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**NEW
MEXICO
LAW
REVIEW**

SPECIAL EDITION

**NEW MEXICO
LEGISLATIVE SURVEY**

Vol. 1

April 1974

No. 1

A REVIEW OF LAWS ENACTED BY
THE 1974 LEGISLATURE.

COMMENTS

THE OPEN MEETINGS LAW
THE NEW SCHOOL FORMULA
THE REPEAL OF LITTLE NEPA

A Special Edition
of the
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THE NEW MEXICO LEGISLATIVE SURVEY

Vol. 1

April 1974

No. 1

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FOREWORD

Probably the most frequent complaint made about law reviews in general is that they fail to publish articles of value to the practicing bar. Probably the most frequent complaint made about the New Mexico Statutes Annotated is that the pocket supplements are not published until three or four months after the laws have gone into effect -- usually seven months after the bills are signed into law.

In recognition of these complaints and in an effort to provide a service to the New Mexico bar, the Law Review is publishing a summary of all legislation passed by the legislature during the 1974 session. The survey will briefly analyze all bills passed and provide more substantial analysis of major legislation. The primary goal is to alert the bar to changes made in the law by the legislature. Once it is determined that a change has been made by the legislature, the researcher can check the slip laws at his or her local court library.

The first issue of the survey is distributed free of charge to all members of the New Mexico bar and the New Mexico legislature. The continued existence of this survey depends on your use and acceptance. We invite your suggestions for improvement.

Steven Sanders
Editor-in-Chief
New Mexico Law Review
Natural Resources Journal and
The New Mexico Legislative Survey

EDITOR'S NOTE

An editor's note or foreward is always that section of a publication where the editor graciously accepts total responsibility for all ideas and materials contained in the body of the about-to-be-read work and acknowledges a long list of those who suffered through the publication effort with the author. However, in good faith I cannot claim total responsibility for this particular effort. The idea of a New Mexico Legislative Survey was Dean Fred Hart's. A number of us were excited by the Dean's idea and decided to try it. We hope you like it. We hope you find it useful.

We make no express warranties.* This is a new project and we expect and hope you'll have a number of suggestions to make the New Mexico Legislative Review more useful.

We began with a number of assumptions which may be of use in reading the Survey. First, we did not attempt to be political reporters. Obviously, with three gubernatorial candidates in the Senate, politics was a factor in this year's session. Where we thought it appropriate, we mention this fact, but we make no attempt to give any comprehensive explanation of this year's results in terms of the political forces at work. We leave that for Wayne Scott and Fred Buckles.

Secondly, with the exception of our three major articles, we make no concerted effort to criticize the legislation or the members of the legislature. Our primary purpose was to inform the reader what happened to the laws in Santa Fe in 1974 and not to harangue the reader with long discourses on how we feel about the particular legislation. We did choose three pieces of legislation

which in our opinion were particularly significant -- the open meetings law, the repeal of the Environmental Improvement Act, and the new school formula -- for major analysis. We felt there should be plenty of freedom in the major comments for the writer to vent some spleen or express admiration. Otherwise, we have tried to keep editorializing to a minimum.

A note also is in order on organization. We tried to arrange the acts by subject and the classification system was necessarily arbitrary. You may disagree with certain of our selections. We might even agree.

Finally, we have included at the end of the survey a list of sections repealed, sections amended, sections repealed and reenacted, and sections substantially effected. This may prove to be the most useful tool in the Survey. At least, we hope it's helpful.

Lastly, I must thank some people. Staffers Connie Borkenhagen, Catherine Goldberg and Diane Potter who, like this editor, expected a maximum of 35 bills to pass the 1974 session and watched in horror as nearly 100 emerged, did a terrific job. Thanks also to Professor Anne Bingaman who made her legislation class Student's legislative papers available to us; to Charles McCash, second year law student, who made his research on the Environmental Improvement Act available to us (his efforts will be published as a Comment in the July edition of the Natural Resources Journal); to Wendy Bowman who typed the whole thing; to the law school print shop staff who had the major responsibility for, what else, printing the issue; to the current editors and staffers of the New Mexico Law Review and Natural Resources Journal who agreed to try the idea, provide the staff and leave us alone to make our own mistakes; and to Gary O'Dowd of the Institute of Public Law and Service for providing us with copies of the act as quickly as possible.

And, of course, to Fred Hart for having such a vision

MARIAN MATTHEWS

* In fact, we must admit that two acts -- HB23 relating to workman's compensation and SB7 relating to income tax refunds -- have been inadvertently omitted.

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AGRICULTURE AND RANCHING

An Act Exempting Gross Receipts from Training Livestock from the Gross Receipts Tax; HB57

Effective Date: May 15
Chief Sponsor: Rep. Lenton Malry, D-Bernalillo
Vote: House, 42-21, Senate, 33-3.

This act amends § 72-16A-12.7 N.M. Stat. Ann. 1953 to exempt gross receipts from training livestock from the gross receipts tax. Already exempted are receipts derived from feeding, pasturing, penning or handling livestock prior to sale.

* * * * *

An Act Creating a State Department of Agriculture; SB35

Effective Date: EMERGENCY
Chief Sponsor: Sen. Frank O. Papen, D-Dona Ana
Vote: Senate, 30-6; House 53-0.

This act legalizes the de facto New Mexico department of agriculture and gives it an organizational framework under the control of the New Mexico State University board of regents. The department has been in existence since 1955, but its legislative creation was necessitated by an opinion by the Attorney General that the constitutional provision for such a department was "not self-executing," A.G. Opin. 73-20. Article XV, Section 1 of the New Mexico Constitution permits creation of such a department under control of the N.M.S.U. regents.

* * * * *

An Act Creating a Livestock Research Center; SB24

Effective Date: May 15
Chief Sponsor: Sen. John L. Morrow, D-Colfax, Harding, San Miguel, Union
Vote: Senate, 31-0; House, 55-2.

This act appropriates \$300,000 to the New Mexico State University Agricultural experiment station to acquire cattle and feed, facilities and pens and hire personnel for a livestock nutrition and management research center. The funds may be spent in the 62nd, 63rd and 64th fiscal years. Research emphasis is on diseases of cattle in the pre-feeding stage.

CAPITAL EXPENDITURES

An Act Appropriating Funds for Construction of State Buildings; SB56

Effective Date: EMERGENCY

Chief Sponsor: Sen. Aubrey L. Dunn, D-Otero

Vote: Senate, 33-3; House, 46-21.

This act appropriates monies from the state general fund to designated recipients for construction and improvement of certain state buildings and facilities.

The sum of \$1,500,000 is appropriated to the New Mexico State University board of regents to construct a building for the department of agriculture, a state agency, on the N.M.S.U. campus. Senate bill 35, enacted by the 1974 legislature established the New Mexico department of agriculture under the control of the board of regents of N.M.S.U.

A \$27,000 appropriation is made to the supreme court building commission to air condition the law library.

A total of \$1,258,700 is appropriated to the capital program fund for the following projects:

- (1) \$30,000 to seal and paint buildings in the law enforcement complex, Santa Fe;
- (2) \$84,000 to pave and improve streets adjoining state office buildings and to improve access to state parking lots in Santa Fe;
- (3) \$400,000 to remodel the Bataan Memorial Building, Santa Fe;
- (4) \$600,000 to assist in meeting material and construction costs for new state office buildings in Alamogordo, Clovis and Santa Fe;
- (5) \$109,000 to meet additional costs for the new state police building in Mesilla Park; and
- (6) \$35,700 to improve the palace of the governors and the anthropology laboratory of the New Mexico museum.

* * * * *

An Act Appropriating Funds for Capital Improvements; SB54

Effective Date: EMERGENCY

Chief Sponsor: Sen. Aubrey L. Dunn, D-Otero

Vote: Senate, 38-1; House, 54-7.

This act appropriates \$2.2 million from the general fund for various capital improvements.

The sum of \$303,000 is appropriated to Highlands University for construction of a field house.

The state armory board is to receive \$72,000 for improvement of armories.

Finally, \$1,840,000 is appropriated to the capital program fund for the following expenditures:

- (1) \$860,000 to assist with construction costs of a combined laboratory for the state medical investigator, the environmental improvement agency and the health and social services department;

(2) \$130,000 to assist in meeting costs for constructing and equipping a therapy pool at the Los Lunas hospital and training school;

(3) \$300,000 for improvement of certain designated hospital facilities under the hospitals and institutions department; and

(4) \$550,000 for construction of a new Bernalillo county office building for the health and social services department.

EDUCATION

An Act Relating to Public School Financing; HB85

Effective Date: July 1

Chief Sponsor: Rep. William Warren, D-Bernalillo

Vote: House, 55-14; Senate, 33-7.

The distribution of funds for public education necessarily involves figures and formulas. The 1974 Public School Finance Act has plenty of both. But computations should not hide the fact that finding is a pocket-book application of educational philosophy. The New Mexico legislature has indicated that it believes that the quality of a child's education should not be dependent upon the wealth of his or her community, but rather is the concern of the entire state.

State government has assumed a much larger proportion of the burden of financing public education. Payments will be based on figures supplied by local school officials. Each school district will be required to keep accurate and permanent records of membership.

The superintendent must furnish to the department of education and, upon request, to the chief of the public school finance division attendance reports for each 20-day period and cumulative reports for 40 days, 80 days and the entire school year. The state superintendent of schools polices the reporting process and if a school district fails to comply, funds are withheld.

That sanction is perhaps inevitable, for without membership figures the chief cannot determine the allocations to each school district. The chief begins with the average daily membership (ADM), computed by taking the total enrollment of students for each school day of the school year, subtracting students withdrawn or absent for at least ten consecutive days, and dividing the result by the number of school days in the year.

To the ADM, the chief applies a cost differential factor. This factor is a recognition of the fact that different types of education require different expenditures. Taking a basic program in grades four through six as the basis, or 1.0, the cost differential factor for grades one through three is 1.1, for grades seven through nine is 1.2, and for grades ten through 12 is 1.4.

Multiplying the ADM in each grade by the appropriate cost differential factor gives the number of program units for the basic program. A similar process reveals the number of program units each school is entitled to for

its early childhood education, special education, vocational training and bilingual-multicultural education programs. The sum of the program units for these types of education is then multiplied by an instructional staff training and experience index. This process adjusts the level of funding to reflect the higher salaries paid to teachers with experience and more academic training.

The number of program units that results from this multiplication will be the total for many school districts. But schools with ADM of less than 200 and districts with ADM of less than 4000 will get additional program units to compensate for some expenses that occur chiefly in sparsely settled areas. And schools that utilize and pay for private special education for the severely handicapped will also get additional program units.

The operation of the various cost differential factors is expected to transform, for the purposes of funding, 285,000 students into about 360,000 program units statewide. The legislature determines the dollar value to be placed on each unit. In a school district, the program cost will be the number of program units to which it is entitled multiplied by the dollar value of a unit.

The purpose of the state equalization guarantee distribution is to insure that each school district has operating revenue equal to its program cost. The state's share will be the total program cost minus 95 percent of the district's local and federal revenues. Local revenues are the amount that would be raised by a property tax rate of \$8.925 per \$1000 of net taxable value and the district's share of motor vehicle fees. Federal revenues include forest reserve funds, moneys received in federal impact areas (PL 874 funds) and grants pursuant to the United States Vocational Education Act of 1963.

In addition to the equalization guarantee, the chief can distribute funds for transportation, to pay out-of-state tuition, to help districts with financial emergencies, and for special vocational education. The funds will come out of the public school fund, which is fed by appropriations and by federal mineral leasing revenues. Should it prove insufficient to make equalization guarantee distributions, a state support reserve fund of \$5 million will be available.

So that no school district will suffer a drastic reduction in funds available per student when the new formula takes effect, there is temporary provision for a safe harmless distribution, to be phased out within six years.

The most controversial portion of the act is that allowing federal revenues to be taken into account in determining the state equalization guarantee. Similar provisions in educational funding laws in Virginia, Kansas, South Dakota, Nebraska and California have been declared unconstitutional as violative of the supremacy clause of the United States Constitution. The theory is that to avoid a possible breakdown of administration caused by inconsistent state laws, it is necessary that the laws of the United States be dominant over those of any state. Additionally, the activities of the federal government are free from regulation by the states. The courts have held that Congress in writing the law providing impact area funds decided what amount of money was necessary to compensate the affected district. When states consider these funds in their own formulas, they are substituting their judgment for that of the federal government and are interfering with the operation of a federal statute. Since the first invalidation of a funding formula in Shepherd v. Godwin, 280 F.Supp. 869 (1968), Congress

has amended PL 874 so that no impact area payments may be made to school districts in states where the presence of the federal money would cause a reduction on the amount of aid from the state government.

Under current law it would seem that the provision of the New Mexico formula requiring that federal impact area funds be considered as a source of operating revenues to local school districts would result in loss of the federal money. However, the Dole amendment, in effect for the 1973-74 fiscal year, provided that no local educational agency would be deprived of PL 874 funds if that local agency was in a state which after June 30, 1972, had adopted a program of state aid for free public education designed to equalize expenditures for education among local educational agencies in that state. The United States Office of Education is seeking repeal of the restrictive portion of PL874 and clearly supports allowing states to establish equalization programs taking into account PL874 funds as local revenues. Unless these funds are considered, equalized spending is impossible. If the New Mexico provision taking federal funds into account does operate to the state's disadvantage, it can be dropped, because of a severability clause, without affecting other portions of the act.

Local school district should not find compliance with the requirements of the act onerous. The department of education is required to furnish the forms for reporting attendance. School boards may find that they have more responsibility and flexibility in deciding which special programs will serve their districts best. Fewer state funds will be limited to use in a specific manner; instead local schools will receive funding, by way of extra program units, for whichever services they decide to provide.

The distribution mechanism is one which can be easily adapted to changing educational needs in the state. The dollar value per program unit can be changed by the legislature as the level of support needed varies. Even the use of the cost differential factors to weight various parts of the educational system cannot adequately reflect all differences in actual costs between schools. But if the need for changes in the weighting system becomes apparent as the formula is administered, those changes can easily be made.

The act appears to be a sincere and competent attempt to equalize educational spending. The state has realized that variations on wealth in different parts of the state make it impossible for some districts to educate their children adequately. It has accepted expanded responsibilities with a well-seasoned plan for fulfilling them that could truly lead to greater educational equality.

DIANE POTTER

An Act Relating to State Board of Education Approval of School Construction; HB25

Effective Date: May 15
Chief Sponsor: Rep. William Warren, D-Bernalillo
Vote: Senate, 34-0; House, 59-0.

This act reduces the number of instances in which local school boards must secure approval from the state board of education to expend funds to erect, remodel or add to public school buildings or structures. Only expenditures of \$25,000 or more for such construction will require approval of the state board and such approval will relate only to educational aspects of the construction.

* * * * *

An Act Relating to Compulsory School Attendance; HB44

Effective Date: May 15
Chief Sponsor: Rep. William Warren, D-Bernalillo
Vote: Senate, 33-0; House, 65-0.

This act changes the age at which children in New Mexico are required to begin school. In school districts without approved early childhood education programs (kindergartens), a child must attend school if he will be at least six years of age prior to January 1 of the school year. In districts having such programs, a child must attend school if he is six years of age by December 1, 1974, for the school year 1974-75; by November 1, 1975 for the school year 1975-76; by October 1, 1976 for the school year 1976-77; and by September 1, 1977 for the school year 1977-78 and all succeeding school years.

* * * * *

An Act Relating to Technical and Vocational Institutes; HB60

Effective Date: May 15
Chief Sponsor: Rep. Abel McBride D-Bernalillo
Vote: Senate, 29-0; House, 60-0.

This act increases the amount of state support to vocational and technical institutes from not more than \$300 to not less than \$325 per full-time equivalent student.

* * * * *

An Act Relating to Educational Finance; HB59

Effective Date: May 15
Chief Sponsor: Rep. Abel McBride, D-Bernalillo
Vote: Senate, 36-0; House, 59-0.

This act amends Section 73-33-14.2 to increase state support to junior colleges. The previous statute had permitted the board of educational finance to budget not more than \$300 for each full-time equivalent student in a junior college. Now the board must distribute at least \$325 per full-time equivalent student.

* * * * *

An Act Requiring a Uniform System of Accounting for Institutions of Higher Education; SB32

Effective Date: EMERGENCY
Chief Sponsor: C.B. Trujillo, D-Taos, Mora & San Miguel
Vote: Senate, 36-0; House, 67-0.

This act directs the board of educational finance to compile a manual prescribing a uniform system for classifying accounts, budgeting, and reporting funds. When approved by the legislative finance committee and filed in accordance with the State Records Act, the requirements of the manual and subsequent revisions or amendments will have the force of law. All state educational institutions except the New Mexico schools for the deaf and for the visually handicapped must comply. The uniform system of budgeting and reporting must be implemented by July 1, 1974; the uniform classification of accounts by July 1, 1975.

* * * * *

An Act Funding the Defense of the New Public School Formula; SB72

Effective Date: EMERGENCY
Chief Sponsor: Sen. Bob Wood, D-Roosevelt, Chavez
Vote: Senate, 27-4; House, 47-14.

This act provides the department of finance and administration with \$25,000 for use in supporting or defending the state equalized public school finance program.

* * * * *

An Act Relating to Educational Retirement ; HB19

Effective Date: July 1
Chief Sponsor: Rep. William O'Donnell, D-Dona Ana
Vote: Senate, 36-0; House, 65-0.

This Act updates the Educational Retirement Act, Sections 77-9-1 to 77-9-45 N.M. Stat. Ann. 1953. It provides new conditions for determining eligibility for and amounts of retirement benefits for teachers who retire on or after July 1, 1974. Each member's contribution to the retirement fund is increased from 4 percent to 5 1/2 percent of his or her annual salary. All persons currently receiving benefits pursuant to the Educational Retirement Act will receive a 4 percent increase effective July 1, 1974.

* * * * *

An Act Relating to Vocational Education Transportation; HB66

Effective Date: July 1
Chief Sponsor: Rep. Dan Berry, D-Lea
Vote: Senate, 36-0; House, 64-1.

This act allows local school boards providing vocational education to request the establishment of school bus routes to transport students to the sites of vocational programs. Cost of the routes will be paid from the state public school fund, subject to the same requirements as regular and special transportation distributions.

* * * * *

An Act Relating to Public School Capital Outlay; SB57, 37

Effective Date: EMERGENCY
Chief Sponsor: Sen. Aubrey Dunn, D-Otero
Vote: Senate, 34-0; House, 48-0.

This act appropriates \$2 million to the public school capital outlay fund to provide aid to local school districts for construction of school facilities. Funds which had been payable to the emergency capital outlay fund, which is now abolished, will also be credited to the public school capital outlay fund.

The state board of education will approve applications for money in the fund, based on numerical priorities to be established by the public school capital outlay advisory council. No school district will be eligible for the assistance if it has a remaining bonding capacity of \$200,000 or more, has unbudgeted balances of over 5 percent of proposed operational fund expenditures, or has not maintained an adequate property reappraisal program.

An Act Funding Construction at the Luna Area Vocational School ; HB70

Effective Date: EMERGENCY

Chief Sponsor: Rep. Samuel F. Vigil, D-San Miguel

Vote: Senate, 30-2; House, 62-0.

Chapter 301 of the Laws 1971 authorized the construction, expansion and remodeling of school buildings and school grounds at Luna area vocational school. This act appropriates from the state general fund to the state department of public education \$192,000 for such construction during the 62nd and 63rd fiscal years. There is no longer a requirement that expenditures be matched by federal funds.

* * * * *

An Act Funding the Development Training Act ; SB38

Effective Date: July 1

Chief Sponsor: Sen. Otis Echols, D-Curry

Vote: Senate, 38-0; House, 48-0.

The Development Training Act of 1972 Sections 73-42-1 to 73-42-6 N.M. Stat. Ann. 1953, provided for state funding of in-plant job training programs in new or expanding industries in New Mexico. SB38 appropriates from the general fund to the department of education \$300,000 to carry out the provisions of the Development Training Act in the 63rd fiscal years. This appropriation compares with \$250,000 granted in the 61st fiscal year and \$170,000 in the 62nd fiscal year.

* * * * *

An Act Providing for Continuation of the University Study Committee ; SB16

Effective Date: EMERGENCY

Chief Sponsor: Sen. Alex G. Martinez D-Santa Fe

Vote: Senate, 38-0; House, 52-1.

This act provides for the continuation during the 63rd fiscal year of the 11 member joint interim University Study Committee established by Laws 1970, Chapter 88. The purpose of the committee is to inquire into the policies and administrative structures of state-supported institutions of higher learning and related administrative agencies. Members are appointed by the legislative council and will report to the 1975 session of the legislature. A total of \$50,000 is appropriated for salaries and expenses of committee members.

* * * * *

An Act Authorizing Use of School Buses for Public Transportation ; SB42

Effective Date: EMERGENCY

Chief Sponsor: John Rogers, D-Los Alamos, Santa Fe

Vote: Senate 29-0; House, 50-1.

This act, entitled the Emergency Transportation Act, provides that the state corporation commission may approve applications for use of school buses for general public transportation if a public transportation emergency exists, other transportation systems will not be adversely affected, and requirements governing transportation of the general public are met.

Notice of approval by the corporation commission will be sent to the state transportation director who can grant permits if he determines that school bus service to the students will not be adversely affected and that there will be no unnecessary duplication of transportation services. The transportation director can issue and require compliance with regulations providing for fees, forms, and permit procedures.

Permits are renewable yearly, except that a permit may be terminated upon 30-days notice when one of the conditions for its granting no longer exists. Buses operating under a permit will be subject only to those provisions of the motor carrier regulations which apply to school buses.

ELECTIONS

An Act Amending the Form of Primary Election Nominating Petitions ; HB46

Effective Date: EMERGENCY

Chief Sponsor: Rep. T. E. Brown, Jr., D-Eddy, Chavez

Vote: House, 66-0; Senate, 23-0.

This act amends Section 3-8-24.1 N.M. Stat. Ann. 1953 to remove some of the exacting standards for nominating petitions for candidates in primary elections. Thus, petitions may be "approximately" 8 1/2 inches x 14 inches in size, with lines "approximately" 3/8 inches apart.

All sheets must be firmly secured. In short, petitions must only be "substantially" in the statutory form.

* * * * *

An Act Providing for Automatic Appointment of Deputy Registration Officers; HB39

Effective Date: May 15
Chief Sponsor: Rep. Bobby Duran, D-Taos
Vote: House, 63-0, Senate, 35-0.

This act amends Section 3-4-38 N.M. Stat. Ann. 1953 relating to the appointment of deputy registration officers by county boards of registration. The amendment provides that all persons listed by county chairmen, from major and minor political parties, and submitted to the county board of registration for appointment as registrars, are automatically appointed deputy registration officers if the board fails to act within 14 days.

* * * * *

An Act Lowering Filing Fees for Officers in H-Class or Incorporated Counties; SB8

Effective Date: EMERGENCY
Chief Sponsor: Sen. John D. Rogers, D-Los Alamos, Santa Fe
Vote: Senate, 34-0; House, 67-0.

This act amends Section 3-8-26 N.M. Stat. Ann. 1953 to allow a \$5, rather than a \$50, filing fee for county officers in H-Class or incorporated counties under Art. 10, Sec. 5, of the New Mexico Corporation. Incorporated counties are those with less than 144 square miles and 10,000 or more inhabitants. H-Class counties are 144 square miles or less.

* * * * *

An Act Relating to Write-In Votes; HB40

Effective Date: EMERGENCY
Chief Sponsor: Rep. Bobby Duran, D-Taos
Vote: House, 47-18, Senate, 21-1.

This act amends two sections of the Election Code -- Sections 3-8-24.7 and 3-12-36 N.M. Stat. Ann. 1953 -- to decrease the time a write-in candidate has to declare for a primary election and to assure the counting of write-in votes in primary elections.

Under the amended law, a write-in candidate must file a declaration of intent on the seventh day preceding the date for filing a declaration of candidacy for the primary election. Prior to the change, write-in candidates could

declare their candidacy up to the 22nd day preceding the primary election. Sponsors of the change maintained that the petition system of candidate qualification made it unfair to permit a person to file as a write-in candidate so close to the election without having to secure signatures on petitions for a place on the ballot.

The act applies to the primary election for U.S. Senator, U.S. Representative, all state-wide offices, state representative, state senator, district judge, district attorney, state board of education and magistrate judge.

The amendment to Section 3-12-36 removes the previous inconsistency in the statutes regarding the validity of write-in votes in primary elections by deleting language to the effect that such ballots are valid only in general elections.

ENVIRONMENT, ENERGY AND NATURAL RESOURCES

An Act Creating the Emergency Petroleum Products Supply Act; HB96

Effective Date: EMERGENCY

Chief Sponsor: Rep. George Fettinger, D-Otero

Vote: House, 65-0; Senate, 32-3.

In direct response to the energy crisis, this act seeks to prohibit any supplier of petroleum products from discontinuing or reducing petroleum allocations in the state unless required to do so by any federal or state law or regulation.

The act covers all petroleum products used in connection with vehicular transportation or heating purposes. Suppliers include persons who sell, market or distribute petroleum products in the state for resale.

Four acts are prohibited:

- 1) discontinuing allocations of petroleum products to the state;
- 2) reducing allocations to less than the amount sold or supplied during the corresponding period of 1972;
- 3) failing to notify the attorney general at least 60 days in advance of discontinuing or significantly reducing allocations; and
- 4) terminating, canceling or failing to renew any written contract for the sale or distribution of petroleum products. The only exceptions to the prohibitions are reductions required by federal or state law or federal regulations and failure of the buyer to substantially comply with the terms of his written contract with the supplier.

The attorney general must seek an injunction against a supplier alleged to be in violation of the act after a complaint has been filed by a "person alleging injury" or on his own initiative after investigation. A person alleging injury to his business or property may file his own suit to enjoin the violation and to recover damages. Punitive damages not in excess of three times the actual damages are available if the violation was willful.

* * * * *

An Act Relating to Environmental Improvement Board Hearings; SB97

Effective Date: May 15

Chief Sponsor: I. M. Smalley, D-Sierra, Luna, Hidalgo

Vote: Senate, 37-0; House, 50-1.

This act amends Sections 12-12-13 and 12-14-6 N.M. Stat. Ann. 1953, which had designated Santa Fe as the location for environmental improvement board hearings on proposed state-wide regulations under the Environmental Improvement Act (EIA) and the Air Quality Control Act (AQCA), Sections 12-12-1 through 12-12-14 and Sections 12-14-1 through 12-14-13 N.M. Stat. Ann. 1953, respectively.

The chief effect of the amendment is to enable the environmental improvement board, to conduct its hearing on regulations proposed for state-wide application, either in Santa Fe, or in the area substantially effected by the regulation.

The environmental improvement board, established in 1971, promulgates regulations and standards in specified areas of environmental management and consumer protection. The AQCA designates the environmental improvement board as the state air pollution control agency and authorizes the board to regulate in the areas of air pollution prevention or abatement and emission control.

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An Act Repealing the State Environmental Quality Act ; SB92

Effective Date: May 15

Chief Sponsor: Sen. Harry M. McAdams, D-Lea

Vote: Senate 27-10; House 59-9.

This act repeals the state environmental Quality Act, Sections 12-20-1 through 12-20-8 N.M. Stat. Ann. 1953. The effect is to abolish the requirement that state agencies prepare environmental impact statements for major projects. The state act was patterned after the federal National Environmental Policy Act passed by Congress in 1970 .42 U.S.C. Section 4321 et seq. (hereinafter, NEPA). NEPA created a National Council on Environmental Policy (NCE) and required all federal agencies to submit to the NCE statements detailing foreseeable environmental effects of all federal projects having an effect on the quality of human environment.

In 1971, New Mexico followed suit by enacting the Environmental Quality Act, known as "Little NEPA." Little NEPA too created a Council on Environmental Quality (hereinafter, CEQ) and required state agencies to submit environmental impact statements to CEQ on proposed state actions affecting the quality of human environment.

A 1972 decision of the New Mexico Court of Appeals held invalid those environmental regulations adopted in August, 1971, by the New Mexico Water Quality Control Commission without the prior preparation of an environmental impact statement. City of Roswell v. New Mexico Water Quality Control Commission, 84 N.M. 561, 505 P.2d 1237 (1972). The court's stance appeared to place in jeopardy all state environmental regulations adopted after Little NEPA's passage.

The controversy over the propriety of requiring impact statements, engendered in part by the Roswell decision, prompted the 1973 legislature to suspend the environmental impact statement requirement and to prohibit further court challenges of the issue until June 1, 1974 Section 12-20-8 N.M. Stat. Ann. 1953. Further the 1973 legislature, in an effort to sort out the competing interests of the environmentalists, industrialists, and state agencies, authorized the CEQ to conduct public hearings to determine whether full or partial implementation of the environmental impact statement requirement was in the public interest. The CEQ, based on its findings, was to recommend legislative action to the 1974 legislature Section 12-20-3 N.M. Stat. Ann. 1953. If the 1974 legislature were to pass no legislation altering or supplanting the environmental impact statement requirement, the requirement would be reactivated on June 1, 1974.

The CEQ concluded that retention of the environmental impact statement was in the public interest and, accordingly, a bill recommending partial implementation of the environmental impact statement requirement was submitted to Governor King. The governor's message to the legislature did not specify that the legislature discuss solely the recommended bill, and thus several weaker measures and a repealer proposal were presented.

Lobbying pressures and group discord led to introduction of a weak substitute bill for the CEQ bill. After this weakened substitute bill passed in the senate and was sent to the house natural resources committee, environmentalists, displeased with the watered down legislation, joined foes of the environmental impact statement legislation to pass the repealer provision, subsequently passed by the house. They wanted to put the decision squarely on the shoulders of the Governor. He signed the repealer. Thus, the state is now left without statutory authority to require environmental impact statements by state agencies prior to undertaking action with environmental consequences.

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An Act Making an Appropriation to the Water Supply Construction Fund; HB68

Effective Date: May 15
Chief Sponsor: Rep. Samuel Vigil, D-San Miguel
Vote: Senate, 37-0; House, 62-0.

This act appropriates \$1,000,000 from the general fund to the water supply construction fund, a special fund from which grants and loans are made to local authorities and counties for construction or improvement of water supply facilities. The water supply construction fund, with an initial general fund appropriation of \$1,500,000, was established in 1973 under the Water Supply Construction Act, §§ 75-41-1 et. seq. N.M. Stat. Ann. 1953.

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An Act Relating to the Land Use Advisory Council; SB15

Effective Date: EMERGENCY

Chief Sponsor: Sen. Robert E. Ferguson, D-Chavez, Eddy

Vote: Senate, 34-0; House 59-0.

This act provides for continuation of the land use advisory council, as created by Laws 1973, Ch. 299. The council was established to study the effectiveness of current land use laws and practices, to develop new or amendatory legislation, if necessary, and to formulate a timetable for the implementation of state-wide land use planning, if advisable.

This act designates the land use advisory council as the state agency to use federal funds available to study and design a state-wide land use inventory.

Any balances remaining of the original \$35,000 appropriation are re-appropriated and a new appropriation of \$75,000 is made to pay the cost of designing a state-wide land use inventory and to pay expenses. All required funds for matching federal grants are to be made from the \$75,000 appropriation, and federal funds, where available, are to be used in lieu of state funds.

* * * * *

An Act Making An Appropriation to the Emergency Water Supply Fund; SB66

Effective Date: May 15

Chief Sponsor: Sen. Matias L. Chacon, D-Rio Arriba

Vote: Senate, 35-0; House, 55-3.

This act appropriates \$50,000 from the general fund to the state board of finance for the emergency water fund in the 63rd fiscal year. The emergency water supply fund was established in the state treasury in 1972. Section 14-26-9 N.M. Stat. Ann. 1953. Expenditures are authorized when the state board of finance finds that an emergency exists requiring funds to assure an adequate and safe drinking water supply for residents of any New Mexico community of less than 5,000 population using a drinking water supply in common.

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Acts Increasing the Oil, Gas and Coal Severance Taxes; SB55, 60

Effective Date: July 1

Chief Sponsor: Sen. Aubrey L. Dunn, D-Otero

Vote: SB60 - Senate, 32-6; House, 42-21;

SB55 - Senate, 34-4; House, 47-9.

Senate Bill 60 amends Section 72-19-4 N.M. Stat. Ann. 1953 of the Oil and Gas Severance Tax Act, to increase the severance tax on oil and gas from 2.5 percent to 3.75 percent of taxable value. It levies a tax on all products permanently severed from the state and sold. "Products" means "oil, natural gas, and liquid hydrocarbons, individually or in combination ..." Section 72-19-2(E). "Value" is the "actual price received for products at the production unit" Section 72-19-2(D).

Senate Bill 55 amends Section 72-18-2 N.M. Stat. Ann. 1953 of the Severance Tax Act to increase the severance tax on coal from 1/8 percent to 1/2 percent. The coal industry, which paid \$34,000 in severance taxes last year, would pay an estimated \$104,000 next year under this legislation.

The 1.25 percent increase in oil and gas severance taxes will increase state revenues by an estimated \$10 million. The measures, as originally introduced, would have levied a flat 5 percent severance tax on oil, gas and coal. Beginning last year, the legislature earmarked nearly half the severance tax revenues for a permanent reserve fund. Section 72-18-33. The policy underlying the severance tax is that the people of the state should be reimbursed -- both present and future generations -- against the permanent loss of a finite resource. Conservative industry estimates show that known reserves will be depleted in 10.9 years. Opponents of the higher tax allege that the increased cost of operating oil and gas wells will discourage exploration, particularly exploration by small independents, and wildcatters who explore and find most of the new reserves.

The industry presently pays six taxes directly related to the production of oil and gas: (1) the severance tax, Section 72-19-1 *et. seq.*; (2) the emergency school tax, Section 72-21-1 *et. seq.*; (3) the oil and gas conservation tax, Section 72-20-1 *et. seq.*; (4) the oil and gas ad valorem production tax, Section 72-23-1 *et. seq.*; (5) the oil and gas ad valorem production equipment tax, Section 72-23-1 *et. seq.*, all totaling about \$41.9 million in 1973.

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An Act Relating to the Environmental Health Study Committee; SB87

Effective Date: May 15
Chief Sponsor: Sen. Joseph E. Gant, D-Eddy
Vote: Senate, 22-0; House, 52-1.

This act continues the environmental health study committee. The act also appropriates to the legislative council service, for expenses of the committee, the unexpended balance of the original 1972 appropriation of \$30,000. Laws 1973, Ch. 287, Section 4; Laws 1972, Ch. 55, Section 2.

The committee was established to examine sources of environmental health law and the relationship of environmental health to economic growth in New Mexico. Laws 1973, Ch. 287, Sections 2 and 3.

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An Act Establishing a 55-Mile-Per-Hour Speed Limit; HB8

Effective Date: March 2 (EMERGENCY)

Chief Sponsor: Rep. Bennie J. Aragon, D-Bernalillo

Vote: Senate, 32-6; House, 58-10.

This act lowers New Mexico's maximum speed limit to 55 miles an hour for the period of time that Pub. Law 93-39, the federal Emergency Highway Energy Conservation Act, is in effect. When the federal act ceases to be effective, the speed limits set by Section 64-18-1 *et seq.* N.M. Stat. Ann. 1953 will again be operative.

The lowered speed limit is not applicable to authorized emergency vehicles.

Though this act allows arrests to be made and fines to be imposed for violations of the new speed limit, it prohibits the Motor Vehicle Department under the state's current point system, from suspending or revoking the driver's license of a person ticketed for driving between 56 and 70 miles per hour.

This legislation was passed in compliance with the national 55-mile-per-hour speed limit imposed as an energy conservation measure by the Emergency Highway Energy Conservation Act. The federal act set a March 3, 1974, deadline for the states' compliance with the reduced speed limit under penalty of loss of federal highway funds.

To effectuate the legislation prior to the March 3 deadline, the act had to contain an emergency clause so that it would take effect upon signature by the Governor. Otherwise, the state would stand to lose \$58 million in federal funds.

The New Mexico Constitution requires a two-thirds vote by both the House and Senate for approval of an emergency clause. N. M. Const., Art. 4, Section 23.

On January 25, the speed limit bill was passed by the House 56-6 without the provision prohibiting suspension or revocation of driver's licenses for traveling between 56 and 70 miles per hour. On February 8, the Senate, with a 32-6 vote, passed the bill with the amendment eliminating license suspension or revocation penalties for violators. The bill was returned to the House for concurrence on the Senate amendment, and on February 9, the House approved the amended version of the bill with a 42-24 vote -- short of the two-thirds level required to retain the emergency clause. The amendment, restricting enforcement of the new speed limit, generated controversy as to whether its provisions were in compliance with the federal act and as to the difficulty confronting the Motor Vehicle Department in separating the various categories of traffic violators.

To assure that the 55-mile-per-hour speed limit would take effect upon approval by the Governor, the House voted a second time on February 13, to concur with the Senate amendment. With the reconsideration vote, the amendment was approved 58-10, containing the two-thirds majority necessary for the emergency clause to take effect.

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An Act Providing for the Management and Protection of Endangered Species; SB93

Effective Date: EMERGENCY

Chief Sponsor: Sen. Fred Gross, R-Bernalillo

Vote: Senate, 34-0; House, 45-6.

This act creates new Sections 53-2-50 through 53-2-59 N.M. Stat. Ann. 1953 to provide protection for endangered species.

Called the "Wildlife Conservation Act," it finds and declares that wildlife indigenous to the state which is found to be endangered should be managed to maintain or enhance its numbers within the carrying capacity of the habitat. In addition, wildlife deemed to be endangered elsewhere will be protected within the state of New Mexico.

Adequate funding, though an annual appropriation to the department of game and fish will be made from the general fund. The initial appropriation, in this legislation, is \$45,000.

The director of the department of game and fish will conduct investigations to determine which wildlife indigenous to this state is endangered and what is needed for its survival. On the basis of those investigations, the director will develop a list of those species and subspecies which are endangered, and make the necessary regulations to prohibit the further dissemination of the species. The list will be reviewed biennially.

Also protected within the state will be wildlife on the federal lists of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973.

The director is to establish research programs for the acquisition of land or aquatic habitat deemed necessary by the commission for the management of endangered species.

Public hearings will be held before adoption of a state plan for endangered species.

Permits may be issued for the taking, possession, transportation or exportation of endangered species for use in scientific, zoological or educational purposes, to protect private property or to protect human health. Failure to secure a permit is a misdemeanor and the penalty is a fine of \$50 to \$300 or 90 days in jail, or both.

Except for the purposes listed above, the taking, possession, transportation or exportation of endangered species is made a misdemeanor. The penalty is a \$1000 fine or imprisonment for 30 days to one year, or both.

HEALTH AND WELFARE

An Act Appropriating Funds for an Alcoholic Rehabilitation Hospital; SB30

Effective Date: EMERGENCY

Chief Sponsor: Sen. Wayne Radosevich, D-McKinley

Vote: Senate, 32-0; House, 51-0.

This act appropriates \$250,000 from the general fund to the state planning office to provide a share of the construction costs of a joint county-municipal alcoholic rehabilitation hospital in Gallup.

The appropriated funds are to be expended only if the following conditions are fulfilled: the municipality and county have entered into an agreement for the construction, maintenance, and operation of the hospital; the municipality and county have made construction arrangements and developed a \$1 million financing plan acceptable to the state planning office; and the National Institute on Alcoholic Abuse and Alcoholism, Department of Health, Education and Welfare, has granted operational funds for the proposed center for seven years.

This act repeals an earlier appropriations act, Laws 1973, Ch. 302, which made funds available for the same purpose during the previous fiscal year.

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An Act Providing for Ambulance Standards; SB67

Effective Date: EMERGENCY

Chief Sponsor: Sen. Consuelo J. Kitzes, D-Torrence, Santa Fe

Vote: House 40-13; Senate, 25-15.

This act establishes a comprehensive licensing and regulatory plan covering most ambulance services in the state.

The Ambulance Standards Act brings previously fragmented control of ambulance services under the state corporation commission and appropriates \$24,073 to the motor transportation department to implement the licensing. The commission is to hold public hearings within one year to adopt standards for ambulance operations and licensing requirements for all ambulance drivers and attendants.

The commission, in establishing standards for ambulances, is to take into account the needs and resources of the community being served.

Specifically, the standards will relate to, at least, vehicle design, health and safety equipment, operating procedure and provide for annual inspections. For drivers and attendants, the standards will deal with minimum training requirements and will require a written and practical examination.

The commission's regulatory authority includes all ambulances operating in New Mexico except those owned by a private business and used for the transportation of sick or injured employees from the place of business to a treatment facility. Also exempt from the regulatory authority are individuals rendering gratuitous assistance in emergencies and law enforcement officials in the pursuit of their duties.

The act amends Section 12-27-1 N.M. Stat. Ann. 1953, require corporation commission approval for operation of ambulances by a municipality or county.

Also amended is Section 64-27-25 N.M. Stat. Ann. 1953 which defines those vehicles exempt from provisions of the Motor Carrier Act. Sections 64-27-1 through 64-27-72. Thus, the previously existing exemption for motor vehicles used exclusively to convey children to and from schools is now conditioned on use of such vehicles under a permit pursuant to the Emergency Transportation Act, and ambulances are deleted from the list of funeral directors' vehicles exempted from provisions of the Motor Carrier Act.

Finally, the act amends Section 67-20-5 N.M. Stat. Ann. 1953 so that funeral directors' ambulances are no longer exempt from the provisions regulating motor carriers, and so that the state board of embalmers and funeral directors no longer has authority to regulate ambulances owned or ambulance services operated by a funeral director.

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An Act Making an Appropriation to the Hospitals and Institutions Department; SE109

Effective Date: May 15

Chief Sponsor: Sen. I. M. Smalley, D-Sierra, Luna, Hidalgo

Vote: Senate, 38-0; House, 49-0.

This act appropriates \$200,000 from the state general fund to the hospital and institutions department to purchase hospital services from the Bernalillo County Medical Center for certain indigent and medically needy persons living outside Bernalillo County. DHI and BCMC are directed to contract for the services. The contract's terms must spell out the conditions under which BCMC is to provide services and must define the class of those eligible for services. Primarily, the services are authorized for non-Bernalillo County residents who can not afford hospital services and for whom there is no government program, other than a county program for indigents, available to pay for the services.

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An Act Funding the Los Lunas Hospital and Training School; HB126

Effective Date: May 15

Chief Sponsor: Rep. Fred Luna, D-McKinley, Valencia

Vote: House, 54-0; Senate, 37-0.

This act appropriates \$100,000 from the general fund to the hospitals and institutions department for replacement or renovation of three buildings at Los Lunas Hospital and Training School.

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An Act Relating to the Health and Aging Study Committee; HB17

Effective Date: May 15

Chief Sponsor: Sen. John Rogers, D-Los Alamos, Santa Fe

Vote: Senate 37-0; House, 67-0.

This act extends to the 63rd fiscal year the expenditure period for the \$25,000 appropriated to the legislative council service in 1973 to assist the health and aging study committee. This interim legislative committee was created in 1973 to examine the condition of the aged and community health problems. Laws 1973, Ch. 295, §§ 1-7.

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An Act Allowing Non-Profit Corporations Engaged in Health Care Services to Issue Industrial Revenue Bonds; HB48

Effective Date: May 15

Chief Sponsor: Rep. Edward J. Lopez, D-Santa Fe

Vote: House, 64-0; Senate, 36-0.

This act amends §§ 14-31-1, 14-31-1.2, and 14-31-2.1 of the Industrial Revenue Bond Act to allow non-profit corporations providing health care services to sell industrial revenue bonds for new facilities. The act defines "health care services" as "diagnosis or treatment of sick or injured persons or medical research ...". In specifying legislative intent, § 14-31-2.1 permits municipalities to sell industrial revenue bonds for health care projects to locate or expand in New Mexico, but makes clear that municipalities are not authorized to own or operate such projects.

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An Act Enabling the Health and Social Services Department to Participate in Medicaid; SB18

Effective Date: EMERGENCY

Chief Sponsor: Sen. John D. Rogers, D-Los Alamos, Santa Fe

Vote: Senate, 37-0; House, 67-0.

This act permits the health and social services department, subject to the availability of state funds, to provide "assistance to aged, blind or disabled individuals in amounts consistent with federal law to enable the state to be eligible for medicaid funding." By regulation, the H.S.S.D. board will determine who is aged, blind or disabled.

Other sections of the Public Assistance Act, §§ 13-17-1 to 13-17-17 N.M. Stat. Ann. 1953, define "consistent with federal law" as compliance with the Social Security Act, 42 U.S.C. § 301 et seq.

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An Act Establishing Regional Health Planning Councils; HB16

Effective Date: EMERGENCY
Chief Sponsor: Rep. Lenton Malry, D-Bernalillo
Vote: House, 60-0; Senate, 33-0.

This act appropriates \$105,000 from the general fund to the comprehensive health planning council to establish and operate regional comprehensive health planning agencies and councils in each of the state's seven regional planning districts. Criteria for the agencies will be adopted by the council, but will include an itemized budget. In addition, the legislature authorizes mutual planning cooperative agreements.

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An Act Making the Hospitals and Institutions Board Responsible for Providing Mental Retardation, Mental Health, and Drug Abuse Programs; SB83

Effective Date: May 15
Chief Sponsor: Sen. Thomas T. Rutherford, D-Bernalillo
Vote: Senate, 37-0, House, 52-1.

This act requires that the hospitals and institutions board provide community programs for the delivery of "adequate" services in the areas of mental health, mental retardation and drug abuse. It further requires that the Board "establish a system for evaluation of the effectiveness of the programs."

No funds are appropriated.

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INCOME TAX

An Act Increasing the Tax Credit for State and Local Taxes; HB36

Effective Date: January 1, 1974
Chief Sponsor: Rep. Edward Lopez, D-Santa Fe, by request
Vote: House, 59-1; Senate, 26-0.

This act increases the credit taxpayers receive for state and local taxes on their individual state income tax returns and applies to taxable years beginning on or after January 1, 1974.

The new rates mean substantial savings to taxpayers in the \$0 to \$2,000 modified gross income levels, particularly if they claim two or more dependents. The biggest credit increase in actual dollar terms goes to a taxpayer with a modified gross income of from \$500 to \$1,000 and six deductions. That person would get an increased credit of \$96 for state and local taxes.

The tax credit also is extended to six new classes of taxpayers: those with two dependents and modified gross income of \$2,500 to \$3,000; three dependents, income \$3,000 to \$3,500; four dependents, income \$4,000 to \$4,500; five dependents, income \$5,000 to \$5,500; and six dependents, income \$6,000 to \$6,500 and income \$6,500 to \$7,000.

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An Act Allocating a Taxpayer's Income During the First Taxable Year; SB6

Effective Date: EMERGENCY
Chief Sponsor: Sen. D. J. Michelson, D-Bernalillo
Vote: Senate, 37-0; House, 47-1.

This act makes it mandatory for a new resident of New Mexico to apportion his income tax liability between this state and the state of his previous residency. The act removes the option previously given a taxpayer during his first taxable year in which he incurs tax liability as a resident to exclude income earned in his state of previous residency if that state had no income tax. Under the amended § 72-15A-6 N.M. Stat. Ann. 1953, the taxpayer pays tax to New Mexico on that income he earned on or after the date he became a resident and the income he earned in New Mexico while a non-resident.

Section 72-15A-11 N.M. Stat. Ann. 1953 is amended to eliminate the credit a taxpayer received for taxes paid in another state during the first taxable year he incurred tax liability as a resident of New Mexico.

The changes are applicable to taxable years ending on or after December 31, 1974.

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An Act Reducing Individual Income Tax Rates; HB37

Effective Date: Taxable Years on or after January 1, 1974

Chief Sponsor: Rep. Edward Lopez, D-Santa Fe

Vote: House, 50-18; Senate, 39-0.

This act amends Section 72-15A-5 N.M. Stat. Ann. 1953 to permanently reduce individual income tax rates and to add a new taxpayer classification.

Under the existing section, there are only two individual income tax rate schedules -- one for heads of household and married individuals filing joint returns, and another for single individuals and married individuals filing separate returns. The new act divides the latter category, thus making three taxpayer classification schedules.

The rate reductions are expected to save taxpayers \$5 million annually. The first effect should be felt on July 1 when state withholding rates are reduced.

The biggest break will go to unmarried persons who make between \$6,000 and \$15,000 annually, though all categories of taxpayers will benefit in some way.

For example, a married individual filing a separate return with a net income of over \$12,000 but not more than \$20,000 will pay \$515 plus 7.5 percent of the excess over \$12,000 for his 1973 taxes. His 1974 tax bill will be computed on a base of \$468, plus 7.5 percent of the excess over \$12,000 for a savings of \$47.

For a single individual in the same income tax bracket, taxes for 1973 will equal \$515 plus 7.5 percent of the excess over \$12,000. For the 1974 taxable year, the same taxpayer will pay \$327 plus 6.1 percent of the excess over \$12,000 for a savings of, at least, \$188.

The head of household and married individuals filing joint returns with a net income between \$12,000 and \$14,000 will pay \$320 plus 4.5 percent of the excess over \$12,000 for 1973, but only \$280, plus 4.2 percent of the excess over \$12,000 for the 1974 tax year, for a minimum savings of \$40.

JUDICIARY

An Act Relating to the Probate Code Committee; SB2

Effective Date: EMERGENCY

Chief Sponsor: Sen. I. M. Smalley, D-Sierra, Luna, Hidalgo

Vote: Senate, 29-0; House, 48-2.

This act continues the probate code committee until the end of the 1975 legislative session. It also extends to the end of the 63rd fiscal year any balances remaining from the original appropriation of \$25,000 made to the legislative council service to assist the committee.

The probate code committee, a joint interim legislative committee, was established in 1973. Laws 1973, Ch. 303, Sections 1-7. The enabling legislation directed the committee to study existing sources of probate law in New Mexico and to report its findings and legislative recommendations to the 1974 legislature.

An Act Increasing the Salary of Probate Judges in H Class Counties; SB7

Effective Date: May 15

Chief Sponsor: Sen. John Rogers, D-Los Alamos, Santa Fe

Vote: Senate, 37-0; House, 67-0.

This act, amending Section 15-43-5.1 N.M. Stat. Ann. 1953, increases the annual salary of the probate judge in Class H counties from \$1.00 to \$2,304. Further, the probate judge is no longer entitled to receive per diem compensation. An H class county is any county which covers an area of not more than 144 square miles.

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An Act Relating to the Judicial Standards Commission; HB9

Effective Date: May 15

Chief Sponsor: Rep. Thomas Foy, D-Grant

Vote: House, 56-0; Senate, 37-1.

This act requires the judicial standards commission to employ an executive director who shall conduct commission investigations, enter into necessary contracts on behalf of the commission, hire personnel to carry out the responsibilities of the commission and perform such other duties as the commission delegates to him or her. The executive director will replace the clerk of the Supreme Court as the staff for the commission.

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An Act Relating to Disposition of Supreme Court Fees; SB31

Effective Date: May 15

Chief Sponsor: Sen. John Conway, R-Lincoln, Otero

Vote: Senate, 35-0; House, 50-4.

This act amends Section 16-2-5 N.M. Stat. Ann. 1953 to increase from \$2 to \$4 the amount the Supreme Court retains from docketing fees to defray the cost of binding final records in cases.

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An Act Relating to the Selection and Payment of Juries in Magistrate Courts; SB40

Effective Date: May 15
Chief Sponsor: Sen. John Conway, R-Lincoln, Otero
Vote: Senate, 25-0; House, 53-0.

This act requires the use of the master jury wheel system of selecting a jury panel in the magistrate courts. Specifically, it repeals Section 36-10-3 N.M. Stat. Ann. 1953 which required the magistrate to direct the "sheriff or some responsible person to write down the names of eighteen qualified residents of the county" when a jury was required. It also deletes from the statute the oath to be given the sheriff for performing this duty and the oath to be given to jurors.

The act further limits the time any person may be required to remain as a member of a magistrate jury panel in one year to six months following qualification unless the panel is hearing a trial.

In Section 36-10-6 N.M. Stat. Ann. 1953, the pay for magistrate jury service is increased from \$1.50 a day to \$1.60 an hour and jurors who travel more than five miles to and from their residences when their attendance is ordered are entitled to receive ten cents a mile.

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An Act Increasing Judicial Retirement Fund Contributions; SBL08

Effective Date: May 15
Chief Sponsor: Sen. C. B. Trujillo, D-Taos, Mora and San Miguel
Vote: Senate, 37-0; House, 57-0.

This act increases the contributions made to the judicial retirement fund. Section 5-5-25 N.M. Stat. Ann. 1953 is amended to increase from \$5 to \$13.75 the amount from each civil case docket fee paid in the district court which goes to the fund.

Section 5-5-26 N.M. Stat. Ann. 1953 is amended to increase the contribution made by the judges of the district court, court of appeals and supreme court from eight percent of their salary to ten percent.

In addition, the authorization given to the state treasurer to invest the money in the judicial retirement fund is eliminated. That authorization was in conflict with Section 5-5-28.2 N.M. Stat. Ann. 1953 which puts administration of the judicial retirement fund under the public employees' retirement board and investment of fund monies is made by that board.

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An Act Providing An Additional District Court Judge in Certain Judicial Districts; HB71, 88, 89, 98

Effective Date: July 1

Chief Sponsor: Rep. Thomas P. Foy, D-Grant

Vote: House, 54-7; Senate, 35-0.

This amendatory act creates an additional state district court judgeship in the sixth, ninth, 11th, 12th and 13th judicial districts.

The act increases the number of judges in the sixth, ninth, 12th and 13th judicial districts from one to two, and from two to three in the 11th district.

It further directs the judge of division two of the sixth district to reside and maintain his principal office in Luna county. Section 16-3-3.6 N.M. Stat. Ann. 1953. The judges of divisions one and three on the 11th district are to reside and maintain their principal offices in San Juan county Section 16-3-3.11 N.M. Stat. Ann. 1953. In the 13th judicial district, the judge of division two is to reside and maintain his principal office in Sandoval county. Section 16-3-3.13 N.M. Stat. Ann. 1953.

Except in the 13th judicial district, the new judgeships will be filled initially by persons elected to the posts in the 1976 general election. The additional district judge in the 13th judicial district is to be appointed by the Governor on July 1, 1974, to serve until the 1976 general election.

LABOR

An Act Extending Coverage of the Occupational Disease Disablement Act; HB24

Effective Date: May 15

Chief Sponsor: Rep. Frank Brown, D-Eddy

Vote: House, 62-0; Senate, 26-0.

This act entitles certain employees working outside the state of New Mexico to coverage under the Occupational Disease Disablement Act as if they had been in the state when they suffered the occupational disease.

To be covered under the amendments, employees who work outside the state and there suffer an occupational disease must (1) work principally within the state, or (2) work under contract made in New Mexico, and (3) not be covered by another occupational disease disablement law. Decedents are covered similarly.

Payments received under another occupational disease disablement law are not a bar to a claim under the New Mexico act. If compensation is paid, other medical and related benefits are deducted from the total possible compensation paid by New Mexico. Income or death benefits are credited against the total amount of benefits which would have been due.

An employee who sustains an occupational disease in New Mexico while working for an employer domiciled in another state who has not secured payment of compensation to the employee through the New Mexico act is still entitled to the act's protection. The employer according to Section 1(c) must file a

certificate with the labor commissioner from the employer's state of domicile indicating that the employee will be compensated through that other state. The filing of such certificate makes the labor commissioner the employer's agent for service of process.

The employer may be deemed to be a qualified self-insurer, insured under the corresponding provisions of another state's act if it meets the standards of the New Mexico law, or he may be otherwise insured. If the maximum insurance from another state or private insurance does not equal New Mexico's payment provisions the labor commissioner may require the employer to pay security to assure payment of benefits due the employee. If the employer complies with these provisions, he or she has fully complied with the act as to the employee in question.

The definitions are standard. Only the discussion of the principal location of a person's employment is significant. If an employee travels continuously, he or she may agree in writing with the employer which state shall be the principle place of employment.

LAW ENFORCEMENT

An Act Appropriating Funds for Crime Prevention and Control; SB71

Effective Date: EMERGENCY
Chief Sponsor: Sen. John Tannehill, R-Bernalillo
Vote: Senate, 38-2; House, 61-0.

This act appropriates \$100,000 from the general fund to the department of finance and administration for expenditure in state and local crime prevention and control efforts.

The act directs the governor's council on criminal justice planning to implement a procedure, according to guidelines set forth in the act, so that appropriate state agencies and local governmental units can obtain grants from the appropriated funds.

* * * * *

An Act Relating to Rehabilitation of Criminal Offenders; HB87

Effective Date: May 15
Chief Sponsor: Rep. Ray Sanchez, D-Bernalillo
Vote: House, 46-3; Senate, 31-0.

This legislation establishes a Criminal Offender Employment Act and amends certain pre-existing statutory provisions to bring them into line with the new act's purpose.

The main objective of this legislation is to facilitate the rehabilitation of criminal offenders or ex-convicts by providing them with a greater opportunity to secure employment or to engage in a lawful trade, occupation or profession.

The act establishes standards for the appropriate authorities' determination of the employment eligibility of criminal offenders for employment with the state or its subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession. Thus, it is specified that an applicant's criminal conviction may be considered by the appropriate authority, but such conviction is not to operate as an automatic bar to obtaining public employment or license or other authority to practice a particular trade, business or profession.

Further, records of arrests not followed by a valid conviction and misdemeanor convictions not involving moral turpitude are not to be used or distributed in connection with an application for public employment or license.

The act also empowers the appropriate authority to suspend, revoke, or refuse to grant or renew any public employment, license or other such authority for specified causes. Conviction of a felony or a misdemeanor involving moral turpitude or a criminal conviction directly relating to the particular employment, trade, business or profession are grounds on which the person may be prohibited from engaging in the employment. If such a prohibition occurs based in whole or in part on conviction of a crime of moral turpitude relating to the particular employment, the governing authority is to explicitly state in writing the reasons for the decision. Where the applicant has been convicted of a felony or misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, the appropriate authority may prohibit such person's public employment or revoke any license or other authority if it is determined that the person so convicted has not been sufficiently rehabilitated to warrant the public trust. However, where an applicant has been convicted of a crime of moral turpitude which does not relate directly to the particular employment, completion of probation or parole supervision, or of a period of three years after final release from imprisonment without any subsequent conviction creates a presumption of sufficient rehabilitation.

Although the Criminal Offender Employment Act is not applicable to law enforcement agencies, such agencies may adopt its policy.

New sections are added to existing statutes regulating various trades, businesses, and professions which make the provisions of the Criminal Offender Employment Act applicable to any required or permitted consideration of criminal records. The trades and professions effected include law, meat dealers, insurance, vehicle dealers and wreckers, optometrists, nurses, chiropractors, dentists, medicine, osteopaths, pharmacists, physical therapists, veterinarians, architects, barbers, collection agencies, cosmetologists, funeral directors and embalmers, engineers and surveyors, public accountants, real estate brokers and sales persons, podiatrists, psychologists, polygraphers, trades within the jurisdiction of the Construction Industries Licensing Act, hearing-aid dealers and fitters, nursing home administrators and practitioners of massage.

The act also amends Sections 67-15-56 and 67-17-17 N.M. Stat. Ann. 1953, which state grounds for denying collection agency licenses and certificates under the cosmetology act, respectively. The effect of both amendments is to make certification or license denial for the causes defined discretionary rather than mandatory.

* * * * *

An Act Prohibiting Pirating of Phonograph Records and Tapes; HB72

Effective Date: May 15

Chief Sponsor: Rep. Richard A. Carbajal, D-Valencia

Vote: House, 67-0; Senate, 24-0.

This act makes it a crime and establishes criminal penalties for pirating phonograph records and tapes.

Four offenses are created:

(1) knowingly and willfully transferring or causing to be transferred the recorded sounds on a tape, disc, record, wire or film to another recording device with intent to sell or use for profit through public performance is made a fourth degree felony;

(2) advertising, offering for sale, distributing or selling pirated recordings and tapes with knowledge is made a misdemeanor;

(3) offering or making available for a fee any equipment or machinery with knowledge that it will be used for such pirating is a misdemeanor; and

(4) selling or distributing any phonograph record, tape or album without the name of the manufacturer and without the name of the actual performer or performer; prominently displayed on the cover or jacket is made a misdemeanor.

Excepted from these new provisions of the Criminal Code are a transferral made with the consent of the owner; a transferral made by a radio or television broadcaster in connection with a broadcast or for archival preservation; or a transferral for personal use and without any compensation.

Each transfer, advertisement, distribution, sale or transfer is a separate offense.

* * * * *

An Act Providing Penalties for Violation of the Controlled Substances Act; SB68

Effective Date: EMERGENCY

Chief Sponsor: Sen. R. Wayne Radosevich, D-McKinley

Vote: Senate, 32-6; House, 40-13.

This act amends Sections 54-11-20 through 54-11-25 N.M. Stat. Ann. 1953 of the Controlled Substances Act, dealing with penalties for trafficking, possession or distribution of illegal drugs. The act was introduced as a result of the decision in Staté v. Herrera, No. 1242 (N.M. Ct. App., Jan. 31, 1974), which held that the statutory definition of penalties in the controlled Substances Act was too vague. Following are the new penalties:

ACT	PENALTY		PRIOR PENALTY	
	1st Offense	2nd & Subsequent Offense	1st Offense	2nd & Subsequent Offense
Sec. 54-11-20 Trafficking in controlled substances	Felony \$10,000 10-50 yrs.	Felony \$15,000 life	2nd degree felony	1st degree felony
Sec. 54-11-21 Distribution of marijuana to minor	Felony \$5,000 2-10 yrs.	Felony \$10,000 10-50 yrs.	3rd degree felony	2nd degree felony
Distribution of hard nar- cotics to minor	Felony \$10,000 10-50 yrs.	Felony \$15,000 life	2nd degree felony	1st degree felony

Sec. 54-11-22 Distribution of narcotics including marijuana	Felony \$5,000 1-5 yrs.	Felony \$5,000 2-10 yrs.	4th degree felony	3rd degree felony
Distribution of hard nar- cotics	Felony \$5,000 2-10 yrs.	Felony \$10,000 10-50 yrs.	3rd degree felony	2nd degree felony
Distribution of depressant or stimulant drugs without prescription	Misdemeanor \$100 - \$500 180 - 364 days definite term		Misdemeanor \$100 - \$500 180 days - 1 yr.	
Distribution of a counter- feit substance	Felony \$5,000 1-5 yrs.		4th degree felony	
Distribution of counterfeit stimulant or depressant drugs without pres- cription	Petty misdemeanor \$100 definite prison term less than 6 mos.		Petty misdemeanor	

Sec. 54-11-23 Possession of an ounce or less of mari- juana	Petty mis- demeanor \$50 - \$100 15-days	Misdemeanor \$100-\$1,000 definite term less than 1 yr.	Petty mis- demeanor \$50 - \$100 15-days	Misdemeanor \$100-\$1,000 not more than 1 yr.
Possession of 1-8 ounces of marijuana		Misdemeanor \$100-\$1,000 definite term less than 1 yr.		Misdemeanor \$100 not more than 1 yr.
Possession of 8 or more ounces of marijuana		Felony \$5,000 1-5 yrs.		4th degree felony
Possession of any other controlled drug except hard narcotic		Misdemeanor \$500-\$1,000 definite term 30 days to less than 1 yr.		Misdemeanor \$500-\$1,000 30 days - 1 yr.
Possession of a hard narcotic		Felony \$5,000 1-5 yrs.		4th degree felony

Sec. 54-11-24 Unlawfully manu- facturing drugs or failing to report		Felony \$5,000 1-5 yrs.		4th degree felony
Sec. 54-11-25 Unlawful poss- ession or dis- tribution of drugs without a license and failure to report		Felony \$5,000 1-5 yrs.		4th degree felony

LOCAL GOVERNMENT

An Act Creating a Joint Interim Legislative Committee on Local Government; HB4

Effective Date: EMERGENCY

Chief Sponsor: Rep. Raymond G. Sanchez, D-Bernalillo, for the
Local Government Needs Committee

Vote: House, 53-0; Senate, 24-0.

This act is new legislation establishing a joint interim committee to be known as the Local Government Committee which is to examine the laws governing the financing and operation of local governments and to recommend appropriate legislation to the 1975 legislature. The committee is to function only until the first day of the 1975 legislature.

The committee is to be composed of 11 members, six from the House and five from the Senate, appointed by the legislative council. Party proportions are to be maintained, but there is to be no fewer than one member per party per chamber. The legislative council will name the chairperson and vice chairperson.

A report of findings and suggested legislation is to be made available by December 15, 1974.

The sum of \$30,000 is appropriated to cover salaries and other expenses, including per diem and travel.

* * * * *

An Act Requiring Municipal Refunding Revenue Bonds to be Sold at Public Sale; HB11

Effective Date: May 15

Chief Sponsor: Rep. William O'Donnell, D-Dona Ana

Vote: House, 60-0; Senate, 36-0.

This act amends Sections 14-30-8.1 and 14-30-9 N.M. Stat. Ann. 1953 to delete language allowing municipal refunding bonds to be sold at either private or public sale. The amended statutory provisions allow such bonds to be sold only at public sale.

* * * * *

An Act Providing Local Government Assistance; HB5

Effective Date: May 15
Chief Sponsor: Rep. Ray Sanchez, D-Bernalillo
Vote: House, 56-7; Senate, 37-0.

This act appropriates \$5 million for a one-year period beginning July 1, to provide the state's counties and municipalities with financial relief.

As introduced, the act would have transferred all of the state's share of cigarette tax revenues -- nine cents per pack -- to the cities and counties. An estimated \$9.1 million to \$10 million would have been distributed to the cities and counties under the plan.

The cities and counties presently receive three cents out of the 12-cent tax on each pack of cigarettes sold and one-cent out of the state's four-cent gross receipts tax.

Legislators backed down from a total cigarette tax transfer and provided the one-year relief from the state general fund. Each county will share in the appropriation according to the proportion its population, exclusive of incorporated municipalities within the county, bears to the state's total population.

Bernalillo county will receive the biggest piece of the pie, \$344,299, and Harding county the smallest, \$3,090.

The municipal distributions also are based on the proportion the city's population bears to the state's total population. In all, grants will go to 93 municipalities. Albuquerque will receive the largest amount, \$1,199,571 and Grenville the smallest, \$103. Ten municipalities will receive less than \$1,000 under the plan and eight cities, in addition to Albuquerque, will get over \$100,000. They include Alamogordo, Carlsbad, Clovis, Farmington, Hobbs, Las Cruces, Roswell and Santa Fe.

Each county and city must report quarterly to the department of finance and administration and to the legislative finance committee all expenditures from its distribution.

An additional \$1.2 million is appropriated from the general fund to the department of finance and administration for one year to make up any slack in gasoline tax revenues suffered by any county or municipality. The county or city will receive funds to bring it up to its 1972 level if its gas tax receipts fall below the amount received in the comparable month in 1972.

* * * * *

An Act Designating the Bernalillo County Commission Districts; HB82

Effective Date: May 15
Chief Sponsor: Rep. Abel M. McBride, D-Bernalillo
Vote: House, 42-2; Senate, 26-14.

This act draws county commission district lines for Bernalillo county. Unhappy with the district line-drawing of the Republican Bernalillo county commission, the legislature stepped in and created its own districts in one of the more blatant pieces of "special" legislation seen in some time.

By constitutional amendment passed in 1973, the Bernalillo county commission was increased from three to five members. The amendment, however, did not specify who was to do the line-drawing and the Bernalillo county commission filled the void, armed with an attorney general's opinion that the commission should do the districting. The opinion was affirmed in State of New Mexico ex. rel. Ira S. Robinson v. Hon. Bruce King, Gov., No. 9960, N.M. S.Ct., April 5, 1974, which held that the legislature has the power to set county commission districts.

MISCELLANEOUS

An Act Requiring Open Meetings of Public Bodies; HB63

Effective Date: EMERGENCY

Chief Sponsor: Rep. James H. Koch, D-Santa Fe

Vote: House, 49-9; Senate, 33-0.

The decision to fire Albuquerque City Manager Herb Smith may have been made at a secret breakfast meeting of city commissioners.

The Watergate excesses have made secrecy in public affairs a synonym for dishonesty.

So that venerable body of reform and honesty, the New Mexico legislature took the political pulse and gave us an open meetings law which is, at once, hypocritical, confusing and probably unworkable. But now all that anger of the body politic will be directed at both the well-intentioned officials who can't figure out how to comply with the act's provisions and those nefarious servants who want not to comply with the goal of full disclosure of how and why public decisions are made.

The act declares that many meetings -- but not all -- of many state policy-making bodies and boards and commissions and agencies and authorities of counties, municipalities, districts and political subdivisions of anything -- but not all -- shall be open to the public if the purpose of the meeting is to formulate public policy, or to discuss the public's business, or to vote or do any authorized activity.

The act gives a general idea to people who have anything to do with making policy decisions for any governmental or quasi-governmental body that they should perhaps give the public prior notice of their meetings and let the people watch them discuss and vote. But then the old open meetings law, Section 5-6-17 N.M. Stat. Ann. 1953, repealed by this act, did the same thing with more specificity in that it covered all final actions taken by any group dealing with public funds.

The only clear message in this new open meetings law is that no one really knows what actions of what groups are within the scope of the act, or how to comply with it, or whether it really matters if they do or don't.

I. ANALYSIS

The new open meetings act applies to the following public bodies: boards, commissions or other policy-making bodies of state agencies, but apparently not executive committees since they are not mentioned; agencies or "authorities" of counties, municipalities, districts or political subdivisions, which means virtually all lower level government-related groups; and committees or policy-making bodies of the state legislature. To come under the scope of the act, however, the public body must have a quorum present and must be acting within its authority. Untra vires acts are not covered.

The act forbids either the formation of public policy or the conduct of business by vote, or both, to be secret, whether meetings are called for that purpose or not. Meetings, which must be open, must be held for the specific purpose of formulating public policy or discussing public business or taking any action within the particular body's authority; or, in the case of a legislative committee or policy making body, the meeting must be for the purpose of taking action within the committee's authority or delegated authority or for the purpose of discussing public business. To say that it is impossible to determine with any specificity what meetings of what organizations are covered by the act is an understatement. Yet stating that all public policy formation is covered is not accurate because of the omissions and because of the exemptions.

And exemptions are legion. State legislative matters exempted are general appropriations bills, and any legislative matter not yet presented to either house, personnel matters, and matters adjudicatory in nature. Exemptions applicable to public bodies other than the state legislature include adjudicatory or personnel matters, meetings pertaining to issuance, suspension, renewal or revocation of a license, or meetings of grand juries.

The act also requires reasonable notice of public meetings, that minutes of public meetings be available to the public, and the presence of a quorum at public meetings in order to conduct business. Meetings where discussion or adoption of any proposed resolution, proposed rule, proposed regulation or proposed formal action occurs, if a quorum is present, should be preceded by reasonable notice to the public. If no quorum is present, reasonable notice requirements are not triggered probably because no business can be conducted. Other actions taken by a public body also exempt it from the notice requirements.

The definition of reasonable notice is left to each effected body and no guidelines are provided by the legislature. Minutes of all meetings of boards, commissions or "other" policy-making bodies, if taken, are to be made available to the public, but there is no provision that minutes must be taken, or be detailed, or be promptly transcribed.

The presence of a quorum at a meeting means that it must be open to the public at all times, and also triggers the reasonable notice requirements. In the legislature, a quorum of any committee or policy-making body is declared to be a public meeting. Without a quorum, a meeting of a public body does not come under the act.

The remedies for breach of the law are considerably clearer and easier to understand than the breaches, but are still confusing. If a board, commission or committee -- only non-legislative committees are not within the scope of the act -- or other policy-making body takes action or passes a resolution, rule, regulation or ordinance in violation of the act, it is invalid. Only, it is presumed to be valid. A body violating not the letter of the law, but the "purposes" of the act, which are unstated, may be subject to injunction issued

by the district courts upon application of five or more citizens and for good cause shown. Perhaps this means that the attorney general who is given the unenviable job of enforcing the act must be joined by four other New Mexicans to seek an injunction for violation of his or her interpretation of the "purposes" of the act. Or perhaps this grants standing to any five citizens, whether directly effected by a given secret meeting or the result of a secret meeting violating the "purposes" of the act. The title of the section does read, "Invalid actions -- Standing." Thus, it's conceivable under the act that Herb Smith's friends from Los Alamos might have been able to enjoin the Albuquerque City Commission's secret meeting or its action in firing Smith. A person violating the act is guilty of a misdemeanor, and if convicted, the penalty is a maximum \$100 fine. This, at least, is clear.

Nowhere in the act are there definitions or guidelines to help New Mexicans who wish to comply with the act, get around the act, or catch some "body" violating the act. Lacking such guidelines, interpreting what bodies should comply and when is little more than guess work and an imprecise interpretation of legislative intent. It is especially difficult because most of the legislative decisions on the act were not made at public meetings. Issues to consider, however, might be the following:

- (1) whether public business is discussed;
- (2) whether a quorum is present;
- (3) whether reasonable notice was given, and
- (4) whether any exceptions apply, including
 - (a) personnel matters,
 - (b) licensing hearings,
 - (c) grand juries,
 - (d) adjudicative matters,
 - (e) legislative appropriations, or
 - (f) matters not yet presented to the legislature.

The notice requirement is the most pressing problem for public bodies probably covered by the act. Sections 10-2-1 through 10-2-13 N.M. Stat. Ann. 1953 deal with legal notice. Deduced from those statutes and accepted practice, the following may be satisfactory:

- (1) A legal advertisement carried in a newspaper of general circulation distributed sufficiently in advance of the meeting to permit the public to attend the meeting;
- (2) For local councils or boards, a press release distributed to local newspapers in sufficient time to be printed and distributed before the meeting;
- (3) For state-wide boards a press release to the Associated Press and United Press International delivered a reasonable time prior to the meeting and with reasonable assurance that the release will be printed.
- (4) Covered public bodies might standardize their regular meetings so that one publication for the entire year could serve as reasonable notice. This procedure, although logical on its face and conservative of time and effort, may be deemed insufficient if challenged and if the court relies heavily on legislative history in interpreting the act.

Specific language permitting annual notice of regular meetings was drafted into the original open meetings bill by its major sponsor, Rep. Jamie Koch, but that language was removed before the bill was submitted to the legislature pursuant to the governor's message. It was not replaced by the legislature.

(5) Nothing precludes personal notification in addition to the public notice, although a requirement to that effect was removed by the governor's staff and not replaced by the legislature. Consequently it appears that the clerk of all effected public bodies need not maintain a list of persons to be notified prior to every meeting, but may do so.

(6) The initial step a covered public body might take to avoid violating the act is to advertise that a meeting will be held to determine what constitutes reasonable notice.

There are problems with these approaches. First, legal advertisements may be prohibitively expensive for many small local bodies covered by the act, and may not give adequate notice because many people do not regularly read such advertisements. Secondly, even if press releases were distributed with the best intentions of the body and with assurances from the newspaper or wire service that it would print the release, the notice may not in fact be printed prior to the meeting and thus notice will not have been given no matter how honorable the intentions.

This act defies precise analysis. The above guidelines serve as little more than general guesses toward the intent of the public in its distrust of the legislative process, the demands of the press which pressured Santa Fe, and the legislators themselves who were more concerned with partisan politics, grandstanding and the next election than with sound legislation when the next election than with sound legislation when they passed this bill.

II. PROBLEMS OF INTERPRETATION

The act is rife with interpretation problems. It is intolerably vague. Clearly, the act cannot be complied with because discussions virtually anywhere may be covered. It cannot be complied with because the purposes of the act are not stated, yet breach may bring an injunction. There is only one limited definition. Inconsistencies are rampant. The public body, if it comes within the scope of the act, may itself decide what constitutes reasonable notice and whether minutes should be kept. The legislative exemptions are absurd if the other portions of the act are accepted, or, conversely, the other parts of the act are absurd if the legislative exemptions are accepted. Other exemptions are too broad. Because there is an emergency clause, no body had an adequate opportunity to prepare for the act. The title does not cover all elements of the act and may not give the public notice of what the act does. And the remedies, except for the criminal penalty, are either impossible or too easy to effect. The whole bill, in fact, is like a dog chasing its tail -- broad and narrow, vague or redundant, but always circular, defying adequate interpretation.

Nevertheless, it is the law and thus some of the major interpretation problems warrant discussion.

The open meetings act includes a criminal penalty; it is a misdemeanor to violate it. Criminal statutes must be strictly construed in order to give adequate notice of what constitutes the crime. Here, strict construction of the act is impossible.

Formation of public policy is covered by the act because the heading for Section 1 says so. Public bodies are covered by the act because the title says so. Section 1(B) narrows formation of public policy to meetings held for the purpose of formulating public policy, and narrows public bodies to a quorum of any "board, commission, or other policy-making body of any

state agency, or any agency or authority of any county, municipality, district or any political subdivision," if it is acting within its authority. Committees are not included. Yet Section 3(A) makes Section 1 committee actions invalid if they do not meet the provisions of the act, and presumes those committee actions to be valid.

Adjudicatory or personnel matters are too broad. Firing Herb Smith could definitely be called a personnel matter; thus, the notorious Albuquerque City Commission meeting could be exempt from the open meetings law. A discussion of pay raises for public employees might be a personnel matter. Apparently such a discussion would not be covered by the act if thought of as a personnel matter, but would be an open meeting if the committee were a standing legislative committee, called by the chairperson, and deliberating on a bill formally introduced in the legislature.

Adjudicatory matters might be anything from violations of administrative acts -- such as producing natural gas beyond the oil conservation commission's allocation -- to a grand jury. Does the absence of other juries from the exempt bodies mean their deliberations are no longer secret?

The act is infeasible. "Discussion," for instance, is a catch-all phrase that may catch more than is intended. The oil conservation commission is composed of three people. Two constitute a quorum, which triggers the act's requirements. These two persons cannot have a cup of coffee together to discuss public business without being in violation of the act for lack of reasonable notice to the public. Alternatively, of course, they might issue a press release indicating that they plan to take coffee breaks every work day at 10:30 a.m. and at 3 p.m. at the fourth table at the Desert Inn in Santa Fe.

As stated, the meeting together of a "majority or a quorum" of the body triggers the reasonable notice requirements. Yet, a quorum is not defined. The New Mexico Constitution describes a quorum as a majority, but it only deals with a quorum of the legislature, Art. IV, Section 7, or a quorum of the Supreme Court, Art. VI, Section 5. Thus, one must turn elsewhere. Roberts' Rules of Order directs that when there is no special rule, a quorum consists of a majority of the members of the assembly. "But when ever a society has a permanent existence, it is usual to adopt a much smaller number," Section 43, Roberts Rules of Order. So a public body may decide that for its purposes, a simple majority will be a quorum or a smaller number may be a quorum, or that all the members of the body constitute a quorum.

Only one word is defined in the open meetings act -- "meeting." But that definition of meeting goes only to the section dealing with legislative exemptions. Meeting, for the legislature, then, means "a gathering of the members called by the presiding officer of a standing committee." Other meetings are not defined.

Generally, words used in legislation should be given their ordinary meaning or interpreted according to the context in which they are used. Section 1-2-2(A) N.M. Stat. Ann. 1953. In this act, it is difficult to interpret from the context what is meant by some of the words. "Public bodies" is one phrase left undefined. Some examples have been mentioned above. Others are not referred to at all. Are deliberations of the Supreme Court or the Court of Appeals meetings of public bodies? Certainly, in the ordinary meaning, the courts are public bodies and the context leads one to believe the purpose is to cover

everything. The judges' deliberations may be "adjudicatory in nature," another undefined phrase. Yet, their private discussions are not in the nature of adversary proceedings. Those discussions, from which everyone but the justices are now excluded, generally result in the policy of the court, decisions on cases or personnel decisions. No court, however, will rule its discussions to be open to anyone, let alone the press and the public.

"Public meeting" is not defined. Reading "public meeting" in conjunction with the phrase "at which public business is discussed" probably means a public meeting takes place any time (1) public business is discussed and (2) a quorum is present to make decisions. Section 1(B) leads to a different definition. There, public meeting apparently must be (1) held to discuss public business or for the purpose of formulating public policy or for the purpose of taking action, (2) within its authority if (3) a quorum is present. Apparently acting *ultra vires* would exempt a body from coverage of the act.

While the legislature rose to protect the rights of the people to know what its city and county officials were doing, it carefully protected its own proceedings. Consideration of HB300, the appropriations bill, is always done in secret session. Hearings are held and legislators hash out their differences in private, then introduce the finished product of their labors as a completed appropriations package. Those sessions continue to be specifically exempted from public scrutiny. Thus, decisions on the spending of public funds, perhaps the most important act of the legislature, are still secret.

The planning stages of almost everything in the legislature are secret. Legislative council service bill drafting is already confidential by law, Section 2-3-7 N.M. Stat. Ann. 1953, so the legislative exemption for matters not yet presented to the legislature can be no more than another way to avoid open meetings. If a committee holds hearings on a not-yet-introduced piece of legislation or a committee substitute, the meeting need not be public. Committees that are not standing committees are not covered, so all subcommittees, special, ad hoc, or interim committees are exempted, whether they are considering legislation which has already been introduced or not.

No legislative record-keeping is required in the bill, nor has any record-keeping ever been required by the legislature in the past. Some committees voluntarily keep records and make them open to the public.

Issuance, suspension, renewal or revocation of license matters are excluded. That provision is specific and clear, with little room or alternative interpretation. Yet there are cogent policy arguments against that exemption. It's arguable that if one seeks to become licensed by the state, he or she loses the privilege of anonymity because the licensing concerns the public health, welfare and safety. The argument was rejected by the legislature, indicating an intent to exclude what might be important, but embarrassing information.

Additionally, the act conceivably has title problems. The title may fail to provide adequate notice of the act's contents. It mentions the prohibition of "secret meetings of public bodies," but does not refer to the numerous exemptions in the act. Penalties are signalled in the title, as is the emergency clause and the repeal of the old open meetings law. In Raton Public Service Co. v. Hobbes, 76 N.M. 535, 416 P.2d 32 (1966), the court held the title of the former public meetings law was not void for vagueness even though it did not mention all governing bodies. Other bodies the court reasoned, could be included in the act. The old law's title did, mention exemptions.

III. CONCLUSION

This legislation is not needed. By enacting it, the legislature yielded to pressure from the press, which in turn was responding to the nasty mood of the public during the continued Watergate revelations and the histrionic display over the firing of Herb Smith.

Smith went to the press, which was sympathetic almost to a person, and the press brought a crowd to the official public meeting where the final vote was taken to fire Smith. The Bernalillo county district attorney would not prosecute under the old open meetings law, but Attorney General David Norvell considered the firing very important, indeed. He went so far as to draft legislation and Jamie Koch agreed to introduce it. Had the legislation been written by any other person in the state, it might have been better received, but his office is not renowned for fine legislative drafting.

Koch and the press convinced the governor to include a request for an open meetings law in his message, which he did, and his technicians modified the bill. Then the Republican legislators got in the act. The Republicans not only yielded to press pressure, but outdid their opponents in grandstand plays and gave the press something to offer as news and views for months. Whenever things got dull in Santa Fe, each party would hassle over portions of the bill trying to grab the good guy hat.

The result was overbill. Despite its zeal to appear progressive and open to the clamoring public, the legislature exempted itself, exempted many pertinent issues other than the legislative appropriations measures, and constructed a law so vague as to be unworkable.

A better result could have been achieved simply by amending the old open meetings law. But it wouldn't have been quite so sexy. An amendment might not give the press enough to write about and the public enough to react to. So the good guys squared off against the bad guys and the greys won and they won all over the front pages of the state.

The open meetings act is a terrible piece of legislation. It defies adequate interpretation. It is ambiguous and full of holes. The concept, if correctly articulated -- to bring government out into the open -- is laudable. But, the act's legislative exemptions make it ludicrous, a sham. It should not have been passed. Instead, specific notice requirements might have been put into the old law and coverage expanded to include all deliberations. If the intent was to require open meetings, the legislature should have so specified. If the legislative purpose was to comply with the mood of the people as conceived by the interpreters, the press, then it probably got what it wanted: all show and little substance.

The act does only one thing adequately and that is to put someone on notice that something is required of someone.

CONNIE BORKENHAGEN

An Act Creating Red Rock State Park ; SB84

Effective Date: May 15

Chief Sponsor: Sen. Wayne Radosevich, D-McKinley

Vote: Senate, 36-0; House, 66-1.

This act authorizes the state park and recreation commission to issue and sell \$1.5 million in severance tax bonds for construction and development of Red Rock state park in McKinley county.

The action is contingent upon a certification of need by the state park and recreation commission and receipt of at least \$1.5 million in matching funds and 640 acres of land from the city of Gallup and the joint powers commission.

Once constructed, the commission is directed to lease the park to the city of Gallup for \$1 per year for a period not to exceed 25 years. The city will bear the total expense of maintaining the park during the term of the lease.

This act was significantly changed from the form in which it was introduced. Originally, in addition to the Red Rock State Park provisions which were passed, the bill contained authority for the issuance of \$10 million in severance tax bonds for the improvement of 34 existing recreational areas.

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An Act Changing the Procedures for Movement of Mobile Homes on Highways; SB47

Effective Date: EMERGENCY

Chief Sponsor: Sen. Robert McBride, D-Bernalillo, for the Tax Study Committee

Vote: Senate, 25-12; House, 53-0.

This act changes the procedures for movement of mobile homes by amending Section 64-23-22 N.M. Stat. Ann. 1953 and repealing Laws 1973, Ch. 258, Section 149, to allow more accurate identification of mobile homes for property tax purposes.

Mobile homes are exempted from the general permit requirements for over-size vehicles and instead are now subjected to more stringent standards in order to assure their payment of property tax. No permit is valid for mobile home movement within the state without a certificate from the assessor or treasurer in the county from which the home is moved showing that all property taxes have been paid for the current and past years. Mobile home dealers are exempted if the new home originates from the dealer's lot and was part of his inventory prior to the sale.

Repeal of Laws 1973, Ch. 258, Section 149 removes the requirement that the highway authority issuing the permit notify the property appraisal department which in turn notifies the assessors of the originating and destination counties and the owner of the mobile home that such notification was made. The highway authority is now to directly notify the county assessors and the owner. Registration numbers alone are sufficient identification.

An Act Ceding Jurisdiction Over Land in Torrance County; HB19

Effective Date: May 15

Chief Sponsor: Sen. Tibo J. Chavez, D-Valencia

Vote: Senate, 35-0; House 63-0.

This act cedes legislative jurisdiction to the United States over lands in Torrance county comprising the Quari and Abo state monuments. Jurisdiction is ceded only for the purpose of incorporating land within a national monument, and the land is to revert to the state whenever all or part of such land is not used for this purpose. The cession is contingent upon approval of the national monument plan by the director of the museum of New Mexico, the cultural properties review committee and the state historic preservation offices.

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An Act Establishing Regional Housing Authorities ; HB61

Effective Date: May 15

Chief Sponsor: Rep. Nick L. Salazar, D-Rio Arriba

Vote: House, 50-0; Senate, 27-0.

This act amends Section 4-30-1 N.M. Stat. Ann. 1953 to provide seven regional housing authorities which are coextensive with the seven housing regions. Counties making up the regions are:

Region One: San Juan and McKinley;

Region Two: Rio Arriba, Los Alamos, Taos, Colfax, Mora, Santa Fe and San Miguel;

Region Three: Sandoval, Bernalillo, Valencia and Torrance;

Region Four: De Baca, Curry, Roosevelt, Union, Harding, Ouay and Guadalupe;

Region Five: Catron, Grant, Hidalgo and Luna;

Region Six: Lincoln, Chavez, Otero, Eddy and Lea; and

Region Seven: Socorro, Sierra and Dona Ana.

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MISCELLANEOUS APPROPRIATIONS

The General Appropriation Act of 1974; HB300

Effective Date: EMERGENCY

Chief Sponsor: Rep. William O'Donnell, D-Dona Ana

Vote: (S.S.) House, 63-3; Senate, 34-4.

The cost of operating New Mexico's state government and its on-going programs is approaching the \$1 billion mark.

That much, at least, can be gleaned from the 1974 General Appropriation Bill, HB300.

Specifically, the total spending figure for the 63rd fiscal year includes \$367,624,600 in state funds and \$363,344,400 in federal monies for a whopping total of \$730,959,000, plus some \$2.1 million in emergency and deficiency appropriations. Several of the state appropriations are contingent on the receipt of federal matching funds.

Surprisingly, in this time of inflation, the total expenditures are down from the 62nd fiscal year when the total combined figure was \$778,287,800.

Nevertheless, totals for each division of HB300 showed a definite trend upward. The breakdown:

<u>Division</u>	<u>1973</u>	<u>1974</u>
Legislative	\$ 705,800	\$ 743,000
Judicial	8,623,700	10,049,200
Executive	22,824,000	29,003,200
Inspection and Regulation	4,031,100	4,692,800
Examining and Licensing Boards	699,800	866,400
Natural Resources	15,530,200	18,490,400
Health, Hospitals, Welfare and Other Institutions	123,598,400	133,488,400
Public Safety	15,081,600	17,611,600
State Highway Commission	116,565,700	123,105,800
Other Education	21,872,800	23,290,700
Higher Education	159,405,200	169,593,700
Public School Support	289,349,500	200,023,800

It would be useless, if not absurd, to list each appropriation contained in HB300. Some appropriations, however, bear mention.

The legislature granted \$100,000 for construction of a port of entry at Lordsburg. The public defender received almost a 100 percent increase in funding, including \$80,000 for the defense of indigent juveniles.

The high cost of elections was reflected in the appropriation to the Secretary of State which increased from \$240,400 in 1973-74 to \$308,900 for 1974-75.

The State Racing Commission received an additional \$58,000 for those controversial chemical tests.

In the examining and licensing board area, substantial increases were given the board of nursing, from \$60,800 to \$97,500 and the real estate board, up from \$82,100 in 1973-74 to \$126,100 for 1974-75. Only state funds are involved.

A 100 percent increase was made in the state's appropriation for the transportation and extradition of prisoners, from \$50,000 to \$100,000.

A total of \$200,000 in state funds was appropriated to the Board of Educational Finance for capital outlays for the handicapped and, tucked away in the BEF budget is a new \$2 million state expenditure for energy research and development.

New Mexico State University received a total of \$138,800 in state funds for a new forestry research program. Eastern New Mexico University was allocated \$25,000 for a new independent internal auditor. New Mexico Institute of Mining and Technology will be adding a scanning electron microscope with \$120,000 in state funds.

Resident branch community college students will receive a tuition break. Tuition for full-time academic students was dropped from \$180 per semester to \$156 and part-time academic students will pay only \$13 per semester hour rather than the previous \$15.

In public education, the state equalization guarantee distribution allots \$616.50 per student and, overall, state equalization money is increased from \$170,823,300 in the 62nd fiscal year to \$196,899,000 for the 63rd fiscal year.

There was much hoopla during the legislative session over an estimated \$18 million in accumulated reserves presently held by the universities. The money had not been specifically approved for any purpose and some legislators wanted to prevent the universities from tapping the reserves until the uniform accounting procedures established by legislation this past session could go into effect.

Accordingly, language was inserted into HB300 which effectively would have prevented the universities from using these reserves. Governor Bruce King, however, vetoed all such language.

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An Act Authorizing a State Office Building in Albuquerque ; HR67

Effective Date: May 15

Chief Sponsor: Rep. Abel McBride, D-Bernalillo

Vote: House, 43-20; Senate, 21-20.

This act authorizes the property control division to construct a state office building in Albuquerque for use of the employment security commission.

The commission presently leases office space in the National Building in Albuquerque.

Severance tax bonds totaling \$3,795,000 will be issued to finance land acquisition and construction costs. The bonds will be repaid as follows: \$2,750,000 from the proceeds of the severance tax bonds over a 25-year period, with interest at five percent per annum; \$845,000 from the employment security fund; and \$200,000 from New Mexico's account in the unemployment trust fund under the Social Security Act.

* * * * *

An Act Relating to Eminent Domain ; SB50

Effective Date: May 15

Chief Sponsor: Sen. Theodore R. Montoya, D-Sandoval, Rio Arriba, Bernalillo

Vote: Senate, 23-0; House, 53-0.

This act protects the rights of the state and its political subdivisions over property acquired through the exercise of the power of eminent domain pursuant to Sections 22-9-1 N.M. Stat. Ann. 1953 et seq., while limiting the reversionary rights of the original owners, their heirs and assigns to the condemned land.

The act seeks to limit dicta in the New Mexico Supreme Court decision in Navarez v. State Armory Board, 84 N.M. 262, 502 P.2d 287 (1972) which suggested that the court would look favorably on an action by the original owners, their heirs or assigns to recover land condemned by the state when the land was no longer being used for the purpose for which it was condemned.

In Navarez, the court dealt with a statutory proviso which provides in pertinent part:

... any property acquired under the provisions of this chapter shall be used exclusively for the purposes as set forth in this chapter and whenever the use of such property as herein contemplated shall cease for the period of three [3] years, the same shall revert to the original owner, his heirs or assigns. Section 22-9-21 N.M. Stat. Ann. 1953.

The court in Navarez reaffirmed its previous view that this section creates a determinable fee in the state or political subdivision which acquired the land through eminent domain and a possibility of reverter in the original owners or their successors in interest.

The act amends present law to avoid this judicial construction in an effort to protect lands taken by the state pursuant to its power of eminent domain for one purpose and which are now being used for another purpose. It does so in three ways.

First, Section 22-9-21 N.M. Stat. Ann. 1953 is amended to exempt property acquired by the state or any of its political subdivisions from the requirement that property acquired by eminent domain must be used exclusively for the purpose or purposes for which it was condemned.

Secondly, the act amends Section 22-9-15 N.M. Stat. Ann. 1953 so that all real property acquired by the state, county, municipality or school district pursuant to Section 22-9-15 is held in fee simple absolute unless the property is taken for a street, road or other right-of-way or unless the petition to condemn specifically provides for a transfer of less than a fee.

Finally, a new section is added which establishes a statute of limitations on actions to reacquire property taken by eminent domain. Any person claiming a reversionary interest in real property must bring the action against a state agency or political subdivision within three years from the date the claimant is first entitled to reclaim his interest in the property. The act makes a slight adjustment of the limitation period in the case of a party whose right to reclaim property has occurred prior to the effective date of the act. The party must bring action within three years from the date when first entitled to reclaim the interest or within six months after the effective date of this act, whichever is later.

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An Act Creating a Tax Study Committee ; HB127

Effective Date: EMERGENCY

Chief Sponsor: Rep. Edward J. Lopez, D-Santa Fe

Vote: House, 52-1; Senate, 34-0.

This act creates a joint interim legislative committee, to be known as the Tax Study Committee. The committee's functions are to conduct a study of state taxes and revenues and to report its findings and recommended legislative changes, if any, to the next session of the legislature.

The committee is to be composed of nine legislators appointed by the legislative council service to serve for two-year terms.

The act also appropriates \$50,000 from the general fund to the legislative council service for expenditure by the tax study committee in the performance of its functions. The committee members' per diem and mileage expenses are payable out of this sum.

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An Act Creating New Insurance License Categories; HB33

Effective Date: March 1, 1975 for the provisions relating to fee increases and to new license categories; July 1, 1974 for the remainder of the act

Chief Sponsor: Rep. Alvino E. Castillo, D-Colfax, Union

Vote: House, 56-0; Senate, 35-0.

This act amends the statutory section imposing taxes and fees on insurance companies and agents. The amendment's chief effects are: (1) to increase certain pre-existing fees payable to the superintendent of insurance, under paragraph A, by every insurance company transacting or seeking admission to transact insurance business in New Mexico and, under paragraph B, by agents licensed to transact insurance business in New Mexico; and (2) to add new license categories under paragraphs A and B.

Fees for filing amendments to articles of incorporation are raised from \$1 to \$2 and the fee for each annual license issued to agents is increased from \$2 to \$5 in each of the three subcategories of designated agents.

Under paragraph B, the fees have been increased as follows: from \$2 to \$5 for each annual license issued to solicitors; from \$2 to \$10 for each annual license issued to adjusters; from \$5 to \$50 for each annual license issued to rating organizations; from \$2 to \$10 for each seal and signature affixed to any instrument; and from \$20 to \$25 for each annual license for each insurance vending machine.

The new license categories and corresponding fee schedules added to paragraph A include, for an annual variable annuity license to transact insurance business, \$100; for each nonresident agent licensed to transact insurance business, \$20; for each variable annuity agent's license, \$25; and for the insurance agent's examination, for each class, \$10.

Finally, a new license category has been added to paragraph B for each annual license issued to advisory organizations, and a corresponding fee of \$50 charged.

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An Act Relating to Handymen; HB52

Effective Date: May 15

Chief Sponsor: Rep. T. Brown, R-Eddy, Chavez

Vote: Senate, 35-0; House, 52-0.

This act amends Section 67-35-3 N.M. Stat. Ann. 1953 to increase the annual amount an individual may earn and still retain his status as a handyman. The permissible annual compensation limit is raised from \$1,500 to \$7,200. Individuals who qualify as handymen are excluded from the definition of contractors and thus the licensing requirements of the Construction Industries Licensing Act. Sections 67-35-1 to 67-35-63 N.M. Stat. Ann. 1953. The other requirements for classification as a handyman are left intact by the amended Section 67-35-3.

An Act Providing for an International Space Hall of Fame; HB56

Effective Date: EMERGENCY

Chief Sponsor: Rep. David M. Salman, D-Union, Mora, Harding

Vote: House, 63-0; Senate, 35-0.

This act is new legislation establishing an 11-member commission to be appointed by the Governor to administer construction and operation of an international space hall of fame in Alamogordo. The sum of \$1.8 million is appropriated for construction.

Four members are to be appointed at-large and one member is to be appointed from each of the state's seven planning and development districts. Three members' terms are to end December 31, 1974; four members' terms are to end December 31, 1975; and four members' terms are to end December 31, 1976. Subsequent appointments will maintain the staggered-term system.

The commission is to operate the hall of fame "for the benefit of the people of New Mexico, the nation and the world as an educational project tracing the path of man's conquest of space." The commission may collect, and prepare exhibits, supplies and equipment, employ necessary personnel, accept federal matching funds, establish educational programs relating to space and accept donations and bequests for the hall of fame. Members, if not public officials or employees, are to be reimbursed for mileage and per diem expenses under the Per Diem and Mileage Act.

Proponents of the project estimated that \$10 million will be required to build the hall of fame, but stated that no additional state revenues will be requested. The balance will come from federal, local and private contributions. The dedication is scheduled for July, 1974 in Alamogordo. Plans include an amphitheater, planetarium, auditorium and exhibition hall. The International Aeronautics Federation, an organization of scientists, would be responsible for choosing those persons to be nominated and elected to the hall of fame.

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An Act Appropriating Funds to the Planning and Development Districts; HB93

Effective Date: May 15

Chief Sponsor: Rep. Joseph Kloeppe, D-Sandoval

Vote: House, 50-2, Senate, 36-1.

This act appropriates \$78,400 to the state planning office to divide equally among the seven recognized planning and development districts. The appropriations are styled as grants-in-aid.

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An Act Creating a Veterans' Home; SB74

Effective Date: EMERGENCY

Chief Sponsor: Sen. Ray Leger, D-San Miguel, Guadalupe, DeBaca

Vote: Senate, 37-1; House, 68-0.

This act creates the Montezuma veteran's center as a state home for veterans of service in the military.

The act, which Gov. Bruce King included on his call for the special session of the legislature, allows the state to take advantage of an offer from the American Bishops Conference to lease their land to the state for \$1 a year. The land is estimated to be worth \$3 million.

The governor also reportedly saw the creation of the veterans' center has an opportunity not only to provide a home for veterans but to aid the Las Vegas community. The center will be located in the old Montezuma seminary or school near Las Vegas at the head of Gallinas Canyon.

The sum of \$350,000 is appropriated for the center, contingent upon receipt of "significant" federal matching funds for construction.

The center will be under the control of the hospitals and institutions department. An advisory board was created by the act, but pocket vetoed by the governor.

Only those who served on active duty at least 90 days during a period of war or "conditions comparable thereto" are eligible to be occupants of the center. In addition, the veteran must have been either a resident of New Mexico at the time of entering the armed forces or have lived in the state at least five of nine years immediately preceding his application. However, veterans who do not meet these requirements are eligible if federal funds are available for the use and benefit of the center.

The hospitals and institutions board is authorized to establish a schedule of rates for occupancy based upon the veteran's annual income.

Provisions whereby unclaimed estates of occupants would escheat to the center were pocket vetoed.

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An Act Relating to the Aging; SB44

Effective Date: May 15

Chief Sponsor: Sen. Odis L. Echols, D-Curry

Vote: Senate, 37-0; House, 48-0.

This act appropriates \$4,000 for the hiring of an employment specialist by the commission on aging. The specialist is to work with area agencies on aging and area employment security commission offices to find jobs for elderly persons. The appropriation is not made contingent on receipt of matching federal funds or other monies, though the \$4,000 appropriated for the position falls \$800 short of meeting the new state employee minimum wage.

An Act Relating to the Cumbres and Toltec Scenic Railroad; HB26

Effective Date: EMERGENCY

Chief Sponsor: Rep. Reynaldo Medina, D-Taos, Rio Arriba

Vote: House, 65-1; Senate, 39-0.

This act appropriates \$100,000 from the general fund to the New Mexico railroad authority for improvements and repairs to the Cumbres and Toltec Scenic Railroad. The New Mexico appropriation is contingent on a \$100,000 matching appropriation from the State of Colorado.

The money from both states will be used for the repair of tracks, trestles, rails, the roadbed, the engine house at Chama, the water system at Osier and water tanks at Chama and Cresco, for the restoration of historical rolling stock and for a radio communication system.

The 64-mile narrow guage railroad runs between Chama, New Mexico, and Antonito, Colorado. It began under joint operation by Colorado and New Mexico two years ago and was later leased to Scenic Railways, Inc., a California firm. Gasoline shortages reportedly were responsible for the fact that the railroad operated at a deficit in 1973.

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An Act Appropriating Funds to the Legislature; HB1

Effective Date: EMERGENCY

Chief Sponsor: David M. Salman, D-Mora, Harding, San Miguel

Vote: Senate, 38-0; House, 61-4.

This act -- the "feed bill" -- appropriates funds to pay expenses incurred by the 1974 legislature. The sum of \$480,100 is appropriated for per diem and mileage expenses for the lieutenant governor and members of the legislature and to pay salaries of legislative employees. The \$480,100 is divided as follows: \$230,750 for expenses of the house of representatives; \$188,000 for senate expenses; \$2,850 for the session expense of the lieutenant governor while acting as presiding officer of the senate; and \$58,500 for the session expense of the legislative council service.

The legislative council service also is provided \$376,150 for salaries, travel expenses of legislators, other than legislative council members, committee travel, staff expenses of other interim committees; and \$800 for travel and per diem expenses of the legislative members of the interstate education compact commission.

A \$290,720 sum is appropriated to the legislative finance committee for salaries and expenses.

Finally, a \$125,000 appropriation was made to the legislative school study committee.

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An Act Preserving the Salmon Ruin in San Juan County; HR62

Effective Date: July 1

Chief Sponsor: Rep. Jerry W. Sandel, D-San Juan

Vote: House, 59-0; Senate, 37-0.

This act appropriates \$190,000 from the general fund to the state planning office for expenditure in the 63rd, 64th, and 65th fiscal years to stabilize and preserve the Salmon Ruin in San Juan County. The State Planning Office is to contract with the San Juan County Commissioners to develop the Salmon Ruin in accordance with plans approved by the State Planning Office and the Cultural Properties Review Committee.

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An Act Creating a Commission on the Status of Women; HR22

Effective Date: July 1

Chief Sponsor: Rep. William E. Warren, D-Bernalillo

Vote: House, 36-29; Senate, 35-1.

With a \$45,000 appropriation from the general fund, this act establishes a commission on the status of women. The commission is to consist of 15 members, appointed for five-year terms by the Governor. At least one member must come from each planning and development district and the majority of members must be women.

The duties of the commission include promoting study of the status of women, increasing educational and employment opportunities for women, and conducting conferences throughout the state to inform women of their rights and opportunities and to learn from them of their needs and problems.

The commission is authorized to receive, on behalf of the state, donations for use in carrying out its duties; function as the state agency for handling all federal programs related to the status of women, except those programs designated by law as the responsibility of another state agency; and enter into agreements and contracts with agencies of the United States government.

It is the commission's responsibility to report to the governor and legislature by December 1 of each year its preceding year's work and any recommended legislative or other action.

Commission members are to be reimbursed under the Per Diem and Mileage Act, and upon the commission's selection of its director, the director is to employ necessary employees under provisions of the Personnel Act.

An Act Appropriating Funds for the National Legislative Conference ; HB76

Effective Date: EMERGENCY

Chief Sponsor: Rep. John J. Mershon, D-Lincoln, Otero

Vote: House, 53-13; Senate, 31-2.

This act creates the national legislative conference host committee and appropriates \$67,375 to cover some of the expenses incurred in hosting the 1974 national legislative conference in Albuquerque.

The organization's 27th annual convention is scheduled to be held in Albuquerque Aug. 12-16 in conjunction with two related national groups which are expected to merge with it this year, the National Society of State Legislators and the National Conference of Legislative leaders.

The act creates the interim joint committee and provides that it shall be composed of members of the legislature appointed by the legislative council. The committee will serve until Dec. 31, 1974. Its function is to perform such duties as necessary for hosting the national conference.

The appropriation goes to the department of development for use of the committee.

During hearings on the bill, NLC officials reported that the Illinois legislature spent \$90,000 last year to host the convention and the Louisiana legislature appropriated \$82,500 for the 1972 event.

MISCELLANEOUS TAX LAWS

An Act Relating to Claims for Tax Refunds; SB17

Effective Date: EMERGENCY

Chief Sponsor: Sen. John Rogers, D-Los Alamos, Santa Fe

Vote: Senate, 40-0; House, 54-0.

This act amends Section 72-13-40(B) N.M. Stat. Ann. 1953 to permit taxpayers to claim a tax credit or refund from the Bureau of Revenue when the overpayment was caused by an over-assessment by the Bureau up to three years from the time of the over-assessment, or from the time the payment was due, whichever is later.

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An Act Relating to Estate Taxation; SB10

Effective Date: EMERGENCY

Chief Sponsor: Sen. John Rogers, D-Los Alamos, Santa Fe

Vote: Senate, 37-0; House, 53-0.

This act redefines the word "personal representative" as used in the Estate Tax Act, Sections 72-33-1 N.M. Stat. Ann. 1953 *et. seq.*, to mean only executors or administrators of a decedent. It eliminates from the meaning of "personal representative" both a fiduciary and a custodian of property as the persons required to file returns and responsible for payment of taxes due under the Estate Tax Act. The deletions bring state law into conformity with the estate tax provisions of the Internal Revenue Code which require such taxes to be paid by the executor. 26 U.S.C. Section 2002. Under New Mexico law, an "executor" and "administrator" are synonymous. Section 31-1-1 N.M. Stat. Ann. 1953.

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An Act Relating to Property Taxation; SB45

Effective Date: EMERGENCY

Chief Sponsor: Sen. Robert McBride, D-Bernalillo

Vote: Senate, 37-0; House, 44-2.

Section 72-6-4 N.M. Stat. Ann. 1953 is amended to provide a penalty for failure or refusal to furnish information required by the property appraisal department. Such information is required of owners and lessees of non-exempt public utilities, mineral property, and of the machinery and equipment used in essentially heavy construction. Any person who does not file the required return is subject to a penalty of 25 percent of the department's estimate of the taxable value of the property.

This act also removes the requirement that the property appraisal department make its assessments on the first Monday of March of each year and repeals the hearing provision in Section 76-6-4 N.M. Stat. Ann. 1953. This latter provision was in conflict with Section 72-25-10 N.M. Stat. Ann. 1953 which provides that hearings shall be granted if a petition is filed with the department within 30 days after the valuation notice is mailed.

The act also makes clear that despite the amendments, it is still the intent of the legislature that Section 72-6-4 be repealed as of January 1, 1975 when the property tax code enacted in the 1973 legislative session takes effect.

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An Act Removing Penalties under the Gasoline Tax Act from Tax Administration Act Coverage; HB6

Effective Date: July 1

Chief Sponsor: Rep. John H. Mershon, D-Lincoln, Otero

Vote: House, 64-0; Senate, 33-0.

HB6 amends Section 72-13-14 N.M. Stat. Ann. 1953, of the Tax Administration Act, which places the administration and enforcement of New Mexico taxes under the Bureau of Revenue, to exempt the penalty section, Section 72-27-8 N.M. Stat. Ann. 1953, of the Gasoline Tax Act, Sections 72-27-1 to 72-27-15 N.M. Stat. Ann. 1953, from Bureau of Revenue authority. Section 72-27-8 makes it a misdemeanor for anyone other than a producer, refiner, or pipeline company to transport or store drip gasoline or use drip gasoline in a vehicle operated on New Mexico highways. Drip gasoline is a liquid product of condensation from associated or non-associated natural or casing-head gas. Section 72-27-2 (L) N.M. Stat. Ann. 1953. Magistrate courts have jurisdiction of the offense. Conviction carries a fine of not less than \$100 nor more than \$1,000, or six months in the county jail, or both.

An Act Providing for State Police Enforcement of the Gasoline Tax Act; HB7

Effective Date: July 1

Chief Sponsor: Rep. John J. Mershon, D-Lincoln, Otero

Vote: House, 64-0; Senate, 34-0.

This act amends Section 72-27-8 N.M. Stat. Ann. 1953 of the Gasoline Tax Act to make enforcement of the drip gasoline penalties the responsibility of the state police.

An Act Providing for the Annual Payment of Use Fee and Special Fuel Tax; HB119

Effective Date: EMERGENCY

Chief Sponsor: Rep. Hoyt Pattison, R-Lea, Roosevelt, Curry

Vote: House, 59-0; Senate, 38-0.

This act amends sections of the use fee and special fuel tax laws. Sections 64-11-16 through 64-11-16.5 N.M. Stat. Ann. 1953 and Sections 64-26-67 through 64-26-89 N.M. Stat. Ann. 1953, respectively.

The use fee provisions of the Motor Vehicle Code require payment of a "use fee" to the motor transportation department by specified motor vehicles for use of the public highways. The Special Fuel Tax Act imposes an excise tax on the use of special fuels by any motor vehicle, payable to the motor transportation department by defined users and dealers of special fuels as a toll for use of the highways.

The chief effect of this amendatory scheme is to make available an additional payment schedule alternative to those subject to the use fee and special fuels tax. Previously, the use fee and special fuels tax were payable on a quarterly basis. This payment arrangement is left intact. The amendments prescribe certain conditions under which the fee and tax may be paid on an annual basis. The other changes make the annual payment option consistent with the non-payment penalties and security provisions.

Section 64-34-15 N.M. Stat. Ann. 1953 is amended to require compliance with the use fee tax for exemption of certain motor carriers from motor transportation department registration.

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An Act Relating to Property Taxation; SB46

Effective Date: July 1, 1975

Chief Sponsor: Sen. Robert McBride, D-Bernalillo

Vote: Senate, 37-0; House 44-2.

This act amends the property tax code and statutes passed in connection therewith during the 1973 legislature. The code has not taken effect as yet. Two provisions of current law -- Section 15-38-1.2 and Section 77-6-38 N.M. Stat. Ann. 1953 -- also are changed by the act.

It is impossible and a bit futile to describe the changes in the new property tax code without a lengthy discourse on how that code itself changes current law. The subject is beyond the scope of this brief analysis, and shall be left for some future brave soul to contribute to the regular editions of the New Mexico Law Review.

Discussion thus is primarily limited here to the changes in Section 77-6-38 and Section 15-38-1.2. Most significant is the former which deals with school tax levies. The present Section 77-6-38 is repealed and a new Section 77-6-38 enacted effective July 1, 1974. Under current law, there is levied (1) a levy of not more than 10 mills on all taxable property in a county with proceeds going to each school district on the basis of an average daily membership ratio; (2) a special school district levy of up to five mills on all taxable property in a school district with proceeds going into a fund to the credit of the school district to meet the district's revenue requirements; and (3) a one-half mill levy on all taxable property in a county with proceeds submitted to the state treasurer for deposit in the current school fund.

Under the new Section 77-6-38, a levy of \$11.15 is assessed on each \$1,000 of net taxable property allocated to the school district for general operating purposes of school districts in which there is no municipality. In school districts in which there is one or more municipalities, the levy rate is \$8.925 for each \$1,000 of net taxable property allocated to the school district.

In addition, the new section imposes a levy of 50 cents on each \$1,000 of net taxable value of property allocated to the county. Proceeds go to the current school fund.

In comparison to the changes in the school tax levy, the amendment to Section 15-38-1.2 concerning qualifications for appraisers' certificates is minor. The property tax department is substituted for the state tax commission as the state agency responsible for establishing appraisers' qualifications.

Three current statutes, Sections 72-6-12.2, 72-6-12.3 and 72-6.12.4 N.M. Stat. Ann. 1953, are added to the long list of those to be repealed as of January 1, 1975. They deal with the property appraisal department's supervisory power over county assessors, its investigative powers and confidentiality of information.

PROPOSED CONSTITUTIONAL AMENDMENTS

A Joint Resolution Permitting Loans to Students of the Healing Arts; HJR7

Chief Sponsor: Rep. Nick Salazar, D-Rio Arriba
Vote: House, 48-1; Senate, 32-2.

House Joint Resolution No. 7 proposes an amendment to Art. 9, Section 14 of the New Mexico Constitution to allow the legislature to establish a loan program for "students of the healing arts." The proposed loans would be available only to residents of New Mexico who agree to practice after graduation in designated areas of the state for a period of years.

Exactly who would be eligible for such loans is unclear since "healing arts" is not presently defined by statute. The term obviously seems to include physicians, osteopaths and dentists and, perhaps, veterinarians, optometrists, podiatrists and physical therapists.

In 1970, a provision to allow the state to establish a loan program for post-secondary students in state educational institutions was defeated by the voters, but a 1971 amendment to allow such loans to Vietnam veterans was adopted.

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A Joint Resolution Allowing Salaries for Legislators; SJR2

Chief Sponsor: Sen. John Irick, R-Bernalillo
Vote: Senate, 35-3; House, 51-0.

Senate Joint Resolution No. 2 would establish a permanent legislative compensation commission with authority to set the compensation, expenses and allowances paid legislators. Art. 4, Section 10 of the New Mexico Constitution would be repealed and a new Art. 4, Section 10 adopted.

The commission would consist of nine members, three appointed by the governor, two appointed by the chief justice of the Supreme Court, two selected by the president pro tempore of the senate and

two appointed by the speaker of the house of representatives. No member could be a legislator, officer or employee of the state or any of its political subdivisions or an officer or employee of any agency or institution which receives state funds. Committee members would serve at the pleasure of the appointing officials.

The legislature would establish its own rates of compensation, expenses and allowances, but such rates could not exceed those established by the legislative compensation commission.

If the amendment passes, the commission would set the maximum rates by June 30, 1975 and these rates would go into effect on July 1, 1975. They would be reviewed every four years. Different pay rates could be established for sessions, interim periods and legislators who serve as officers.

The proposed amendment is a substantial departure from present law which provides that legislators during a session may receive a maximum of \$40 per diem and 10 cents a mile for travel during the legislative interim and for one trip to their home during the session.

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A Resolution to Bar Taxation by the Middle Rio Grande Conservancy District; HJR8

Chief Sponsor: Rep. Raymond Garcia, D-Bernalillo
Vote: House 54-5; Senate, 28-11.

This resolution would amend Art. 8 of the New Mexico Constitution to prevent any non-elected governing authority -- in short, the Middle Rio Grande conservancy district -- from assessing any sort of tax. The amendment does not bar Taxation or special assessment by a governing authority which was initially appointed if it becomes an elected authority within six years. If approved, the amendment would go into effect July 1, 1976.

This resolution, similar to proposals introduced in many past legislatures, is aimed directly at the Middle Rio Grande conservancy district which is governed by a court-appointed board of directors. The district and its administration are concerned with highly technical engineering problems involving the distribution of irrigation and culinary water, drainage of marshlands, salinity and flood control, and contractual relations with other governmental entities.

The legislature may have hoped to modify the present system of cost assessments with this proposal, but under terms of a long-term contract with the U.S. Bureau of Reclamation, the board must generate certain minimum revenues.

Supporters of the resolution claim the present conservancy district is unresponsive and the district's taxation of land constitutes taxation without representation.

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PUBLIC EMPLOYEES

An Act Relating to Travel of Public Officers and Employees; SB14

Effective Date: May 15

Chief Sponsor: Sen. I. M. Smalley, D-Sierra, Luna, Hidalgo

Vote: Senate, 25-0; House, 57-0.

This act, amending Section 5-10-3 N.M. Stat. Ann. 1953, increases the per diem compensation for public officers and employees for out-of-state travel on official business. The per diem rate is increased from \$25 to \$36, and the rate of mileage compensation compensation for travel in a privately-owned vehicle is increased from \$.10 to \$.12 a mile.

The act also eliminates the requirement that a government vehicle be used when available for state business.

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An Act Relating to Survivors Benefits; HB114

Effective Date: May 15

Chief Sponsor: Rep. Edward J. Lopez, D-Santa Fe

Vote: House, 57-0; Senate, 29-2.

This act amends Section 5-5-16 N.M. Stat. Ann. of the State Retirement Act to change the formula for benefits to the surviving spouse and children of public employees. The act outlines a formula for distribution of benefits when a member of the state retirement fund with five or more years of total service credit dies while in the employ of an affiliated public employer and without an option 3 election in force pursuant to Section 5-5-16(1) N.M. Stat. Ann. 1953. An option 3 election, Section 5-5-15 N.M. Stat. Ann. 1953, provides for a division of any annuity between the primary annuitant and his named beneficiary.

Under the new formula, benefits are to be paid to the surviving spouse as if the member had retired the day preceding his death, even if he had not fulfilled the necessary conditions for retirement, or elected option 3, or nominated his spouse as beneficiary. The surviving spouse will not be paid less than 15 percent of the member's final average salary. The benefits will terminate if the surviving spouse dies or remarries.

If there is no surviving spouse, unmarried minor children divide 50 percent of the member's Section 5-5-13 N.M. Stat. Ann. 1953 annuity equally. Section 5-5-13 provides a formula to compute annuity based on the deceased member's total service credit and final average salary. In no case shall a child receive less than 15 percent of the parent's final average salary. Benefits cease when the child reaches 18 or marries and the remaining benefits are distributed equally among those who are still eligible to receive them.

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If the total amount of payments made are less than the amount in the member's savings fund at his death, the remainder is to be paid in accordance with subsection 4 of Section 5-5-9 N. M. Stat. Ann. 1953. That subsection provides for the payment of the remaining money (a) to designated persons surviving the deceased member, (b) to his legal representative, or, if the amount is less than \$1,000 and no claim is made within one year, to whomever the retirement board determines to be legally entitled to the money under the laws of descent and distribution. Such disbursement bars recovery by other persons.

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An Act Increasing Elected Officers' Salaries in Class A Counties; HB58

Effective Date: January 1, 1975
Chief Sponsor: Rep. Abel E. McBride, D-Bernalillo
Vote: House, 56-5; Senate, 35-0.

This act amends Section 15-43-4 N.M. Stat. Ann. 1953 to increase the annual salaries of elected officers in class A counties. Class A counties are those having a final, full assessed valuation of over \$75,000,000 and having a population of 100,000 persons or more. The only class A county is Bernalillo.

This act makes the following changes in annual salaries:

- A. county commissioners -- from \$3,200 to \$7,200;
- B. treasurer -- from \$12,000 to \$16,000;
- C. assessor -- from \$12,000 to \$16,000;
- D. sheriff -- from \$12,000 to \$16,000;
- E. county clerk -- from \$12,000 to \$16,000;
- F. probate judge -- from \$5,280 to \$7,040; and
- G. county surveyor -- from \$5,400 to \$7,200.

An Act Increasing the Minimum Salary for State Employees; HB78

Effective Date: July 1

Chief Sponsor: Rep. Edward J. Lopez, D-Santa Fe

Vote: House, 63-0; Senate, 32-0.

This act establishes a minimum salary level for all state employees of \$400 per month. The sum of \$392,000 is appropriated from the general fund to finance the increase. The act also extends the \$400 minimum salary to all employees at state educational institutions, except student workers.

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SECTIONS AMENDED

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3-8-24.1	54-11-25	72-31-41
3-8-24.7	58-5-1	72-31-44
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14-31-2.1.	72-13-40	73-33-14.2
15-37-2	72-15A-5	73-34-7.1
15-37-3	72-15A-9	73-34-7.3
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15-38-1.2	72-15A-11.1	77-6-4
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54-11-22	72-31-24	77-24-5
54-11-23	72-31-35	

SECTIONS REPEALED

SECTIONS REPEALED
AND REENACTED

SECTIONS AFFECTED

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12-20-2
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72-31-12
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77-6-18.1
77-6-18.3
77-6-18.4
77-6-18.5
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through
64-18-66
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