of whether or not compensation is due to an owner of health care supplies, a health facility or any other property. The owner may appeal the preliminary determination pursuant to rules promulgated by the attorney general. The rules shall include the owner's right to speak at the appeal and the owner's right to present facts pertinent to the appeal to a hearing officer appointed by the attorney general. A record shall be made of the hearing. The hearing officer shall preside over and take evidence at a hearing held pursuant to this section. The hearing officer shall prepare and submit to the attorney general a summary of the evidence taken at the hearing. The hearing officer shall also submit proposed findings of fact to the attorney general. The attorney general shall render a decision that sets forth the amount of compensation, if any, due to the owner. The attorney general's decision shall include findings of fact and conclusions of law.

C. A decision made by the attorney general pursuant to this section shall be subject to an appeal to the district court, pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

D. To the extent practicable and consistent with protection of public health, the attorney general, prior to the taking or appropriating of property, shall institute civil proceedings against the property to be taken or appropriated in accordance with the Eminent Domain Code, other applicable laws, court rules or rules the courts may develop during a state of public health emergency.

History: Laws 2003, ch. 218, § 15.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-16. Job protection for a person who is isolated or quarantined.

An employer or an agent of an employer shall not discharge from employment a person who is placed in isolation or quarantine pursuant to the provisions of the Public Health Emergency Response Act.

History: Laws 2003, ch. 218, § 16.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-17. Rulemaking.

The secretary of public safety, the secretary of health, the state director and, where appropriate, other affected state agencies in consultation with the secretaries and state director, shall promulgate and implement rules that are reasonable and necessary to implement and effectuate the Public Health Emergency Response Act.

History: Laws 2003, ch. 218, § 17; 2007, ch. 291, § 24.

ANNOTATIONS

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

The 2007 amendment, effective July 1, 2007, defined director as the state director of homeland security.

12-10A-18. Memorandum of understanding; Indian pueblos or tribal entities.

The secretary of public safety, the secretary of health, the director and, when appropriate, other state agencies in consultation with the secretary of health and the secretary of public safety, may enter into a memorandum of understanding with an Indian pueblo or tribal entity within the state of New Mexico in order to effectuate the purposes, procedures and standards set forth in the Public Health Emergency Response Act.

History: Laws 2003, ch. 218, § 18.

ANNOTATIONS

Emergency clauses. — Laws 2003, ch. 218, § 21 contained an emergency clause and was approved April 6, 2003.

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

12-10A-19. Enforcement; civil penalties.

A. The secretary of health, the secretary of public safety or the director may enforce the provisions of the Public Health Emergency Response Act by imposing a civil administrative penalty of up to five thousand dollars ($5,000) for each violation of that act. A civil administrative penalty may be imposed pursuant to a written order issued by the secretary of health, the secretary of public safety or the director after a hearing is held in accordance with the rules promulgated pursuant to the provisions of Section 12-10A-17 NMSA 1978.

B. The provisions of the Public Health Emergency Response Act shall not be construed to limit specific enforcement powers enumerated in that act.

C. The enforcement authority provided pursuant to the provisions of the Public Health Emergency Response Act is in addition to other remedies available against the same conduct under the common law or other statutes of this state.

History: Laws 2003, ch. 218, § 19; 2005, ch. 22, § 3.

ANNOTATIONS

Compiler's notes. — This section was enacted by the legislature as part of Chapter 12, Article 10 NMSA 1978, but it was assigned to Article 10A by the compiler to separate it from the State Civil Emergency Preparedness Act.

The 2005 amendment, effective July 1, 2005, restated the statutory reference as Section 12-10A-17 NMSA 1978.

Valid enforcement of public health emergency orders. — Where governor Michelle Lujan Grisham issued an executive order that a public health emergency existed in New Mexico due to the spread of COVID-19, invoked her powers under the All Hazard Emergency Management Act (AHEMA), §§ 12-10-1 to 12-10-10 NMSA 1978, and declared a public health emergency under the Public Health Emergency Response Act (PHERA), §§ 12-10A-1 to 12-10A-19 NMSA 1978, pursuant to 12-10A-5 NMSA 1978, and where the secretary of the New Mexico department of health, citing the governor's executive orders, the PHERA, the Public Health Act (PHA), §§ 24-1-1 to 24-1-41 NMSA 1978, the Department of Health Act, §§ 9-7-1 to 9-7-18 NMSA 1978, and inherent constitutional powers, issued a series of public health emergency orders which restricted mass gatherings and the operations of certain businesses, requiring some to

close entirely, and where approximately fourteen small businesses and business owners, the real parties in interest, filed suit against petitioners seeking declaratory relief to the effect that the secretary of health's emergency orders during the COVID-19 crisis are not authorized by the PHERA, and therefore the PHERA's penalty provision, 12-10A-19 NMSA 1978, is inapplicable, and where petitioners filed a petition for writ of superintending control and stay to resolve whether the emergency orders temporarily restricting business operations in response to the COVID-19 pandemic are authorized by and enforceable under the PHERA, the New Mexico supreme court granted the writ of superintending control, concluding that the legislature, through the PHERA, authorized petitioners to respond to a public health emergency through measures including the secretary of health's emergency orders temporarily restricting business operations, and petitioners may therefore utilize the PHERA's civil administrative penalty provision to enforce the secretary of health's emergency orders restricting business operations. *Grisham v. Reeb*, 2021-NMSC-006.

Public health order was not ultra vires or arbitrary and capricious. — Where, following the secretary of the department of health's (secretary) reinstatement of a ban on indoor dining, pursuant to an emergency health order issued to combat the spread of the coronavirus in New Mexico, six food and drink establishments (real parties in interest) filed an application in the district court seeking a temporary restraining order (TRO) and a preliminary and permanent injunction against governor Lujan Grisham and the secretary, claiming that the indoor dining ban is ultra vires and not enforceable and is unreasonable, arbitrary and capricious, and where the district court issued a temporary restraining order restraining governor Lujan Grisham and the secretary from enforcing the restrictions imposed upon restaurants and breweries, and where petitioners filed an emergency petition for a writ of superintending control and stay of the TRO, the New Mexico supreme court, taking judicial notice of the serious health risks posed by COVID-19, a highly contagious and potentially fatal disease, the disease's transmission within New Mexico, and the emergency orders issued by governor Lujan Grisham and the secretary, held that it was within the secretary's statutory authority to issue the public health order banning indoor dining, because the public health order does not infringe on the legislative branch by imposing through executive order substantive policy changes in an area of law reserved to the legislature, and the unique risks of indoor dining and the increased COVID-19 cases among New Mexico restaurant staff during the time period when indoor dining restrictions were relaxed show a real and substantial relation between the public health order's temporary prohibition and object of controlling and suppressing the spread of COVID-19. *Lujan Grisham v. Romero*, 2021-NMSC-009.

ARTICLE 10B
Intrastate Mutual Aid

12-10B-1. Short title.

This act [12-10B-1 to 12-10B-10 NMSA 1978] may be cited as the "Intrastate Mutual Aid Act".

History: Laws 2006, ch. 97, § 1.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

12-10B-2. Definitions.

As used in the Intrastate Mutual Aid Act:

A. "committee" means the intrastate mutual aid committee;

B. "disaster" means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from a natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radioactive or hazardous materials, bioterrorism or incidents involving weapons of mass destruction;

C. "emergency" means the imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize;

D. "member jurisdiction" means the state, through the office of the governor or the governor's designee, a political subdivision or an Indian nation, tribe or pueblo that participates in the system;

E. "political subdivision" means a county or a municipality; and

F. "system" means the intrastate mutual aid system.

History: Laws 2006, ch. 97, § 2.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

12-10B-3. Committee created; membership; meetings; duties; expenses.

A. The "intrastate mutual aid committee" is created. The committee shall consist of eleven members appointed by the governor, including a representative of the department of public safety and the governor's homeland security advisor who shall be a permanent member and the presiding officer of the committee. The members shall represent emergency management and response disciplines, political subdivisions and, if participating, Indian nations, tribes or pueblos. Appointments shall be made for terms expiring four years from the date of appointment. The committee shall elect from among its members a vice-presiding officer and any other officers the committee deems appropriate. The committee shall meet at least annually and may meet at the call of the presiding officer or as otherwise called by seven of its members. The committee shall be attached to the department of public safety for administrative purposes only.

B. The committee shall:

(1) review the progress and status of intrastate mutual aid;

(2) assist in developing methods to track and evaluate activation of the system;

(3) examine issues facing member jurisdictions in the implementation of intrastate mutual aid;

(4) develop, adopt and disseminate comprehensive guidelines and procedures that address the following:

(a) projected or anticipated costs of establishing and maintaining the system;

(b) checklists for requesting and providing intrastate mutual aid;

(c) record keeping for member jurisdictions; and

(d) procedures for reimbursing the actual and legitimate expenses of a member jurisdiction that responds to a request for aid through the system; and

(5) adopt other guidelines or procedures considered necessary by the committee to implement an effective and efficient system.

C. Members of the committee shall not be paid for participating in committee meetings and activities; however:

(1) members representing the state, its agencies or political subdivisions shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] paid by their sponsors;

(2) members representing the private sector shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act paid by the department of public safety; and

(3) members representing Indian nations, tribes or pueblos may be compensated or reimbursed as provided by the tribal government they represent.

History: Laws 2006, ch. 97, § 3.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

12-10B-4. Intrastate mutual aid system; initial participation; withdrawal.

A. The "intrastate mutual aid system" is created. The system, pursuant to the Intrastate Mutual Aid Act, is composed of and may be described as:

(1) member jurisdictions and action taken by a member jurisdiction;

(2) the committee and action taken by the committee;

(3) guidelines and procedures;

(4) action taken with respect to requesting aid for an emergency or disaster; and

(5) action taken with respect to responding to a request for aid for an emergency or disaster.

B. The state and, except as provided in Subsection D of this section, every political subdivision of the state is part of the system.

C. An Indian nation, tribe or pueblo located within the boundaries of the state may become a member jurisdiction upon:

(1) adoption by the tribal government of a resolution declaring the tribe's desire to be a member jurisdiction and to comply with the provisions of the Intrastate Mutual Aid Act and the guidelines and procedures adopted by the committee; and

(2) receipt by the emergency planning and coordination bureau of the department of public safety of a copy of the resolution.

D. A member jurisdiction other than the state may elect not to participate in or to withdraw from the system upon:

(1) adopting a resolution or ordinance declaring that the member jurisdiction elects not to participate in or to withdraw from the system; and

(2) receipt by the emergency planning and coordination bureau of the department of public safety of a copy of the resolution or ordinance.

E. This section does not preclude a member jurisdiction from entering into any other agreement with another political subdivision or Indian nation, tribe or pueblo, to the extent provided by law, and does not affect any other agreement to which a political subdivision is a party or may become a party.

History: Laws 2006, ch. 97, § 4.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

12-10B-5. Request for aid.

A. A member jurisdiction may request aid from another member jurisdiction:

(1) to prevent, mitigate, respond to or recover from an emergency or disaster; or

(2) in concert with drills or exercises between member jurisdictions.

B. A request for aid shall be made by or through the presiding officer of the governing body of a member jurisdiction or the chief executive officer or the officer's designee of a member jurisdiction. A request may be verbal or in writing. If the request is verbal, it shall be confirmed in writing within thirty days of the date on which the request was made.

History: Laws 2006, ch. 97, § 5.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

12-10B-6. Limitation on aid; command and control.

A member jurisdiction that responds to a request to provide aid to prevent, mitigate, respond to or recover from an emergency or disaster or in drills or exercises is subject to the following conditions:

A. a member jurisdiction that responds to a request for aid may withhold resources to the extent necessary to provide reasonable protection and services for that responding member jurisdiction;

B. the personnel of a responding member jurisdiction are under:

(1) the command and control of the responding member jurisdiction for purposes that include medical protocols, standard operating procedures and other protocols; and

(2) the operational control of the appropriate officials of the member jurisdiction receiving aid; and

C. the assets and equipment of a responding member jurisdiction are under:

(1) the command and control of the responding member jurisdiction; and

(2) the operational control of the appropriate officials of the member jurisdiction receiving aid.

History: Laws 2006, ch. 97, § 6.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

12-10B-7. Portability of bona fides.

If a person holds a license, certificate, permit or similar documentation that evidences the person's qualifications in a professional, mechanical or other skill and the aid of the person is requested by a member jurisdiction, the person is:

A. considered to be licensed, certified, permitted or otherwise documented in the member jurisdiction that requests aid for the duration of the emergency or disaster or of the drills or exercises; and

B. subject to legal limitations or conditions prescribed by the governing body or chief executive officer of the member jurisdiction that requests aid.

History: Laws 2006, ch. 97, § 7.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

12-10B-8. Reimbursement; dispute resolution.

A. A requesting member jurisdiction shall reimburse, to the extent permitted by law, each member jurisdiction that responds to a request for aid and renders aid under the system, unless the responding member jurisdiction donates all or a portion of the cost of the aid to the requesting member jurisdiction.

B. A request for reimbursement shall be in accordance with procedures developed by the committee.

C. If a dispute regarding reimbursement arises between a member jurisdiction that requested aid under the system and a member jurisdiction that provided aid under the system, they shall make every effort to resolve the dispute within thirty days of written notice of the dispute given by the member jurisdiction raising the dispute to the other member jurisdiction. If the dispute is not resolved within ninety days from the date of the written notice, either member jurisdiction may:

(1) request the department of finance and administration to resolve the dispute; or

(2) if one of the disputing member jurisdictions is an Indian nation, tribe or pueblo, request arbitration pursuant to the commercial arbitration rules and mediation procedures of the American arbitration association.

History: Laws 2006, ch. 97, § 8.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

12-10B-9. Benefits.

A. If a person is an employee of a member jurisdiction that responds to a request for aid under the system and the person sustains injury in the course of providing the requested aid, the person is entitled to all applicable benefits, including workers' compensation benefits, that are normally available to the person as an employee of the member jurisdiction that employs the person.

B. If a person described in Subsection A of this section sustains injury that results in death, the person's estate shall receive additional state and federal benefits that may be available for death in the line of duty.

History: Laws 2006, ch. 97, § 9.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

12-10B-10. Liability.

Except as provided in Section 9 [12-10B-9 NMSA 1978] of the Intrastate Mutual Aid Act, a person responding to a request for aid by a member jurisdiction and who is under the operational control of that member jurisdiction, as provided in Section 6 [12-10B-6 NMSA 1978] of the Intrastate Mutual Aid Act, is considered for the purposes of liability to be an employee of the requesting member jurisdiction.

History: Laws 2006, ch. 97, § 10.

ANNOTATIONS

Emergency clause. — Laws 2006, ch. 97, § 11 contained an emergency clause and was approved March 7, 2006.

ARTICLE 10C
Volunteer Emergency Responder Job Protection

12-10C-1. Short title.

This act [12-10C-1 to 12-10C-4 NMSA 1978] may be cited as the "Volunteer Emergency Responder Job Protection Act".

History: Laws 2006, ch. 98, § 1.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 98 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

12-10C-2. Definitions.

As used in the Volunteer Emergency Responder Job Protection Act:

A. "emergency or disaster" means an event so declared by the governor or president of the United States; and

B. "volunteer emergency responder" means a person who is a member in good standing of a volunteer fire department, an emergency medical service, a search and rescue team or a law enforcement agency or who is enrolled by the state or a political subdivision of the state for response to an emergency or disaster.

History: Laws 2006, ch. 98, § 2.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 98 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

12-10C-3. Termination of employment of volunteer emergency responder prohibited; limitation; notice; certification; withholding pay.

A. An employee shall not be terminated, demoted or in any other manner discriminated against in the terms and conditions of employment because the employee, when serving as a volunteer emergency responder, is absent from the employee’s place of employment in order to respond to an emergency or disaster.

B. Subsection A of this section shall not apply if the employee, while acting as a volunteer emergency responder to an emergency or disaster, is absent from the employee's place of employment for a period of more than ten regular business days in a calendar year.

C. An employee who will be absent from the employee's place of employment while serving as a volunteer emergency responder to an emergency or disaster shall make reasonable efforts to notify the employer of that service and shall continue to make those reasonable notification efforts over the course of the absence.

D. An employer may request an employee to provide to the employer a written verification from the office of emergency management or a state or local official managing an emergency or disaster of the dates and time that the employee served as a volunteer emergency responder to an emergency or disaster.

E. An employer may charge against an employee's regular pay time that the employee is absent from employment while serving as a volunteer emergency responder to an emergency or disaster.

History: Laws 2006, ch. 98, § 3.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 98 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

12-10C-4. Cause of action.

In addition to other available remedies, an employee who has been terminated, demoted or in any other manner discriminated against in the terms and conditions of employment in violation of the Volunteer Emergency Responder Job Protection Act may bring a cause of action seeking reinstatement of the employee's former position, payment of back wages, reinstatement of fringe benefits or, where seniority rights are granted, reinstatement of seniority rights; provided that an action for violation of the Volunteer Emergency Responder Job Protection Act shall be brought within one year from the date of the violation.

History: Laws 2006, ch. 98, § 4.

ANNOTATIONS

Effective dates. — Laws 2006, ch. 98 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

ARTICLE 10D
Emergency Communications Interoperability

12-10D-1. Short title.

This act [12-10D-1 to 12-10D-6 NMA 1978] may be cited as the "Emergency Communications Interoperability Act".

History: Laws 2009, ch. 111, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 111 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

12-10D-2. Definitions.

As used in the Emergency Communications Interoperability Act:

A. "department" means the homeland security and emergency management department;

B. "first responder" means a public safety employee or volunteer whose duties include responding rapidly to an emergency, including but not limited to:

(1) a law enforcement officer;

(2) a firefighter or certified volunteer firefighter; and

(3) an emergency medical services provider;

C. "infrastructure equipment" means the underlying fixed equipment required to establish interoperable communications between radio systems used by local, state, tribal and federal agencies and first responders; and

D. "interoperability" means coordination of critical information communication systems or networks, including radio and emergency coordination information equipment, that are consistently operable with all relevant local, state, tribal and federal agencies and first responders.

History: Laws 2009, ch. 111, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 111 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

12-10D-3. Interoperability planning commission; created.

A. The "interoperability planning commission" is created and administratively attached to the department.

B. The interoperability planning commission is a permanent advisory commission created to advise and support the department on emergency response and homeland security activities relating to interoperability, the obtaining of funding and the use of available funding.

C. The commission consists of twelve members, including:

(1) the lieutenant governor;

(2) the homeland security advisor;

(3) the secretary of information technology or the secretary's designee;

(4) the adjutant general or a representative from the department of military affairs;

(5) the secretary of energy, minerals and natural resources or the secretary's designee;

(6) the state fire marshal or the fire marshal's designee;

(7) the secretary of Indian affairs or the secretary's designee;

(8) the secretary of transportation or the secretary's designee;

(9) the secretary of health or the secretary's designee;

(10) the secretary of public safety or the secretary's designee;

(11) the executive director of the New Mexico municipal league or the executive director's designee; and

(12) the executive director of the New Mexico association of counties or the executive director's designee.

D. The commission shall appoint a chair and vice chair from among its members. The commission shall meet at the call of the chair but no less than two times each year.

E. Members of the commission, or their designees, who are not supported by public money may be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall not receive any other compensation, perquisite or allowance.

History: Laws 2009, ch. 111, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 111 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

12-10D-4. Interoperability planning commission; duties.

The interoperability planning commission shall advise the department on:

A. the development and coordination of a statewide interoperable emergency communications plan in compliance with national incident management system guidelines, including an integrated public safety radio communications system and other

coordinated critical information systems, to achieve interoperability within and between local, state, tribal and federal agencies and first responders;

B. implementation of the interoperable emergency communications plan by state and local agencies and shall provide specific directions for methods by which agencies shall implement those strategies;

C. priorities relating to the interoperable emergency communications plan; and

D. other matters relating to planning, development, coordination, promotion and implementation of the interoperable emergency communications plan.

History: Laws 2009, ch. 111, § 4.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 111 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

12-10D-5. Interoperability; department.

The department shall:

A. establish, implement and administer a statewide interoperable emergency communications plan and standards for a statewide integrated public safety radio communications system;

B. train representatives of entities in the state that are involved in emergency response and homeland security activities with respect to interoperability;

C. require that all radio communications at emergency incidents adhere to the national incident management system guidelines established by the federal department of homeland security and statewide integrated public safety radio communications standards;

D. use appropriated money, including money from relevant federal homeland security grants, for the purposes of designing and promulgating systems compliant with the standards established under Subsection A of this section and to enable the implementation and maintenance of a statewide interoperable public safety radio communications system; and

E. report annually to the appropriate interim legislative committee.

History: Laws 2009, ch. 111, § 5.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 111 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

12-10D-6. Interoperability; agency compliance.

All state and local agency budgets and plans to purchase infrastructure equipment shall conform to the interoperability standards developed by the department.

History: Laws 2009, ch. 111, § 6.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 111 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

ARTICLE 11
Disaster Acts

PART 1
DISASTER SUCCESSION ACT

12-11-1. Short title.

This act [12-11-1 to 12-11-10 NMSA 1978] may be cited as the "Disaster Succession Act."

History: 1953 Comp., § 4-18-1, enacted by Laws 1959, ch. 137, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Officers and Employees §§ 135 to 137.

67 C.J.S. Officers and Public Employees §§ 74 to 79.

12-11-2. Declaration of policy.

The legislature declares that the possibility of an enemy attack of unprecedented destructiveness made possible by recent technological developments, and which may result in the death or inabiilty [inability] to act on the part of a large number of the

officers of the executive and judicial branches of state and local government, make it necessary to assure the continuity and effective operation of the executive and judicial offices of state and local government by providing for advance naming of officers to fill temporarily vacancies in certain offices, and that it is the legislative intent to provide that continuity in the Disaster Succession Act [12-11-1 to 12-11-10 NMSA 1978].

History: 1953 Comp., § 4-18-2, enacted by Laws 1959, ch. 137, § 2.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For the State Civil Emergency Preparedness Act, *see* 12-10-1 NMSA 1978.

12-11-3. Definitions.

As used in the Disaster Succession Act [12-11-1 to 12-11-10 NMSA 1978]:

A. "attack" means any hostile action by an enemy of the United States which is intended to and physically damages citizens or property in the United States;

B. "disaster" means damage or injury, caused by enemy attack, to persons or property in this state of such magnitude that a state of martial law is declared in the state and a disaster emergency is declared by the chief executive officer of the United States and the chief executive officer of this state;

C. "unavailable" means unable, because of death, disability or presumption of death raised by absence from usual place of domicile for unknown causes, to exercise the powers and discharge the duties of the office. The appearance of the officer at his place of office will automatically disqualify a disaster successor, and remove the unavailability of the officer;

D. "deputy" means a deputy, assistant or subordinate officer who is authorized under ordinary circumstances to exercise the powers and duties of an office;

E. "disaster successor" means a person possessing the qualifications required at [of] the office, designated pursuant to the Disaster Succession Act to act in the stead of an officer who is unavailable during the period of a disaster.

History: 1953 Comp., § 4-18-3, enacted by Laws 1959, ch. 137, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

12-11-4. Disaster successors to the governor.

If the governor and all of his constitutional successors are unavailable, the holders of the following offices shall be the disaster successors in the order named:

A. the attorney general;

B. the state auditor;

C. the commissioner of public lands;

D. the state treasurer.

History: 1953 Comp., § 4-18-4, enacted by Laws 1959, ch. 137, § 4.

ANNOTATIONS

Cross references. — For constitutional successors to governor, *see* N.M. Const., art. V, § 7.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States §§ 87 to 90.

12-11-5. Disaster successors to other state executive offices.

The governor shall, pursuant to his constitutional powers to appoint officers, whose appointment is not otherwise provided for, designate three disaster successors to each state executive office and specify their order of succession.

History: 1953 Comp., § 4-18-5, enacted by Laws 1959, ch. 137, § 5.

ANNOTATIONS

Cross references. — For governor's appointive power generally, *see* N.M. Const., art. V, § 5.

12-11-6. Disaster successors to local offices.

Officers of political subdivisions who have authority to fill vacancies in local offices shall designate three disaster successors to the powers and duties of each such office and specify their order of succession.

History: 1953 Comp., § 4-18-6, enacted by Laws 1959, ch. 137, § 6.

12-11-7. [Disaster successors for members of supreme court and judges of district courts.]

The governor shall designate for each member of the supreme court and each judge of the district court three disaster successors and specify their order of succession.

History: 1953 Comp., § 4-18-7, enacted by Laws 1959, ch. 137, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

12-11-8. Formalities of taking office.

Disaster successors shall prior to assumption of the duties and powers of the position take such oath as is required by law, and shall as soon as possible thereafter comply with any other provision of law relative to the formalities of taking office, provided that their inability due to existing circumstances to comply with such other formalities shall not prevent their acting until the formalities can be had.

History: 1953 Comp., § 4-18-8, enacted by Laws 1959, ch. 137, § 8.

12-11-9. Period during which disaster successors may act.

Disaster successors may act in the office to which appointed only:

A. in case of a disaster declared by the chief executive officer of the United States, and the chief executive officer of the state, and as long as a state of martial law is declared to exist or until a duly elected or appointed legislature, fulfilling all constitutional requirements, declares by joint resolution that the disaster emergency period has ended; and

B. the officer or authorized deputy in whose stead they are acting is unavailable; and

C. any disaster successors who are ahead of them in the line of succession to the office are unavailable; and

D. a successor to the office has not been selected and qualified as provided by law, other than the Disaster Succession Act [12-11-1 to 12-11-10 NMSA 1978].

History: 1953 Comp., § 4-18-9, enacted by Laws 1959, ch. 137, § 9.

12-11-10. Filing; notice.

Each appointing power, designating disaster successors for state officers shall file the designations and any changes thereto with the secretary of state. Each appointing power designating disaster successors for district, county, municipal or precinct or other local offices shall file the designations with the county clerk of the county in which the office is located. The designation or change shall be effective when so filed. The appointing power shall also notify the designee of his designation and the order and designation of all other alternates to the office.

History: 1953 Comp., § 4-18-10, enacted by Laws 1959, ch. 137, § 10.

ANNOTATIONS

Severability. — Laws 1959, ch. 137, § 11, provided for the severability of the act if any part or application thereof was held invalid.

PART 2
LEGISLATIVE DISASTER SUCCESSION ACT

12-11-11. Short title.

This act [12-11-11 to 12-11-18 NMSA 1978] may be cited as the "Legislative Disaster Succession Act."

History: 1953 Comp., § 4-19-1, enacted by Laws 1959, ch. 138, § 1.

12-11-12. Declaration of policy.

The legislature declares that the possibility of an enemy attack of unprecedented destructiveness made possible by recent technological developments, and which may result in the death or inability to act on the part of a large number of the membership of the legislature make [makes] it necessary to assure the continuity and effective operation of the legislature by providing for emergency advance naming of persons to temporarily fill vacancies in the legislature, and that it is the legislative intent to provide that continuity in the Legislative Disaster Succession Act [12-11-11 to 12-11-18 NMSA 1978].

History: 1953 Comp., § 4-19-2, enacted by Laws 1959, ch. 138, § 2.

ANNOTATIONS

Cross references. — For the State Civil Emergency Preparedness Act, *see* 12-10-1 NMSA 1978.

12-11-13. Definitions.

As used in the Legislative Disaster Succession Act [12-11-11 to 12-11-18 NMSA 1978]:

A. "attack" means any hostile action by an enemy of the United States which is intended to and physically damages citizens or property in the United States;

B. "disaster" means the damage or injury, caused by enemy attack, to persons or property in this state of such magnitude that a state of martial law is declared to exist in this state, and a disaster emergency is declared by the chief executive officer of the United States and the chief executive officer of this state;

C. "unavailable" means unable because of death, disability or presumption of death raised by absence from usual place of domicile for unknown causes, to exercise the powers and discharge the duties of a member of the legislature. The appearance of the member at a session will automatically disqualify a disaster successor, and remove the unavailability of the member;

D. "disaster successor" means a person possessing the qualifications required of a member, designated pursuant to the Legislative Disaster Succession Act, to act for a member who is unavailable during the period of disaster emergency.

History: 1953 Comp., § 4-19-3, enacted by Laws 1959, ch. 138, § 3.

12-11-14. Designation of disaster successors to legislators.

The county commission of each county shall designate five disaster successors for each legislator elected or appointed from that county, and specify their order of succession. The commission shall have the power to change designations at will. The designation of disaster successors shall not affect the powers of the commission to fill vacancies.

History: 1953 Comp., § 4-19-4, enacted by Laws 1959, ch. 138, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d States, Territories and Dependencies § 44.

81A C.J.S. States § 43.

12-11-15. Filing designations.

The county commission shall file with the secretary of state and the county clerk, its designations of disaster successors for legislators, and any subsequent changes, and shall notify the designees of their designation and the order and designation of all

alternates to the office. Designations shall be effective when filed with the secretary of state.

History: 1953 Comp., § 4-19-5, enacted by Laws 1959, ch. 138, § 5.

12-11-16. Oath of office; assumption of office.

Disaster successors shall take such oath as is required by law prior to assumption of the duties and powers of the position, and serve as legislators subject to the provisions of the Legislative Disaster Succession Act [12-11-11 to 12-11-18 NMSA 1978].

History: 1953 Comp., § 4-19-6, enacted by Laws 1959, ch. 138, § 6.

12-11-17. Quorum and vote requirements.

During the period of a disaster emergency, the quorum requirements for convening the legislature shall be one-third of the members, and all special or regular majorities shall be based on members present. Provided further that legislative action taken without the requisite members present, or without the majority required under the constitution shall be effective only for the period of the disaster.

History: 1953 Comp., § 4-19-7, enacted by Laws 1959, ch. 138, § 7.

12-11-18. Period during which disaster successors may act.

Disaster successors may act as members of the legislature only:

A. in case of a disaster emergency declared by the chief executive officer of the United States and the chief executive officer of the state, and as long as a state of martial law is declared to exist, or until a duly elected or appointed legislature, fulfilling all constitutional requirements, declares by joint resolution that the disaster emergency period has ended; and

B. the member in whose stead they are acting is and remains unavailable; and

C. any disaster successor [successors] who are ahead of them in the line of succession are, and remain unavailable; and

D. a successor to the office has not been selected and qualified as provided by law other than the Legislative Disaster Succession Act [12-11-11 to 12-11-18 NMSA 1978].

History: 1953 Comp., § 4-19-8, enacted by Laws 1959, ch. 138, § 8.

PART 3
DISASTER LOCATION ACT

12-11-19. Short title.

This act [12-11-19 to 12-11-22 NMSA 1978] may be cited as the "Disaster Location Act."

History: 1953 Comp., § 4-21-1, enacted by Laws 1961, ch. 19, § 1.

12-11-20. Definitions.

As used in this act [12-11-19 to 12-11-22 NMSA 1978]:

A. "attack" means any hostile action by an enemy of the United States which is intended to and physically damages citizens or property in the United States; and

B. "disaster" means the damage or injury, caused by enemy attack, to persons or property in this state of such magnitude that a state of martial law is declared to exist in this state and a disaster emergency is declared by the chief executive officer of the United States and the chief executive officer of this state.

History: 1953 Comp., § 4-21-2, enacted by Laws 1961, ch. 19, § 2.

12-11-21. Seat of state government.

A. Whenever a disaster makes it imprudent or impossible to conduct the affairs of state government at its seat in Santa Fe, the governor may proclaim temporary disaster locations for the seat of state government at any place he deems advisable, either inside or outside of the state. The governor may issue necessary orders for orderly transition of the affairs of government to any temporary disaster location, which remains the seat of state government until the legislature establishes a new location or until the disaster is declared ended by the legislature and the seat is returned to its normal location in Santa Fe.

B. Any official act or meeting required to be performed at the seat of state government is valid when performed at a temporary disaster location under this section.

History: 1953 Comp., § 4-21-3, enacted by Laws 1961, ch. 19, § 3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States § 38.

12-11-22. Seats of local governments.

A. Whenever a disaster makes it imprudent or impossible to conduct the affairs of any local government at its regular location, the governing body may meet at any place,

inside or outside the limits of the political subdivision, at the call of the presiding officer or any two members of the governing body, and designate by ordinance a temporary disaster location of the local government, which remains the seat of the local government until the governing body establishes a new location or until the disaster is declared ended by the legislature and the seat is returned to its normal location.

B. Any official act or meeting required to be performed at the seat of the local government is valid when performed at a temporary disaster location under this section.

History: 1953 Comp., § 4-21-4, enacted by Laws 1961, ch. 19, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 28, 44 to 49.

20 C.J.S. Counties §§ 45 to 62; 62 C.J.S. Municipal Corporations § 392.

12-11-23. Policy and purpose.

Because of the existing possibility of the occurrence of disasters resulting from drouth [drought], fire, flood, earthquake or other causes, and in order to insure [ensure] that preparation of this state will be adequate to deal with such disasters, and generally to protect the peace, health and safety and to preserve the lives and property of the people of the state of New Mexico, it is hereby found and declared to be necessary to establish a source of emergency funds.

History: 1953 Comp., § 11-7-1, enacted by Laws 1955, ch. 185, § 1; 1978 Comp., § 6-7-1, recompiled as § 12-11-23 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 6-7-1 NMSA 1978 as 12-11-23 NMSA 1978, effective July 1, 2005.

12-11-24. Provisional appropriation.

For the purposes set out in Section 6-7-1 NMSA 1978, when and if the governor shall declare an emergency, as provided in Section 6-7-3 NMSA 1978, there is appropriated the sum of seven hundred fifty thousand dollars ($750,000) for each eligible and qualified applicant or so much thereof as the governor may from time to time designate from the surplus unappropriated money in the general fund, if any, at the time of the declaration of such emergency or emergencies.

History: 1953 Comp., § 11-7-2, enacted by Laws 1955, ch. 185, § 2; 1977, ch. 383, § 1; 1989, ch. 181, § 1; 1978 Comp., § 6-7-2, recompiled as § 12-11-24 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 6-7-2 NMSA 1978 as 12-11-24 NMSA 1978, effective July 1, 2005.

The 1989 amendment, effective July 1, 1989, substituted "Section 6-7-1 NMSA 1978" for "Section 11-7-1 NMSA 1953", "Section 6-7-3 NMSA 1978" for "Section 11-7-3 NMSA 1953", and "seven hundred fifty thousand dollars ($750,000) for each eligible and qualified applicant" for "five hundred thousand dollars ($500,000)".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Funds § 62.

81A C.J.S. States § 205.

12-11-25. Expenditure of funds; manner.

The money appropriated by Sections 6-7-1 and 6-7-2 NMSA 1978 shall be expended for disaster relief for any disaster declared by the governor to be of such magnitude as to be beyond local control and requiring the resources of the state. The funds shall be expended by the governor or any agent or agency designated by him for those purposes, either as a state project or for securing matching federal funds. The money shall be paid out upon warrants drawn by the secretary of finance and administration upon vouchers approved by the governor or an agent or agency designated by him for that purpose. As used in this section, "state project" means an expenditure by a state agency to provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control. "State project" may include any expenditure on a temporary, emergency basis for lodging, sheltering, health care, food, any transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare.

History: 1953 Comp., § 11-7-3, enacted by Laws 1955, ch. 185, § 3; 1978, ch. 67, § 1; 1999, ch. 140, § 1; 1978 Comp., § 6-7-3, recompiled as § 12-11-25 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 6-7-3 NMSA 1978 as 12-11-25 NMSA 1978, effective July 1, 2005.

The 1999 amendment, effective June 18, 1999, substituted "money" for "moneys" and "Sections 6-7-1 and 6-7-2 NMSA 1978" for "Sections 11-7-1 and 11-7-2 NMSA 1953" in

the first sentence, substituted "The money" for "Said moneys" in the third sentence, and added the fourth and fifth sentences.

ARTICLE 12
Hazardous Materials Emergency Response

12-12-1. Short title.

This act [12-12-1 to 12-12-9 NMSA 1978] may be cited as the "Energy Emergency Powers Act."

History: Laws 1980, ch. 107, § 1.

ANNOTATIONS

Cross references. — For the Energy, Minerals and Natural Resources Department Act, *see* 9-5A-1 NMSA 1978 et seq.

12-12-2. Definitions.

As used in the Energy Emergency Powers Act [12-12-1 to 12-12-9 NMSA 1978]:

A. "energy emergency" means an existing or imminent domestic, regional or national shortage of energy resources which may result in the curtailment of essential services or production of essential goods or the disruption of significant sectors of the economy or have a severe impact on the health, safety and general welfare of the citizens of this state unless action is taken to conserve or limit the use of the energy form involved and the allocation of available energy resources among users;

B. "energy resource" means petroleum or other liquid fuels, natural or synthetic fuel gas, electricity, coal, synthetic fuel or its components;

C. "energy supply alert" means an anticipated shortfall of available energy resources on a national, regional or local basis which foreseeably could result in an energy emergency unless action is taken to reduce energy uses by the state, its agencies and political subdivisions; and

D. "person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency or any other entity, public or private, however organized.

History: Laws 1980, ch. 107, § 2.

12-12-3. Energy supply alert; energy emergency; powers of the governor.

A. The governor, after making written findings of the grounds upon which he bases his decision, may issue a declaration that an energy supply alert exists. The governor shall publish his declaration and the findings upon which it is based along with any orders issued pursuant to the declared alert. After declaring that the state or any region thereof is in an alert status the governor may issue executive orders directed at state agencies and political subdivisions of the state. Such orders may include but are not limited to the following provisions:

(1) imposition of restrictions on any wasteful, inefficient or nonessential use of energy resources;

(2) ordering changes in operation schedules and working hours;

(3) curtailing the use of land vehicles, watercraft and aircraft; and

(4) such other provisions as are deemed necessary to reduce the consumption of energy resources.

B. The governor, upon termination of an energy supply alert or after determining that the declaration of an energy supply alert would be insufficient to meet the situation facing the people of New Mexico and after making written findings of the grounds upon which he bases his decision that an energy emergency exists, which findings shall be provided the presiding officer of each house of the legislature, may issue a declaration that such an emergency exists. Upon the issuance and publication of such a declaration and the written determination of need, the governor may issue executive orders and may take such steps as are necessary and appropriate to carry out the provisions of the Energy Emergency Powers Act [12-12-1 to 12-12-9 NMSA 1978] and generally to protect the peace, health, safety and welfare and preserve the lives and property of the people of this state. Executive orders may include but are not limited to the following provisions:

(1) imposition of restrictions on any wasteful, inefficient or nonessential use of energy resources;

(2) allocation of available supplies of energy resources among areas, users, persons or categories of persons or users. In allocating available resources the governor shall give priority to energy resource use essential to public health and safety, and shall thereafter attempt to allocate the remaining supply equitably;

(3) regulation of the days and times when energy resources may be sold to end users and the amounts which may be sold or purchased;

(4) regulation of the hours and days during which nonresidential buildings may be open and the temperature at which they may be maintained; and

(5) such provisions as may be necessary to assure that adequate transportation facilities exist to supply the energy needs of this state.

C. The governor shall review the requests of the chief executive of political subdivisions that the governor issue orders to require specific actions to be taken within those subdivisions. The governor may grant those requests he deems in the best interest of the state and may delegate to the political subdivisions such powers as he determines would best be vested in local entities.

D. Executive orders issued pursuant to this section shall take effect three days after publication in a manner designed to assure statewide notification. In addition, executive orders issued hereunder are exempt from the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: Laws 1980, ch. 107, § 3.

ANNOTATIONS

Compiler's notes. — Laws 2011, ch. 2, § 1, effective March 16, 2011, created a natural gas emergency investigation task force and provided that the task force report its findings and recommendations to the governor and the appropriate interim legislative committees by August 1, 2011, and post its report on the public regulation commission website upon completion.

12-12-4. Delegation; administration and enforcement.

Notwithstanding any other provision of law, the governor or his designee may administer and enforce energy conservation measures under a delegation of authority pursuant to Title 2 of the federal Emergency Energy Conservation Act of 1979, 42 U.S.C. Sections 8501 through 8541 (1979).

History: Laws 1980, ch. 107, § 4.

12-12-5. Termination [of emergency or alert].

Whenever the governor is satisfied that any energy emergency or energy supply alert no longer exists, he shall terminate the emergency or alert by another declaration. The declaration shall be published in such newspapers of the state and posted in such places as the governor deems appropriate.

History: Laws 1980, ch. 107, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For publication of legal notices, *see* 14-11-1 NMSA 1978 et seq.

12-12-6. Legislative extension; reduction; suspension.

In no event shall any executive order issued pursuant to the powers granted in Subsection B of Section 3 [12-12-3 NMSA 1978] of the Energy Emergency Powers Act continue in effect for more than one hundred twenty days unless extended, restricted or suspended by joint resolution of the legislature in regular, extraordinary or special session.

History: Laws 1980, ch. 107, § 6.

12-12-7. Penalties and enforcement.

Any person who violates any provision of the Energy Emergency Powers Act [12-12-1 to 12-12-9 NMSA 1978] or any provision of an executive order issued thereunder is, upon conviction, guilty of a misdemeanor. Every day of violation after notice of violation shall constitute a separate offense. The attorney general shall be responsible for prosecuting violations charged under the Energy Emergency Powers Act and may petition the district court for injunctive relief to prevent any future violation of that act.

History: Laws 1980, ch. 107, § 7.

ANNOTATIONS

Cross references. — For sentencing for misdemeanors, *see* 31-19-1 NMSA 1978.

12-12-8. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 39, § 1, repealed 12-12-8 NMSA 1978, relating to the July 1, 1983 termination of the Energy Emergency Powers Act.

12-12-9. Liberal interpretation.

The Energy Emergency Powers Act [12-12-1 to 12-12-9 NMSA 1978] shall be liberally construed to carry out its purpose.

History: Laws 1980, ch. 107, § 9.

12-12-10. Short title.

This act [12-12-10 to 12-12-16 NMSA 1978] may be cited as the "Emergency Petroleum Products Supply Act."

History: 1953 Comp., § 65-10-1, enacted by Laws 1974, ch. 22, § 1; 1978 Comp., § 70-8-1, recompiled as § 12-12-10 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 70-8-1 NMSA 1978 as 12-12-10 NMSA 1978, effective July 1, 2005.

12-12-11. Purpose and findings.

The legislature hereby determines that:

A. shortages of petroleum products caused by discontinuance or significant reductions of normal and customary availability in New Mexico of petroleum supplies create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods;

B. such hardships and dislocations are a threat to the public health, safety and welfare and can be averted or minimized through the operation of the Emergency Petroleum Products Supply Act [12-12-10 to 12-12-16 NMSA 1978];

C. the purpose of the Emergency Petroleum Products Supply Act is to avert or minimize such threats to the public health, safety and welfare; and

D. the preservation of existing marketing and distribution facilities of petroleum products in the state is necessary to prevent chaos and promote the public health, safety and welfare.

History: 1953 Comp., § 65-10-2, enacted by Laws 1974, ch. 22, § 2; 1978 Comp., § 70-8-2, recompiled as § 12-12-11 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 70-8-2 NMSA 1978 as 12-12-11 NMSA 1978, effective July 1, 2005.

12-12-12. Definitions.

As used in the Emergency Petroleum Products Supply Act [12-12-10 to 12-12-16 NMSA 1978]:

A. "petroleum products" means gasoline, aviation gasoline, kerosene, diesel fuels, heating oils, propane, butane and all other liquefied petroleum gases other than natural gasoline;

B. "supplier" means any person, except a small refiner, who sells, markets or distributes petroleum products in a refined state to any distributor in New Mexico;

C. "distributor" means any distributor, wholesaler, jobber, consignee, commission agent or other person, except a supplier's employee, who purchases or otherwise acquires possession of or an interest in petroleum products in New Mexico from a supplier for wholesale sale and not for retail sale or ultimate consumption;

D. "small refiner" means a refiner whose total refinery capacity, including the refinery capacity of any firm which controls, is controlled by or is under common control with such refiner, does not exceed fifty thousand barrels per day;

E. "monthly allocation" means the monthly amount of petroleum products sold or otherwise supplied to, for or in connection with a distributor in the same month of the calendar year next preceding the calendar year of the intended reduction or discontinuance. Reduction or increase in a monthly allocation shall not be considered in determining the monthly allocation for succeeding periods;

F. "to discontinue" means the failure or refusal to deliver a monthly allocation to a distributor for a period of six consecutive months unless such failure or refusal is the direct and proximate result of force majeure;

G. "to reduce" means the failure or refusal to deliver at least seventy-five percent of a monthly allocation to a distributor for a period of two consecutive months unless such failure or refusal is the direct and proximate result of force majeure; and

H. "force majeure" means an act of God or any other cause not reasonably within the control of the supplier.

History: 1953 Comp., § 65-10-3, enacted by Laws 1974, ch. 22, § 3; 1979, ch. 174, § 1; 1983, ch. 196, § 1; 1978 Comp., § 70-8-3, recompiled as § 12-12-12 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 70-8-3 NMSA 1978 as 12-12-12 NMSA 1978, effective July 1, 2005.

12-12-13. Consent as a condition of doing business.

Any supplier who commences business or continues to do business in New Mexico for a period of thirty days after the effective date of the Emergency Petroleum Products

Supply Act [12-12-10 to 12-12-16 NMSA 1978] is deemed to have consented to all the terms of the Emergency Petroleum Products Supply Act as a condition of doing business in New Mexico.

History: 1953 Comp., § 65-10-4, enacted by Laws 1974, ch. 22, § 4; 1978 Comp., § 70-8-4, recompiled as § 12-12-13 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 70-8-4 NMSA 1978 as 12-12-13 NMSA 1978, effective July 1, 2005.

Law reviews. — For note, "Access to Sunlight: New Mexico's Solar Rights Act," see 10 N.M.L. Rev. 169 (1979-80).

12-12-14. Prohibited acts.

Except in case of failure by any New Mexico distributor to substantially comply with the requirements imposed upon him by a contract or agreement with the supplier or except as first authorized by an agency of the federal government responsible for regulating allocations of petroleum products or except as provided in Section 12-12-15 NMSA 1978, it is unlawful for any supplier:

A. to discontinue monthly allocations of petroleum products to a New Mexico distributor, his successors in interest or qualified assigns; or

B. to reduce monthly allocations of petroleum products to a New Mexico distributor, his successors in interest or qualified assigns.

History: 1953 Comp., § 65-10-5, enacted by Laws 1974, ch. 22, § 5; 1979, ch. 174, § 2; 1978 Comp., § 70-8-5, recompiled as § 12-12-14 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 70-8-5 NMSA 1978 as 12-12-14 NMSA 1978, effective July 1, 2005.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 153, 161.

12-12-15. Exemption.

A supplier is authorized to reduce or discontinue monthly allocations of petroleum products with any New Mexico distributor if the supplier:

A. furnishes the distributor with an alternative source of monthly allocations of petroleum products of equal type, grade, quantity and equivalent delivery location or, in the event the distributor refuses to accept the alternative source; and

B. agrees to supply the distributor with monthly allocations of petroleum products for a period of thirty months after furnishing the distributor and the governor with notice of the tender of the alternative source of monthly allocations of petroleum products and of its intention to discontinue or reduce such allocations.

History: 1978 Comp., § 70-8-5.1, enacted by Laws 1979, ch. 174, § 3; recompiled as § 12-12-15 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 70-8-5.1 NMSA 1978 as 12-12-15 NMSA 1978, effective July 1, 2005.

12-12-16. Right of action; injunction; damages.

Whenever the attorney general of New Mexico, after complaint has been filed by any person alleging injury hereunder or upon his own initiative after investigation made, believes any supplier has violated, or is knowingly in violation of, the provisions of the Emergency Petroleum Products Supply Act [12-12-10 to 12-12-16 NMSA 1978], the attorney general shall bring an action to enjoin the violation in any district court of the state. Additionally, any person who shall be injured in his business or property by a violation of this act may bring an action to enjoin the violation and to recover all damages sustained thereby, including cost of suit and a reasonable attorney's fee, in any district court of the state. In an action for money damages, the court or jury may award punitive damages not to exceed three times the actual damages, if the violation is found to be willful.

History: 1953 Comp., § 65-10-6, enacted by Laws 1974, ch. 22, § 6; 1978 Comp., § 70-8-6, recompiled as § 12-12-16 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 70-8-6 NMSA 1978 as 12-12-16 NMSA 1978, effective July 1, 2005.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Plaintiff's rights to punitive or multiple damages when cause of action renders both available, 2 A.L.R.5th 449.

12-12-17. Short title.

Sections 12-12-17 through 12-12-30 NMSA 1978 may be cited as the "Hazardous Materials Emergency Response Act".

History: 1978 Comp., § 74-4B-1, enacted by Laws 1983, ch. 80, § 1; 1984, ch. 41, § 1; recompiled as § 12-12-17 by Laws 2005, ch. 22, § 4; 2007, ch. 291, § 25.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-1 NMSA 1978 as 12-12-17 NMSA 1978, effective July 1, 2005.

Compiler's notes. — Chapter 74, Article 4B was recompiled as part of Chapter 12, Article 12 by Laws 2005, ch. 24, § 4. At the time it was recompiled the Emergency Management Act consisted of Sections 74-4B-1, 74-4B-2, 74-4B-3, 74-4B-4, 74-4B-5, 74-4B-6, 74-4B-6.1, 74-4B-7, 74-4B-8, 74-4B-9, 74-4B-10, 74-4B-10.1, 74-4B-13 and 74-4B-14. These sections were recompiled as Sections 12-12-17 to 12-12-30 NMSA 1978.

Cross references. — For Voluntary Remediation Act, *see* Chapter 74, Article 4G NMSA 1978.

The 2007 amendment, effective July 1, 2007, changed the statutory reference and the title of the act.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Standing to sue for violation of state environmental regulatory statute, 66 A.L.R.4th 685.

Validity, construction, and application of state hazardous waste regulations, 86 A.L.R.4th 401.

State or local regulation of toxic substances as pre-empted by Toxic Substances Control Act (15 USCS § 2601 et seq.), 84 A.L.R. Fed. 913.

Third-party defense to liability under § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607), 105 A.L.R. Fed. 21.

12-12-18. Findings and purpose.

A. The legislature finds that the use of hazardous materials, including radioactive materials, and the transportation of such materials through or within New Mexico occurs on a daily basis, and, no matter how safety-conscious facilities, users, shippers or carriers are, accidents may occur. In the event of an accident, resource requirements may be beyond the capability of local governments, and the state must be prepared to respond quickly and effectively to protect the health and safety of its citizens and the environment.

B. It is the purpose of the Hazardous Materials Emergency Response Act [12-12-17 to 12-12-30 NMSA 1978] to:

(1) provide that adequate hazardous materials emergency management capability exists in the state to protect the health and safety of New Mexico citizens and the environment;

(2) delineate those state agencies that are responsible for responding to an accident and providing for the control and management of such an accident and to provide for the cooperation of other state agencies and local governments in emergency management; and

(3) provide for the formulation of a comprehensive hazardous materials emergency response plan that will be distributed statewide and that will be complied with by all persons who may be involved in responding to an accident.

History: 1978 Comp., § 74-4B-2, enacted by Laws 1983, ch. 80, § 2; recompiled as § 12-12-18 by Laws 2005, ch. 22, § 4; 2007, ch. 291, § 26.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-2 NMSA 1978 as 12-12-18 NMSA 1978, effective July 1, 2005.

The 2007 amendment, effective July 1, 2007, deleted former Subsection B.

12-12-19. Definitions.

As used in the Hazardous Materials Emergency Response Act [12-12-17 to 12-12-30 NMSA 1978]:

A. "accident" means an event involving hazardous materials that may cause injury to persons or damage to property or release hazardous materials to the environment;

B. "administrator" means the hazardous materials emergency response administrator;

C. "board" means the hazardous materials safety board;

D. "chief" means the chief of the New Mexico state police;

E. "commission" means the state emergency response commission;

F. "department" means the homeland security and emergency management department;

G. "emergency management" means the ability to prepare for, respond to, mitigate, recover and restore the scene of an institutional, industrial, transportation or other accident;

H. "first responder" means the first law enforcement officer or other public service provider with a radio-equipped vehicle to arrive at the scene of an accident;

I. "hazardous materials" means hazardous substances, radioactive materials or a combination of hazardous substances and radioactive materials;

J. "hazardous substances" means flammable solids, semisolids, liquids or gases; poisons; corrosives; explosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents, but does not include radioactive materials;

K. "orphan hazardous materials" means hazardous substances, radioactive materials, a combination of hazardous substances and radioactive materials or substances used in the manufacture of controlled substances in violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] where an owner of the substances or materials cannot be identified;

L. "plan" means the statewide hazardous materials emergency response plan;

M. "radioactive materials" means any material or combination of materials that spontaneously emits ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material are not considered to be radioactive materials unless determined to be so by the hazardous and radioactive materials bureau of the water and waste management division of the department of environment for purposes of emergency response pursuant to the Hazardous Materials Emergency Response Act;

N. "responsible state agency" means an agency designated in Subsection D of Section 12-12-21 NMSA 1978 with responsibility for managing a certain type of accident or performing certain functions at the scene of such accident; and

O. "secretary" or "state director" means the state director of homeland security and emergency management.

History: 1978 Comp., § 74-4B-3, enacted by Laws 1983, ch. 80, § 3; 1984, ch. 41, § 2; 1986, ch. 62, § 1; 1989, ch. 149, § 10; 1992, ch. 5, § 1; 1997, ch. 152, § 1; 1997, ch. 231, § 1; recompiled as § 12-12-19 by Laws 2005, ch. 22, § 4; 2007, ch. 291, § 27.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-3 NMSA 1978 as 12-12-19 NMSA 1978, effective July 1, 2005.

Cross references. — For chief of the New Mexico state police, *see* 29-2-3 NMSA 1978.

The 2007 amendment, effective July 1, 2007, redefined "department" to mean the homeland security and emergency management department and defined "secretary" or "state director" to mean the state director of homeland security and emergency management.

The 1997 amendment, effective July 1, 1997, inserted "or hazardous substances used in the manufacture of controlled substances in violation of the Controlled Substances Act" and made related stylistic changes in Subsection K.

The 1992 amendment, effective May 20, 1992, substituted "that" for "which" in Subsection A; added present Subsection F; redesignated former Subsections F through I as present Subsections G through J; added present Subsection K; redesignated former Subsections K through N as present Subsections M through P; and, in Subsection M, substituted "that" for "which" in the first sentence, and substituted all of the present language of the second sentence beginning with "hazardous" for "radiation protection bureau of the environmental improvement division of the health and environment department for purposes of emergency response pursuant to the Emergency Management Act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Establishing "release or threatened release" of hazardous substance from facility for purposes of liability pursuant to § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607), 120 A.L.R. Fed. 1

12-12-20. State responsibility for management of accidents; immunity from liability; cooperative agreements; private property.

A. The state director shall have final authority to administer the provisions of the Hazardous Materials Emergency Response Act [12-12-17 to 12-12-30 NMSA 1978].

B. As between state and local governments, the state government has the primary responsibility for the management of an accident, and the local government in whose jurisdiction the accident occurs shall assist the state in its management of the accident.

C. Nothing in the Hazardous Materials Emergency Response Act shall be construed as a waiver or alteration of the immunity from liability granted under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] or as a waiver of any other immunity or privilege under law.

D. The state, through the state director or state director's designee, may enter into cooperative agreements with county and municipal governments for the management of accidents based on the severity of the accident and the resources of the local government. The plan shall set forth the criteria for determining when an accident may be managed by the local government in whose jurisdiction the accident occurred.

E. The state director shall support emergency response capabilities by assisting local and state responders in the acquisition of equipment, training and hazardous materials information.

F. The state, through the state director or state director's designee, may enter into cooperative agreements with the federal government, Indian tribes and pueblos and bordering states for assistance in the management of accidents.

G. Whenever an accident appears imminent or has occurred, employees or authorized persons of responsible state agencies as defined in Section 12-12-21 NMSA 1978 are authorized to enter upon any premises for the purpose of determining whether it is necessary for emergency management procedures to be implemented. The state on-scene coordinator or a responsible state agency may take full control and custody of the premises for the purpose of managing the accident.

History: 1978 Comp., § 74-4B-4, enacted by Laws 1983, ch. 80, § 4; 1984, ch. 41, § 3; 1986, ch. 62, § 2; 1989, ch. 149, § 11; 1996, ch. 37, § 9; recompiled as § 12-12-20 by Laws 2005, ch. 22, § 4; 2007, ch. 291, § 28.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-4 NMSA 1978 as 12-12-20 NMSA 1978, effective July 1, 2005.

The 2007 amendment, effective July 1, 2007, changed references from the "Emergency Management Act" to the "Hazardous Materials Emergency Response Act".

The 1996 amendment, effective July 1, 1996, added Subsection E, redesignated the remaining subsections, and, in Subsection G, deleted "buildings or" preceding "premises" in the first sentence and substituted "the premises" for "such building and premises" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — State or local regulation of transportation of hazardous materials as pre-empted by Hazardous Materials Transportation Act (49 U.S.C.S. § 1801 et seq.), 78 A.L.R. Fed. 289.

12-12-21. State police emergency response officer; procedure for notification; cooperation of other state agencies and local governments.

A. The state director, in addition to having final authority to administer the provisions of the Hazardous Materials Emergency Response Act, shall be responsible for central coordination and communication in the event of an accident.

B. The chief shall designate one or more persons to be known as "state police emergency response officers". A state police emergency response officer shall be

trained in accident evaluation and emergency response and shall be available to answer an emergency response call from the first responder.

C. In the event of an accident, if the first responder is a law enforcement officer, the officer shall immediately notify the state police district emergency response officer in the officer's area, who shall in turn immediately notify the state police emergency response center. If the first responder is a person with radio capability tied into radio communications protocol or reporting structure with the department of information technology, the person shall immediately notify Santa Fe control, who shall in turn immediately notify the state police emergency response center. The state police emergency response center shall:

(1) evaluate and determine the scope of the accident based on information provided by the first responder;

(2) instruct the first responder on how to proceed at the accident scene;

(3) immediately notify the state director and the appropriate responsible state agency and advise it of the necessary response;

(4) notify the sheriff or chief of police in whose jurisdiction the accident occurred; and

(5) coordinate field communications and summon additional resources requested by the emergency management team.

D. The responsible state agencies shall be:

(1) the New Mexico state police division of the department of public safety for coordination, law enforcement and traffic and crowd control;

(2) the department of environment for assistance with accidents involving hazardous materials or hazardous substances;

(3) the state fire marshal's office for assistance with any accident involving hazardous materials;

(4) the injury prevention and emergency medical services bureau of the public health division of the department of health for assistance with accidents involving casualties;

(5) the homeland security and emergency management department and the department of military affairs for assistance with accidents that require the evacuation of the vicinity of the accident or the use of the national guard of New Mexico; and

(6) the department of transportation for assistance with road closures, designating alternate routes and related services.

E. Other state agencies and local governments shall assist the responsible state agencies when requested to do so.

F. Any driver of a vehicle carrying hazardous materials involved in an accident that may cause injury to persons or property or any owner, shipper or carrier of hazardous materials involved in an accident who has knowledge of such accident or any owner or person in charge of any building, premises or facility where such an accident occurs shall immediately notify the New Mexico state police division of the department of public safety by the quickest means of communication available.

History: 1978 Comp., § 74-4B-5, enacted by Laws 1983, ch. 80, § 5; 1984, ch. 41, § 4; 1986, ch. 62, § 3; 1989, ch. 149, § 12; recompiled as § 12-12-21 by Laws 2005, ch. 22, § 4; 2007, ch. 290, § 11; 2007, ch. 291, § 29.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-5 NMSA 1978 as 12-12-21 NMSA 1978, effective July 1, 2005.

Cross references. — For the environmental improvement division, *see* 9-7A-4 NMSA 1978.

For the state fire marshal's office, *see* 59A-52-1 NMSA 1978.

2007 Multiple Amendments. — Laws 2007, ch. 290, § 11 and Laws 2007, ch. 291, § 29 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2007, ch. 291, § 29, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2007, ch. 68, § 2 and Laws 2007, ch. 69, § 6 are described below. To view the session laws in their entirety, *see* the 2007 session laws on *NMOneSource.com*.

Laws 2007, ch. 291, § 29, effective July 1, 2007, changed "secretary" to "state director" and "Emergency Management Act" to "Hazardous Materials Emergency Response Act".

Laws 2007, ch. 290, § 11, effective July 1, 2007, required a first responder with radio capability tied into the radio communications protocol or reporting structure with the department of information technology to notify Santa Fe control in the event of an accident.

Reporting of train accidents involving hazardous cargo. — A state corporation commission (now public regulation commission) rule requiring telephonic reporting to the state police of train accidents involving hazardous cargo was not in conflict with this article, nor was it inconsistent with federal regulations promulgated under the federal

Hazardous Materials Transportation Act. *Southern Pac. Transp. Co. v. Corp. Comm'n*, 1986-NMSC-091, 105 N.M. 145, 730 P.2d 448.

Actions of officer upheld. — Actions of state police emergency officer and state police emergency response center were not violative of this section. *Caillouette v. Hercules, Inc.*, 1992-NMCA-008, 113 N.M. 492, 827 P.2d 1306, cert. denied, 113 N.M. 352, 826 P.2d 573.

12-12-22. Repealed.

History: 1978 Comp., § 74-4B-6, enacted by Laws 1983, ch. 80, § 6; 1984, ch. 41, § 5; 1986, ch. 62, § 4; 1987, ch. 268, § 41; 1989, ch. 149, § 13; recompiled as § 12-12-22 by Laws 2005, ch. 22, § 4; repealed by Laws 2007, ch. 291, § 36.

ANNOTATIONS

Repeals. — Laws 2007, ch. 291, § 36 repealed 12-12-22 NMSA 1978, as enacted by Laws 1983, ch. 80, § 6, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

Laws 2007, ch. 290, § 12 amended this section, making the secretary of information technology a member of the emergency management task force. The section was set out as repealed by Laws 2007, ch. 291, § 36. *See* 12-1-8 NMSA 1978.

12-12-23. Hazardous materials emergency response administrator; created; duties.

The position of "hazardous materials emergency response administrator" is created within the homeland security and emergency management department. The state director shall assign the administrator's duties.

History: 1978 Comp., § 74-4B-6.1, enacted by Laws 1984, ch. 41, § 6; 1986, ch. 149, § 14, recompiled as § 12-12-23 by Laws 2005, ch. 22, § 4; 2007, ch. 291, § 30.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-6.1 NMSA 1978 as 12-12-23 NMSA 1978, effective July 1, 2005.

The 2007 amendment, effective July 1, 2007, eliminated references to the public safety department.

12-12-24. Training officers.

Each responsible state agency shall designate one person who is knowledgeable in the area of hazardous materials accident response, as it applies to the functions of that agency, to be its training officer. It is the duty of the training officer to teach the appropriate personnel within the agency the proper methods of discharging the agency's responsibilities in responding to hazardous materials accidents. The training officer is also responsible for providing cross-training to personnel of other responsible state agencies and other persons as may be required by the hazardous materials safety board.

History: 1978 Comp., § 74-4B-7, enacted by Laws 1983, ch. 80, § 7, recompiled as § 12-12-24 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-7 NMSA 1978 as 12-12-24 NMSA 1978, effective July 1, 2005.

12-12-25. Hazardous materials safety board; creation; duties.

A. There is created the "hazardous materials safety board", composed of the training officers of the responsible state agencies. The chairman of the board shall be elected by the members of the board.

B. The board shall, at the direction of the state emergency response commission:

(1) establish a curriculum of accident response training for the personnel of each responsible state agency designed to implement the plan adopted by the task force;

(2) certify to each responsible state agency those persons who have completed the training curriculum or parts of the curriculum;

(3) meet at least every four months to review the training needs of each responsible state agency and formulate a plan to meet those needs;

(4) conduct, under the direction and administration of the state fire marshal, an annual comprehensive training course for all appropriate personnel from responsible state agencies, other state agencies and local governments, which course shall include teaching the basic duties, responsibilities and procedures of responsible state agencies, other state agencies and local governments;

(5) in conjunction with the task force, prepare and submit to the state emergency response commission a budget for statewide training needs; and

(6) cooperate with and assist the task force as requested, including providing the task force with any requested information regarding safety and training of emergency response personnel.

History: 1978 Comp., § 74-4B-8, enacted by Laws 1983, ch. 80, § 8; 1984, ch. 41, § 7; 1986, ch. 62, § 6; 1989, ch. 149, § 15, recompiled as § 12-12-25 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-8 NMSA 1978 as 12-12-25 NMSA 1978, effective July 1, 2005.

Cross references. — For the state fire marshal, *see* 59A-52-1 NMSA 1978.

12-12-26. Accident review; report.

After any hazardous materials accident which required the presence of an emergency management team, including a local government team pursuant to a cooperative agreement, the board shall meet to review the performance of the team and to establish the probable cause of the accident. The board shall report its findings to the task force and the local government in whose jurisdiction the accident occurred; provided, however, the conclusions contained in the report shall not be admissible in evidence in any court proceeding to prove or disprove the negligence of any party found by the report to have contributed to the cause of the accident. The report shall be filed with the state corporation commission [public regulation commission] and the administrator.

History: 1978 Comp., § 74-4B-9, enacted by Laws 1983, ch. 80, § 9; 1984, ch. 41, § 8; recompiled as § 12-12-26 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-9 NMSA 1978 as 12-12-26 NMSA 1978, effective July 1, 2005.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that references to the state corporation commission be construed as references to the public regulation commission.

12-12-27. Clean-up.

Nothing in the Hazardous Materials Emergency Response Act [12-12-17 to 12-12-30 NMSA 1978] shall be construed to relieve hazardous materials owners, shippers or

carriers of their responsibilities and liability in the event of an accident. Such persons shall assist the state as requested in responding to an accident and are responsible for restoring the scene of the accident to the satisfaction of the state.

History: 1978 Comp., § 74-4B-10, enacted by Laws 1983, ch. 80, § 10; recompiled as § 12-12-27 by Laws 2005, ch. 22, § 4; 2007, ch. 291, § 31.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-10 NMSA 1978 as 12-12-27 NMSA 1978, effective July 1, 2005.

The 2007 amendment, effective July 1, 2007, changed the title of the act.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Third-party defense to liability under § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607), 105 A.L.R. Fed. 21.

Arranger liability of sellers pursuant to § 107(a)(3) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)(3)), 125 A.L.R. Fed. 315.

Arranger liability of state government under § 107(a) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)), 130 A.L.R. Fed. 431.

Arranger liability of nongenerators pursuant to § 107(a)(3) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)(3)), 132 A.L.R. Fed. 77.

Liability of local government under § 107(a) of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USCS § 9607(a)), 133 A.L.R. Fed. 293.

What constitutes "disposal" for purposes of owner or operator liability under § 107(a)(2) of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USCS § 9607(a)(2)), 136 A.L.R. Fed. 117.

Private entity's status as owner or operator under § 107 (a)(1,2) of Comprehensive Environmental Response, and Liability Act (42 USCS § 9607 (a)(1,2)) (CERCLA), 140 A.L.R. Fed. 181.

Equitable allocation of response costs in contribution action under § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USCA § 9613(f): Factors affecting response cost liability of generator, broker or arranger, and transporter in single waste stream cases, 146 A.L.R. Fed. 363.

Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.A. § 9613(f)(1): multiple waste streams, 162 A.L.R. Fed. 371.

12-12-28. Good Samaritan law.

A. Notwithstanding any provision of law to the contrary, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened release of hazardous materials, or in preventing, cleaning up or disposing or attempting to prevent, clean up or dispose of such release, shall be subject to civil liabilities or penalties of any type.

B. The immunity provided for in Subsection A of this section does not apply to any person:

(1) whose act or omission caused, in whole or in part, the actual or threatened release of hazardous materials and who would otherwise be liable; or

(2) who receives compensation other than reimbursement for out-of-pocket expenses for his services in rendering assistance or advice.

C. Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from that person's gross negligence or reckless, wanton or intentional misconduct.

History: 1978 Comp., § 74-4B-10.1, enacted by Laws 1984, ch. 41, § 9; recompiled as § 12-12-28 by Laws 2005, § 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-10.1 NMSA 1978 as 12-12-28 NMSA 1978, effective July 1, 2005.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 57A Am. Jur. 2d Negligence §§ 98, 114, 115.

Construction and application of "Good Samaritan" statutes, 68 A.L.R.4th 294.

12-12-29. Orphan material recovery fund established.

A. There is created in the state treasury the "orphan material recovery fund". The fund shall be invested as other state funds are invested. All money remaining in the orphan material recovery fund at the end of any fiscal year shall remain in that fund.

B. The department shall administer the orphan material recovery fund. Money in the fund is appropriated to the department for the purpose of contracting for the disposal of orphan hazardous materials:

(1) held in the possession of the department; and

(2) identified by state emergency response officers.

C. Any expenditures made from the orphan material recovery fund that are recovered from the party responsible for the orphan hazardous materials shall be credited to the fund.

D. If the cost of disposing orphan hazardous materials exceeds the balance available in the orphan material recovery fund, the secretary is authorized to seek and the state board of finance is authorized to disburse funds from the state board of finance emergency fund in an amount necessary to cover the deficit in the orphan material recovery fund.

History: 1978 Comp., § 74-4B-13, enacted by Laws 1992, ch. 5, § 2; recompiled as § 12-12-29 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-13 NMSA 1978 as 12-12-29 NMSA 1978, effective July 1, 2005.

12-12-30. Cleanup of orphan hazardous materials; department recourse; appeal.

The department may assess charges against a party identified as responsible for orphan hazardous materials, for costs the department incurs in cleanup of the orphan hazardous materials and for damage to state property. Amounts received in payment of assessments for cleanup of the orphan hazardous materials shall be deposited in the orphan material recovery fund. Amounts received in payment of assessments for damage to state property shall be used to repair the damage. A person who is assessed charges pursuant to this section may appeal the assessment to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1978 Comp., § 74-4B-14, enacted by Laws 1992, ch. 5, § 3; 1998, ch. 55, § 92; 1999, ch. 265, § 94; recompiled as § 12-12-30 by Laws 2005, ch. 22, § 4.

ANNOTATIONS

Recompilations. — Laws 2005, ch. 22, § 4 recompiled 74-4B-14 NMSA 1978 as 12-12-30 NMSA 1978, effective July 1, 2005.

Cross references. — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see* Zamora v. Village of Ruidoso Downs, 120 N.M. 778, 907 P.2d 182 (1995).

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in the last sentence.

The 1998 amendment, effective September 1, 1998, inserted "; appeal" in the section heading, substituted "a party identified as" for "persons" and rewrote the last sentence.

ARTICLE 12A
Uniform Emergency Volunteer Health Practitioners Act

12-12A-1. Short title.

This act [12-12A-1 to 12-12A-13 NMSA 1978] may be cited as the "Uniform Emergency Volunteer Health Practitioners Act".

History: Laws 2008, ch. 47, § 1.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-2. Definitions.

As used in the Uniform Emergency Volunteer Health Practitioners Act:

A. "disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(1) is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government or the homeland security and emergency management department; or

(2) regularly plans and conducts its activities in coordination with an agency of the federal government or the homeland security and emergency management department;

B. "emergency" means an event or condition that is an emergency, disaster, public health emergency or similar event or condition pursuant to the laws of this state;

C. "emergency declaration" means a declaration of emergency issued by a person authorized to do so pursuant to the laws of this state;

D. "Emergency Management Assistance Compact" means the interstate compact approved by congress by Public Law No. 104-321, 110 Stat. 3877 and codified at Sections 12-10-14 and 12-10-15 NMSA 1978;

E. "entity" means a person other than an individual;

F. "health facility" means an entity licensed pursuant to the laws of this or another state to provide health or veterinary services;

G. "health practitioner" means an individual licensed pursuant to the laws of this or another state to provide health or veterinary services;

H. "health services" means the provision of treatment, care, advice or guidance, or other services or supplies, related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(1) the following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care; and

(b) counseling, assessment, procedures or other services;

(2) the sale or dispensing of a drug, a device, equipment or another item to an individual in accordance with a prescription; and

(3) funeral, cremation, cemetery or other mortuary services;

I. "host entity" means an entity operating in this state that uses volunteer health practitioners to respond to an emergency;

J. "license" means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. "License" includes authorization pursuant to the laws of this state to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity;

K. "person" means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity;

L. "scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority;

M. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

N. "veterinary services" means the provision of treatment, care, advice or guidance, or other services or supplies, related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(1) the diagnosis, treatment or prevention of an animal disease, injury or other physical or mental condition by the prescription, administration or dispensing of a vaccine, medicine, surgery or therapy;

(2) the use of a procedure for reproductive management; and

(3) the monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans; and

O. "volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. "Volunteer health practitioner" does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

History: Laws 2008, ch. 47, § 2.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-3. Applicability to volunteer health practitioners.

The Uniform Emergency Volunteer Health Practitioners Act applies to volunteer health practitioners registered with a registration system that complies with Section 5 [12-12A-5 NMSA 1978] of that act and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

History: Laws 2008, ch. 47, § 3.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-4. Regulation of services during emergency.

A. While an emergency declaration is in effect, the homeland security and emergency management department may limit, restrict or otherwise regulate:

(1) the duration of practice by volunteer health practitioners;

(2) the geographical areas in which volunteer health practitioners may practice;

(3) the types of volunteer health practitioners who may practice; and

(4) any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

B. An order issued pursuant to Subsection A of this section may take effect immediately, without prior notice or comment.

C. A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

(1) consult and coordinate its activities with the homeland security and emergency management department to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(2) comply with any laws other than the Uniform Emergency Volunteer Health Practitioners Act relating to the management of emergency health or veterinary services, including the Emergency Medical Services Act [Chapter 24, Article 10B NMSA 1978] and the All Hazard Emergency Management Act [12-10-1 to 12-10-10 NMSA 1978].

History: Laws 2008, ch. 47, § 4.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-5. Volunteer health practitioner registration systems.

A. To qualify as a volunteer health practitioner registration system, a system shall:

(1) accept applications for the registration of volunteer health practitioners before or during an emergency;

(2) include information about the licensure and good standing of health practitioners that is accessible by authorized persons;

(3) be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided pursuant to the Uniform Emergency Volunteer Health Practitioners Act; and

(4) meet one of the following conditions:

(a) be an emergency system for advance registration of volunteer health care practitioners established by a state and funded through the health resources services administration pursuant to Section 319I of the federal Public Health Service Act, 42 U.S.C. Section 247d-7b, as amended;

(b) be a local unit consisting of trained and equipped emergency response, public health and medical personnel formed pursuant to Section 2801 of the Public Health Service Act, 42 U.S.C. Section 300hh, as amended;

(c) be operated by a: 1) disaster relief organization; 2) licensing board; 3) national or regional association of licensing boards or health practitioners; 4) health facility that provides comprehensive inpatient and outpatient health care services, including a tertiary care and teaching hospital; or 5) governmental entity; or

(d) be designated by the homeland security and emergency management department as a registration system for purposes of the Uniform Emergency Volunteer Health Practitioners Act.

B. While an emergency declaration is in effect, the homeland security and emergency management department, a person authorized to act on behalf of the homeland security and emergency management department or a host entity may confirm whether volunteer health practitioners used in this state are registered with a registration system that complies with Subsection A of this section. Confirmation is limited to obtaining identities of the volunteer health practitioners from the system and determining whether the system indicates that the volunteer health practitioners are licensed and in good standing.

C. Upon request of a person in this state authorized pursuant to Subsection B of this section or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the volunteer health practitioners are licensed and in good standing.

D. A host entity is not required to use the services of a volunteer health practitioner even if the volunteer health practitioner is registered with a registration system that indicates that the volunteer health practitioner is licensed and in good standing.

History: Laws 2008, ch. 47, § 5.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-6. Recognition of volunteer health practitioners licensed in other states.

A. While an emergency declaration is in effect, a volunteer health practitioner registered with a registration system that complies with Section 5 [12-12A-5 NMSA 1978] of the Uniform Emergency Volunteer Health Practitioners Act and licensed and in good standing in the state upon which the volunteer health practitioner's registration is based may practice in this state to the extent authorized by that act as if the volunteer health practitioner were licensed in this state.

B. A volunteer health practitioner qualified pursuant to Subsection A of this section is not entitled to the protections of the Uniform Emergency Volunteer Health Practitioners Act if the volunteer health practitioner is licensed in more than one state and any license of the volunteer health practitioner is suspended, revoked or subject to an agency order limiting or restricting practice privileges or has been voluntarily terminated under threat of sanction.

History: Laws 2008, ch. 47, § 6.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-7. No effect on credentialing and privileging.

A. As used in this section:

(1) "credentialing" means obtaining, verifying and assessing the qualifications of a health practitioner to provide treatment, care or services in or for a health facility; and

(2) "privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care or services at

a health facility subject to limits based on factors that include license, education, training, experience, competence, health status and specialized skill.

B. The Uniform Emergency Volunteer Health Practitioners Act does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

History: Laws 2008, ch. 47, § 7.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-8. Provision of volunteer health or veterinary services; administrative sanctions.

A. Subject to Subsections B and C of this section, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts or other laws of this state.

B. Except as otherwise provided in Subsection C of this section, the Uniform Emergency Volunteer Health Practitioners Act does not authorize a volunteer health practitioner to provide services that are outside the volunteer health practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.

C. The homeland security and emergency management department may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to the Uniform Emergency Volunteer Health Practitioners Act. An order pursuant to this subsection may take effect immediately, without prior notice or comment.

D. A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to the Uniform Emergency Volunteer Health Practitioners Act.

E. A volunteer health practitioner does not engage in unauthorized practice unless the volunteer health practitioner has reason to know of any limitation, modification or restriction pursuant to the provisions of this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) the volunteer health practitioner knows the limitation, modification or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) from all the facts and circumstances known to the volunteer health practitioner at the relevant time, a reasonable person would conclude that the limitation, modification or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

F. In addition to the authority granted by law of this state other than the Uniform Emergency Volunteer Health Practitioners Act to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) may impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;

(2) may impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

G. In determining whether to impose administrative sanctions pursuant to Subsection F of this section, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience and specialized skill.

History: Laws 2008, ch. 47, § 8.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-9. Relation to other laws.

A. The Uniform Emergency Volunteer Health Practitioners Act does not limit rights, privileges or immunities provided to volunteer health practitioners by laws other than the Uniform Emergency Volunteer Health Practitioners Act. Except as otherwise provided in Subsection B of this section, the Uniform Emergency Volunteer Health Practitioners Act does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact [12-10-14, 12-10-15 NMSA 1978].

B. The homeland security and emergency management department, pursuant to the provisions of the Emergency Management Assistance Compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state, a political subdivision of this state or a municipality or other local government within this state.

History: Laws 2008, ch. 47, § 9.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-10. Regulatory authority.

The homeland security and emergency management department may promulgate rules to implement the Uniform Emergency Volunteer Health Practitioners Act. In doing so, the homeland security and emergency management department shall consult with and consider the recommendations of the entity established to coordinate the implementation of the Emergency Management Assistance Compact [12-10-14, 12-10-15 NMSA 1978] and shall also consult with and consider rules promulgated by similarly empowered agencies in other states to promote uniformity of application of the Uniform Emergency Volunteer Health Practitioners Act and make the emergency response systems in the various states reasonably compatible.

History: Laws 2008, ch. 47, § 10.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-11. Rights, privileges and immunities for volunteer health practitioners.

A volunteer health practitioner providing health or veterinary services pursuant to the Uniform Emergency Volunteer Health Practitioners Act is entitled to all the rights, privileges or immunities provided by the laws of this state other than the Uniform Emergency Volunteer Health Practitioners Act.

History: Laws 2008, ch. 47, § 11.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-12. Workers' compensation coverage.

A. As used in this section, "injury" means a physical or mental injury or disease for which an employee of this state who is injured or contracts the disease in the course of the employee's employment would be entitled to benefits under the workers' compensation law of this state.

B. A volunteer health practitioner who provides health or veterinary services pursuant to the Uniform Emergency Volunteer Health Practitioners Act and who is not otherwise eligible for benefits for injury or death under the workers' compensation law of this or another state may elect to be deemed an employee of this state for the purpose of receiving such benefits by making a claim in accordance with the workers' compensation law of this state.

C. The department of health shall promulgate and adopt rules, enter into agreements with other states or take other measures to facilitate the receipt of benefits for injury or death under the workers' compensation law of this state by volunteer health practitioners who reside in other states and may waive or modify requirements for filing, processing and paying claims that unreasonably burden the practitioners. To promote uniformity of application of the Uniform Emergency Volunteer Health Practitioners Act with other states that enact similar legislation, the department of health shall consult with and consider the approaches to filing, processing and paying claims taken by agencies with similar authority in other states.

History: Laws 2008, ch. 47, § 12.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

12-12A-13. Uniformity of application and construction.

In applying and construing the Uniform Emergency Volunteer Health Practitioners Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: Laws 2008, ch. 47, § 13.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 47, § 14 made the Uniform Emergency Volunteer Health Practitioners Act effective July 1, 2008.

ARTICLE 12B
Emergency Gas Pilot Relighting

12-12B-1. Short title.

This act [12-12B-1 to 12-12B-4 NMSA 1978] may be cited as the "Emergency Gas Pilot Relighting Act".

History: Laws 2011, ch. 104, § 1.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 104 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

12-12B-2. Definitions.

As used in the Emergency Gas Pilot Relighting Act:

A. "gas pilot relighting technician" means an individual who has successfully completed a program pursuant to Section 3 [12-12B-3 NMSA 1978] of the Emergency Gas Pilot Relighting Act;

B. "natural gas" means any combustible vapor composed chiefly of hydrocarbons occurring naturally; and

C. "program" means a program for training and certifying persons to relight pilot lights for residential equipment and appliances pursuant to Section 3 of the Emergency Gas Pilot Relighting Act.

History: Laws 2011, ch. 104, § 2.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 104 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

12-12B-3. Certification program.

The higher education department and the regulation and licensing department shall recommend to appropriate institutions of higher learning a program for training and certifying individuals to relight pilot lights for residential equipment and appliances. Upon satisfactory completion of such a program, an individual shall be certified as a gas pilot

relighting technician and be issued a certificate attesting to the person's completion of the program, which certificate shall expire after five years. The regulation and licensing department shall adopt rules specifying the content of the training program, requirements for successful completion of the program and the process for certification of an individual as a gas pilot relighting technician.

History: Laws 2011, ch. 104, § 3.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 104 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

12-12B-4. Declaration of emergency or disaster; employment of gas pilot relighting technicians; reimbursement.

A. Upon a declaration by the governor of an emergency or disaster, a person certified as a journeyman plumber or journeyman gas fitter pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] may employ no more than five gas pilot relighting technicians during the period of the declared emergency or disaster.

B. A gas pilot relighting technician employed by a journeyman plumber or journeyman gas fitter pursuant to Subsection A of this section shall be an employee of the journeyman plumber or journeyman gas fitter and shall be covered by liability insurance provided by the journeyman plumber or journeyman gas fitter.

C. The duties of a gas pilot relighting technician employed by a journeyman plumber or journeyman gas fitter pursuant to Subsection A of this section shall be limited to work directly related to the relighting of pilot lights for residential equipment and appliances serving residences with not more than four dwelling units.

D. If authorized in the declaration of emergency or disaster issued by the governor and subject to funds being made available pursuant to such a declaration, the secretary of homeland security and emergency management may adopt rules permitting state funds to be used to pay the cost of journeyman plumbers, journeyman gas fitters or gas pilot relighting technicians for services rendered during the declared period of the emergency or disaster to restore natural gas service to residences within the area covered by the declaration of emergency or disaster.

History: Laws 2011, ch. 104, § 4.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 104 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

ARTICLE 13
New Mexico Border Act (Repealed.)

12-13-1 to 12-13-7. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 9, § 8 repealed 12-13-1 to 12-13-7 NMSA 1978, effective July 1, 2003, relating to New Mexico Border Act. For provisions of former sections, *see* the 2002 NMSA 1978 on *NMOneSource.com.* For similar present provisions, *see* 12-13A-1 NMSA 1978 et seq.

ARTICLE 13A
New Mexico-Chihuahua Commission

12-13A-1. Short title.

This act [12-13A-1 to 12-13A-6 NMSA 1978] may be cited as the "New Mexico-Chihuahua Commission Act".

History: Laws 2003, ch. 9, § 1.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 9, § 9 made Laws 2003, ch. 9, § 1 effective July 1, 2003.

12-13A-2. Purposes.

The purposes of the New Mexico-Chihuahua Commission Act are to establish a framework in which New Mexico and the state of Chihuahua, Mexico, can work to develop mutually beneficial programs to resolve challenges along the international border common to both states, to maximize the possibilities for economic development and to open and institutionalize lines of communication between the public and private sector leaders of the states.

History: Laws 2003, ch. 9, § 2.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 9, § 9 made Laws 2003, ch. 9, § 2 effective July 1, 2003.

12-13A-3. Definitions.

As used in the New Mexico-Chihuahua Commission Act:

A. "Chihuahua" means the state of Chihuahua, Mexico; and

B. "commission" means the New Mexico-Chihuahua commission.

History: Laws 2003, ch. 9, § 3.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 9, § 9 made Laws 2003, ch. 9, § 3 effective July 1, 2003.

12-13A-4. New Mexico-Chihuahua commission created; members; administration.

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

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

(1) the governor of New Mexico;

(2) the secretary of economic development;

(3) the secretary of tourism;

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

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

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

D. The economic development department shall provide administrative assistance to the commission as needed.

E. The economic development department shall keep records of commission proceedings.

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

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

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

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

J. The public members of the commission appointed by the governor of New Mexico shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for performance of official duties required by the commission and shall receive no other compensation, perquisite or allowance.

History: Laws 2003, ch. 9, § 4.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 9, § 9 made Laws 2003, ch. 9, § 4 effective July 1, 2003.

12-13A-5. Powers and duties.

A. The commission shall provide a forum for discussion and resolution of issues of mutual concern to the governments of New Mexico and Chihuahua.

B. The commission may:

(1) identify projects that can be cooperatively pursued by New Mexico and Chihuahua;

(2) create avenues of communication between New Mexico and Chihuahua concerning cultural, artistic, economic and industrial affairs;

(3) confer with New Mexican and Chihuahuan cultural, artistic, economic and industrial leaders to determine the best methods and procedures to carry out the provisions of the New Mexico-Chihuahua Commission Act;

(4) promote legislation to further the goals of the commission; and

(5) communicate with state or province international commissions in other states or nations in order to obtain information about successful international intergovernmental cooperative activities or models.

C. The governor of New Mexico may negotiate with appropriate officials from Chihuahua to create cooperative projects to be implemented by Chihuahua and New Mexico or to resolve issues of mutual concern to New Mexico and Chihuahua. The governor may implement the agreements reached through those negotiations or projects developed, provided that an agreement that has a fiscal impact on New Mexico and requires an appropriation shall require an act of the legislature.

History: Laws 2003, ch. 9, § 5.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 9, § 9 made Laws 2003, ch. 9, § 5 effective July 1, 2003.

12-13A-6. Conflict of interest.

A member of the commission who performs a function or duty pursuant to the New Mexico-Chihuahua Commission Act shall not have a direct or indirect financial interest in an activity undertaken by the commission.

History: Laws 2003, ch. 9, § 6.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 9, § 9 made Laws 2003, ch. 9, § 6 effective July 1, 2003.

ARTICLE 13B
New Mexico-Sonora Commission

12-13B-1. Short title.

This act [12-13B-1 to 12-13B-5 NMSA 1978] may be cited as the "New Mexico-Sonora Commission Act".

History: Laws 2009, ch. 108, § 1.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 108, § 6 made Laws 2009, ch. 108, § 1 effective July 1, 2009.

12-13B-2. Definitions.

As used in the New Mexico-Sonora Commission Act:

A. "commission" means the New Mexico-Sonora commission; and

B. "Sonora" means the state of Sonora, Mexico.

History: Laws 2009, ch. 108, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 108, § 6 made Laws 2009, ch. 108, § 2 effective July 1, 2009.

12-13B-3. New Mexico-Sonora commission created; members; administration.

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

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

(1) the governor of New Mexico;

(2) the secretary of economic development;

(3) the secretary of tourism;

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

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

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

D. The economic development department shall provide administrative assistance to the commission as needed.

E. The economic development department shall keep a record of commission proceedings.

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

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

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

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

J. The public members of the commission appointed by the governor of New Mexico shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for performance of official duties required by the commission and shall receive no other compensation, perquisite or allowance.

History: Laws 2009, ch. 108, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 108, § 6 made Laws 2009, ch. 108, § 3 effective July 1, 2009.

12-13B-4. Powers and duties.

A. The commission shall provide a forum for discussion and resolution of issues of mutual concern to the governments of New Mexico and Sonora.

B. The commission may:

(1) identify projects that can be cooperatively pursued by New Mexico and Sonora;

(2) create avenues of communication between New Mexico and Sonora concerning cultural, artistic, public safety, economic and industrial affairs;

(3) confer with New Mexican and Sonoran cultural, artistic, public safety, economic and industrial leaders to determine the best methods and procedures to carry out the provisions of the New Mexico-Sonora Commission Act;

(4) promote legislation to further the goals of the commission; and

(5) communicate with state or provincial international commissions in other states or nations in order to obtain information about successful international intergovernmental cooperative activities or models.

C. The governor of New Mexico may negotiate with appropriate officials from Sonora to create cooperative projects to be implemented by New Mexico and Sonora or to resolve issues of mutual concern to New Mexico and Sonora. The governor may implement the agreements reached through those negotiations or projects developed, provided that an agreement that has a fiscal impact on New Mexico and requires an appropriation shall require an act of the legislature.

History: Laws 2009, ch. 108, § 4.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 108, § 6 made Laws 2009, ch. 108, § 4 effective July 1, 2009.

12-13B-5. Conflict of interest.

A member of the commission who performs a function or duty pursuant to the New Mexico-Sonora Commission Act shall not have a direct or indirect financial interest in an activity undertaken by the commission.

History: Laws 2009, ch. 108, § 5.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 108, § 6 made Laws 2009, ch. 108, § 5 effective July 1, 2009.

ARTICLE 14
New Mexico Diamond Jubilee and Bicentennial Commission (Repealed.)

12-14-1 to 12-14-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1986, ch. 83, § 2E repealed 12-14-1 to 12-14-7 NMSA 1978, as enacted by Laws 1986, ch. 83, relating to the diamond jubilee and bicentennial commission, effective December 31, 1989.

ARTICLE 15
Constitutional Revision Commission (Expired.)

12-15-1 to 12-15-7. Expired.

ANNOTATIONS

Expired provisions. — Sections 12-15-1 to 12-15-7 NMSA 1978, as enacted by Laws 1993, ch. 271, §§ 1 to 7, have been omitted from the NMSA 1978 since the constitutional revision commission expired after filing its report pursuant to 12-15-4 NMSA 1978 prior to the convening of the second session of the forty-second legislature.

ARTICLE 16
Intertribal Indian Ceremonial

12-16-1. Short title.

Chapter 12, Article 16 NMSA 1978 may be cited as the "Intertribal Indian Ceremonial Act".

History: Laws 2005, ch. 219, § 1; 2006, ch. 19, § 1; 1978 Comp., § 9-15C-1, recompiled and amended as § 12-16-1 by Laws 2023, ch. 144, § 1.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 1 recompiled and amended former 9-15C-1 NMSA 1978 as 12-16-1 NMSA 1978, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, changed the name of the Intertribal Ceremonial Act to the Intertribal Indian Ceremonial Act; changed "Chapter 9, Article 15C" to "Chapter 12, Article 16"; and after "Intertribal", added "Indian".

Temporary provisions. — Laws 2023, ch. 144, § 6, effective July 1, 2023, provided:

A. On July 1, 2023, all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property of the intertribal ceremonial office of the tourism department are transferred to the local government division of the department of finance and administration.

B. On July 1, 2023, all contractual obligations of the intertribal ceremonial office of the tourism department are binding on the local government division of the department of finance and administration.

C. On July 1, 2023, all references in law to the intertribal ceremonial office of the tourism department shall be deemed to be references to the intertribal Indian ceremonial association of the local government division of the department of finance and administration.

The 2006 amendment, effective March 2, 2006, added the NMSA 1978 statutory reference of the act.

12-16-2. Definitions.

As used in the Intertribal Indian Ceremonial Act:

A. "association" means the intertribal Indian ceremonial association;

B. "county" means the governing body of McKinley county;

C. "director" means the director of the association; and

D. "fund" means the intertribal Indian ceremonial association fund.

History: Laws 2005, ch. 219, § 2; 2006, ch. 19, § 2; 1978 Comp., § 9-15C-2, recompiled and amended as § 12-16-2 by Laws 2023, ch. 144, § 2.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 2 recompiled and amended former 9-15C-2 NMSA 1978 as 12-16-2 NMSA 1978, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, effective July 1, 2023, defined "association" and "county", revised the definition of "director" and removed the definitions of "department," "office" and "secretary"; in the introductory clause, after "Intertribal", added "Indian", deleted former Subsection A, which defined "department", added new Subsections A and B and redesignated former Subsections B and C as Subsections C and D, respectively; in Subsection C, after "director of the", deleted "intertribal ceremonial office" and added "association; and"; in Subsection D, after "intertribal", added "Indian", and after "ceremonial", added "association"; and deleted former Subsections D and E, which defined "office" and "secretary", respectively.

The 2006 amendment, effective March 2, 2006, added Subsection E to define secretary to mean the secretary of tourism.

12-16-3. Intertribal Indian ceremonial association created; powers and duties; intertribal Indian ceremonial association board created.

A. The "intertribal Indian ceremonial association" is created. The association is administratively attached to the local government division of the department of finance and administration.

B. The county shall appoint a director, who shall serve at the pleasure of the county. The director shall hire and terminate other necessary employees, who shall be subject to the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

C. The director shall:

(1) work with private, local, state and federal entities to establish steady funding for the intertribal Indian ceremonial;

(2) supervise the activities of the association;

(3) work with the county to promote the intertribal Indian ceremonial; and

(4) prepare an annual budget and an annual report on the activities of the association.

D. The association shall:

(1) administer an annual intertribal Indian ceremonial;

(2) cooperate with and assist public and private entities that seek to promote recognition of ceremonies significant to Indian nations, tribes and pueblos;

(3) function as the coordinating association for all services and activities pertaining to the intertribal Indian ceremonial;

(4) adopt rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the duties of the association;

(5) accept gifts, grants, donations, bequests and devises from any source to be used to carry out its duties;

(6) enter into contracts; and

(7) charge admission, parking and concessions fees, give prizes and premiums, create sponsorships and other forms of advertising, arrange entertainments and do all things the association may consider proper for the conduct of the intertribal Indian ceremonial and not otherwise prohibited by law.

E. The "intertribal Indian ceremonial association board" is created. The board shall consist of nine members, including the director, who shall serve ex officio, and eight members, appointed by the county, who shall serve terms of five years each. All intertribal Indian ceremonial association board members shall be bona fide residents of the county or surrounding counties, and at least a majority of the members shall be Native American. A board member shall not be removed during the term of office except for cause, following notice and an opportunity for a hearing.

History: Laws 2005, ch. 219, § 3; 2006, ch. 19, § 3; 1978 Comp., § 9-15C-3, recompiled and amended as § 12-16-3 by Laws 2023, ch. 144, § 3.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 3 recompiled and amended former 9-15C-3 NMSA 1978 as 12-16-3 NMSA 1978, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, administratively attached the intertribal Indian ceremonial association to the local government division of the department of finance and administration, revised the duties of the director, changed the name of the intertribal ceremonial board to the intertribal Indian ceremonial association board, removed appointment power from the governor and gave the county the power to appoint a director and members of the intertribal Indian ceremonial association board, and revised the membership composition of the intertribal Indian ceremonial association board; in the section heading, added "Indian", deleted "office" and added "association", and added "intertribal Indian ceremonial association board created"; after each occurrence of "intertribal", added "Indian", and substituted each occurrence of "office" with "association"; in Subsection A, after "administratively attached to the", deleted "department" and added "local government division of the department of finance and administration"; in Subsection B, after "The", deleted "governor" and added "county", and after "pleasure of the", deleted "governor" and added "county"; in Subsection C, Paragraph C(1), after "work with", deleted "the department" and added "private, local, state and federal entities", in Paragraph C(3), after "work with the", deleted "department" and added "county"; in Subsection D, Paragraph D(2), after "Indian", added "nations"; and in Subsection E, after each occurrence of "ceremonial", added "association", after "shall consist of", deleted "eight" and added "nine", after "shall serve ex officio", deleted "the secretary or the secretary's designated representative and six" and added "and eight", after "appointed by the", deleted "governor" and added "county", after "five years each", deleted "provided that the governor's first appointments shall be made of two board members for one-year terms, two for two-year terms, one for a three-year term and one for a four-year term", and after "bona fide residents of the", deleted "state" and added "county or surrounding counties".

Temporary provisions. — Laws 2023, ch. 144, § 5, effective July 1, 2023, provided that the terms of office of the members serving on the intertribal Indian ceremonial association board shall end on July 1, 2023, and new members shall be appointed for a term of office that shall begin on July 2, 2023 according to the provisions of Section 12-16-3 NMSA 1978.

The 2006 amendment, effective March 2, 2006, added Subsection D(7) to provide that the office shall charge fees, give prizes and premiums, create sponsorships and advertising, arrange entertainments and do all things for the conduct of the intertribal ceremonial; and added the provision to Subsection E to increase the number of members of the board from seven members to eight members, including the director who shall serve ex officio, the secretary or the secretary’s designated representative and six members appointed by the governor.

12-16-4. Intertribal Indian ceremonial association fund created; administration.

The "intertribal Indian ceremonial association fund" is created in the state treasury. Money appropriated to the fund or accruing to it through sales, gifts, grants, fees, penalties, bequests or any other source shall be delivered to the state treasurer and deposited in the fund. Money in the fund is subject to appropriation to the local government division of the department of finance and administration for the purpose of carrying out the intertribal Indian ceremonial. Money in the fund at the end of any fiscal year shall not revert. Interest and earnings from the fund shall be credited to the fund. Disbursements from the fund shall be made on warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or the director's authorized representative.

History: Laws 2005, ch. 219, § 4; 2006, ch. 19, § 4; 1978 Comp., § 9-15C-4, recompiled and amended as § 12-16-4 by Laws 2023, ch. 144, § 4.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 4 recompiled and amended former 9-15C-4 NMSA 1978 as 12-16-4 NMSA 1978, effective July 1, 2023.

The 2023 amendment, effective July 1, 2023, changed the name of the intertribal ceremonial fund to the intertribal Indian ceremonial association fund, and provided that money in the fund is subject to appropriation to the local government division of the department of finance and administration; in the section heading, added "intertribal Indian ceremonial association"; after each occurrence of "intertribal", added "Indian", after "ceremonial", added "association", after "Money in the fund is", deleted "appropriated" and added "subject to appropriation", and after "to the", deleted "office" and added "local government division of the department of finance and administration".

The 2006 amendment, effective March 2, 2006, deleted the former provisions that money in the fund is appropriated to the intertribal ceremonial office and that the fund consists of appropriations, gifts, grants donation, bequests and devises; added the provisions that money appropriated to the fund or accruing to it through sales, gifts, grants, fees, penalties, bequests or other sources shall be delivered to the state treasurer and deposited in the fund and that money in the fund is appropriated to the office to carry out the intertribal ceremonial; and deleted the provision that the fund shall be administered by the office.

12-16-5. Compensation.

Members of the intertribal ceremonial board shall be reimbursed for per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: Laws 2005, ch. 219, § 5; 1978 Comp., § 9-15C-5, recompiled as § 12-16-5 by Laws 2023, ch. 144, § 7.

ANNOTATIONS

Recompilations. — Laws 2023, ch. 144, § 7 recompiled former 9-15C-5 NMSA 1978 as 12-16-5 NMSA 1978, effective July 1, 2023.