

AN ACT

RELATING TO BUSINESS ENTITIES; MODERNIZING THE LAWS  
REGULATING CORPORATIONS, LIMITED LIABILITY COMPANIES AND  
COOPERATIVE ASSOCIATIONS; ENACTING THE FOREIGN BUSINESS  
TRUST REGISTRATION ACT; AMENDING, REPEALING AND ENACTING  
SECTIONS OF THE NMSA 1978.

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

Section 1. Section 3-29-1 NMSA 1978 (being Laws 1965,  
Chapter 300, Section 14-28-1) is amended to read:

"3-29-1. SANITARY PROJECTS ACT--SHORT TITLE.--  
Chapter 3, Article 29 NMSA 1978 may be cited as the  
"Sanitary Projects Act". "

Section 2. Section 3-29-16 NMSA 1978 (being Laws 1965,  
Chapter 300, Section 14-28-16) is amended to read:

"3-29-16. CERTIFICATE OF ASSOCIATION.--The members of  
an association shall execute a certificate setting forth:

- A. the name of the association;
- B. the name of the incorporators;
- C. the location of the principal office of the  
association in this state;
- D. the objects and purposes of the association;
- E. the address of the initial registered office  
of the association and the name of the initial registered  
agent at that address;

- F. the amount of capital stock and number and

denomination of the shares or, if the incorporators do not desire to issue shares of stock, the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its work and for its necessary expenses;

G. the period, if any, delimited for the duration of the association; and

H. the number and manner of electing the board of directors of the association.

The certificate or any amendment thereof made as provided in Section 3-29-19 NMSA 1978 may also contain any provisions not inconsistent with the Sanitary Projects Act or other law of this state which the incorporators may choose to insert for the regulation and conduct of the business and affairs of the association. There shall accompany each certificate a list of the names of all members of the association, the list to also show the total number of members of the association and the total number of dwelling units which can be served if the project is completed. "

Section 3. Section 3-29-17 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-17) is amended to read:

"3-29-17. FILING OF CERTIFICATE. --The certificate of association shall be acknowledged as required for deeds of real estate and shall be filed in the office of the public regulation commission. A copy of the certificate, duly

certified by the commission or county clerk, shall be evidence in all courts and places. "

Section 4. A new section of the Sanitary Projects Act is enacted to read:

"REGISTERED OFFICE AND REGISTERED AGENT. -- An association shall have and continuously maintain in the state:

A. a registered office, which may be the same as its principal office; and

B. a registered agent that may be:

(1) an individual resident in the state whose business office is identical with the registered office of the association;

(2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or

(3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation. "

Section 5. A new section of the Sanitary Projects Act is enacted to read:

"CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT. --

A. An association may change its registered office or its registered agent, or both, by filing in the office of the public regulation commission a statement that

includes:

(1) the name of the association;  
(2) the address of its registered office;  
(3) if the address of the association's registered office is changed, the address to which the registered office is changed;

(4) the name of its registered agent;  
(5) if the association's registered agent is changed:

(a) the name of its successor registered agent; and  
(b) if the successor registered agent is an individual, a statement executed by the successor registered agent acknowledging his acceptance of the appointment by the filing association as its registered agent; or

(c) if the successor registered agent is a corporation, an affidavit executed by the president or vice president of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent;

(6) a statement that the address of the association's registered office and the address of the office of its registered agent, as changed, will be identical; and

(7) a statement that the change was

authorized by resolution duly adopted by its board of directors.

B. The statement made pursuant to the provisions of Subsection A of this section shall be executed by the association by any two members and delivered to the public regulation commission. If the commission finds that the statement conforms to the provisions of the Sanitary Projects Act, it shall file the statement in the office of the commission. The change of address of the registered office, or the appointment of a new registered agent, or both, shall become effective upon filing of the statement required by this section.

C. A registered agent of an association may resign as agent upon filing a written notice thereof, executed in duplicate, with the public regulation commission. The commission shall mail a copy immediately to the association in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the association. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission. "

Section 6. A new section of the Sanitary Projects Act is enacted to read:

"SERVICE OF PROCESS ON ASSOCIATION. -- The registered agent appointed by an association shall be an agent of the

association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects the right for process, notice or demand to be served upon an association in any other manner permitted by law. "

Section 7. A new section of the Sanitary Projects Act is enacted to read:

"ANNUAL REPORT. - -

A. An association shall file, within the time prescribed by the Sanitary Projects Act, on forms prescribed and furnished by the public regulation commission to the association not less than thirty days prior to the date the report is due, an annual report setting forth:

- (1) the name of the association and the state or country under the laws of which it is incorporated;
- (2) the address of the registered office of the association in the state and the name of its registered agent in this state at that address;
- (3) a brief statement of the character of the affairs that the association is actually conducting; and
- (4) the names and respective addresses of the directors and officers of the association.

B. The report shall be signed and sworn to by any two of the members of the association. If the association is in the hands of a receiver or trustee, the report shall be executed on behalf of the association by the receiver or

trustee. A copy of the report shall be maintained at the association's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours. "

Section 8. A new section of the Sanitary Projects Act is enacted to read:

"FILING OF ANNUAL REPORT--SUPPLEMENTAL REPORT--  
EXTENSION OF TIME--PENALTY. --

A. The annual report of the association shall be delivered to the public regulation commission on or before the fifteenth day of the fifth month following the end of its taxable year.

B. A supplemental report shall be filed by the association with the public regulation commission, if, within thirty days after the filing of the annual report required under the Sanitary Projects Act, a change is made in:

(1) the name of the association;

(2) the mailing address, street address or the geographical location of the association's registered office in this state and the name of the agent upon whom process against the association may be served; or

(3) the character of the association's business and its principal place of business within or without the state.

C. Proof to the satisfaction of the public

regulation commission that, prior to the due date of any report required by Subsections A or B of this section, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the commission finds that the report conforms to the requirements of the Sanitary Projects Act, it shall file the report. If the commission finds that it does not conform, it shall promptly return the report to the association for any necessary corrections. The penalties prescribed for failure to file the report within the time provided shall not apply if the report is corrected to conform to the requirements of the Sanitary Projects Act and returned to the commission within thirty days from the date on which it was mailed to the association by the commission.

D. The public regulation commission may, upon application by the association and for good cause shown, extend, for no more than a total of twelve months, the date on which any return required by the provisions of the Sanitary Projects Act must be filed or the date on which the payment of any fee is required. The commission shall, when an extension of time has been granted an association under the United States Internal Revenue Code of 1986 for the time in which to file a return, grant the association the same extension of time to file the required return and to pay the required fees, provided that a copy of the approved federal



extension of time is attached to the association's report, and provided further that no such extension shall prevent the accrual of interest as otherwise provided by law.

E. Nothing contained in this section prevents the collection of a fee or penalty due upon the failure of an association to submit the required report.

F. No annual or supplemental report required to be filed under this section shall be deemed to have been filed if the fees accompanying the report have been paid by check, and the check is dishonored upon presentation.

G. An association that fails or refuses to file a report for a year within the time prescribed by the Sanitary Projects Act is subject to a penalty of ten dollars (\$10.00) to be assessed by the public regulation commission. "

Section 9. Section 53-2-1 NMSA 1978 (being Laws 1975, Chapter 65, Section 1, as amended) is amended to read:

"53-2-1. FEES OF PUBLIC REGULATION COMMISSION. --

A. For filing documents and issuing certificates, the public regulation commission shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, a fee of one dollar (\$1.00) for each one thousand shares of the total amount of authorized shares, but in no case less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000);

(2) filing articles of amendment and

issuing a certificate of amendment increasing the total amount of authorized shares or filing restated articles of incorporation and issuing a restated certificate of incorporation increasing the total amount of authorized shares, a fee equal to the difference between the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares, including the proposed increase, and the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares, excluding the proposed increase, but in no case less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000);

(3) filing articles of amendment and issuing a certificate of amendment not involving an increase in the total amount of authorized shares or filing restated articles of incorporation and issuing a restated certificate of incorporation not involving an increase in the total amount of authorized shares, a fee of one hundred dollars (\$100);

(4) filing articles of merger, consolidation or exchange and issuing a certificate of merger or consolidation or exchange, a fee equal to the difference between the fee computed at the rate set forth in Paragraph (1) of this subsection upon the total amount of authorized shares in the articles of merger or consolidation in excess of the total amount of authorized shares of the

corporations merged or consolidated or upon the amount of the shares exchanged, but in no case less than two hundred dollars (\$200) or more than one thousand dollars (\$1,000);

(5) filing an application to reserve a corporate name or filing a notice of transfer of a reserved corporate name, a fee of twenty-five dollars (\$25.00);

(6) filing a statement of a change of address of the registered office or change of the registered agent, or both, a fee of twenty-five dollars (\$25.00);

(7) filing a statement of the establishment of a series of shares, a fee of one hundred dollars (\$100);

(8) filing a statement of reduction of authorized shares, a fee of one hundred dollars (\$100);

(9) filing a statement of intent to dissolve, a statement of revocation of voluntary dissolution proceedings or articles of dissolution, a fee of fifty dollars (\$50.00);

(10) filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, a fee of fifty dollars (\$50.00);

(11) filing a copy of articles of merger or conversion of a foreign corporation holding a certificate of authority to transact business in this state not increasing the total amount of authorized shares, a fee of two hundred dollars (\$200);

(12) filing an application for a certificate of authority of a foreign corporation and issuing to it a certificate of authority, a fee of one dollar (\$1.00) for each one thousand shares of the total number of authorized shares represented in this state, but in no case less than two hundred dollars (\$200) or more than one thousand dollars (\$1,000);

(13) filing articles of merger or consolidation increasing the total amount of authorized shares which the surviving or new corporation is authorized to issue in excess of the aggregate number of shares which the merging or consolidating domestic and foreign corporations authorized to transact business in this state had authority to issue, a fee of one dollar (\$1.00) for each one thousand shares of the increase in the total amount of authorized shares represented in this state, but in no case less than two hundred dollars (\$200) or more than one thousand dollars (\$1,000);

(14) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, a fee of fifty dollars (\$50.00);

(15) filing a corporate report and filing a supplemental report, a fee of twenty-five dollars (\$25.00);

(16) filing any other statement, corrected document or report of a domestic or foreign corporation, a fee of twenty-five dollars (\$25.00);

(17) issuing a certificate of good standing and compliance, a fee of fifty dollars (\$50.00); and

(18) issuing a letter of reinstatement of a domestic or foreign corporation, a fee of one hundred dollars (\$100).

B. The public regulation commission shall also charge and collect for furnishing copies of any document, instrument or paper relating to a corporation a fee of one dollar (\$1.00) per page, but in no case less than ten dollars (\$10.00). In addition, a fee of twenty-five dollars (\$25.00) shall be paid in each instance where the commission provides the copies of the document to be certified.

C. As used in this section:

(1) "total amount of authorized shares" means all shares of stock the corporation is authorized to issue; and

(2) "number of authorized shares represented in this state" means the proportion of a corporation's total amount of authorized shares that the sum of the value of its property located in this state and the gross amount of business transacted by it or from places of business in this state bears to the sum of the value of all of its property, wherever located, and the gross amount of its business, wherever transacted, as determined from information contained in its application for a certificate of authority to transact business in this state.

D. The public regulation commission shall also charge and collect fees, according to a fee schedule approved by the department of finance and administration, for the provision of services requested by persons, agencies and entities dealing with the commission.

E. The public regulation commission may adopt rules establishing reasonable fees for the following services rendered in connection with a service required or permitted to be rendered pursuant to a provision of Chapter 53 NMSA 1978:

- (1) an expedited service; or
- (2) the handling of checks, drafts, credit or debit cards or other means of payment upon adoption of rules authorizing their use, for which sufficient funds are not on deposit. "

Section 10. Section 53-2-3 NMSA 1978 (being Laws 1905, Chapter 79, Section 120, as amended) is amended to read:

"53-2-3. DISPOSITION OF FEES. --The public regulation commission shall turn over to the state treasurer the fees collected under the provisions of this article in the manner required by law. The commission is not responsible for a fraudulent or worthless check, draft, warrant, order or other means of payment accepted by it in good faith for the payment of a fee or on behalf of a corporation, but it shall be permitted to deduct the fee from money held by it to be paid into the state treasury. If a fraudulent or worthless

check, draft, warrant or order is not made good immediately, it is the duty of the attorney general, as soon as the facts are made known to him, to institute suit against the corporation and, if sent by the incorporators its incorporators in the name of the state for the recovery of the amount of the check, draft, warrant, order or other means of payment, and protest fees and costs of the action shall be assessed against the defendant. "

Section 11. Section 53-2-4 NMSA 1978 (being Laws 1905, Chapter 79, Section 123, as amended) is amended to read:

"53-2-4. CORPORATIONS--COMPILATION.--The public regulation commission shall compile annually from the records of its office a complete list, in alphabetical order, of the original and amended certificates of incorporation filed during the preceding year, together with the location of the principal office in this state of the corporations affected, the name of the agent in charge, the amount of the authorized capital stock, the amount of stock with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue. "

Section 12. Section 53-2-8 NMSA 1978 (being Laws 1905, Chapter 79, Section 23, as amended) is amended to read:

"53-2-8. NO STOCKHOLDER'S LIABILITY--SEPARATE CLASS OF CORPORATION.--No stockholder's liability for unpaid stock shall attach to stock issued by a corporation pursuant

to this section if, at the time of filing the certificate of incorporation, a separate certificate is signed and executed in the same manner as the certificate of incorporation, declaring that there is no stockholder's liability on account of stock issued, and is filed in the office of the public regulation commission together with the certificate of incorporation. The separate certificate shall be certified and recorded in the office of the county clerk, and both the certificate of incorporation and the certificate of nonliability of stockholders shall be published as provided in this section. This section does not apply to any of the provisions for the issuance of stock and fixing liability and the means of enforcing liability upon the same contained in any other law, but is a separate provision creating a separate class of corporations. Each corporation taking advantage of the provisions of this section must add to its corporate name in the certificate of incorporation, in every other certificate, report or record required by law and in every contract or other corporate instrument, the words "no stockholder's liability". No corporation shall be organized under this section after December 31, 1967."

Section 13. A new section of Chapter 53, Article 2 NMSA 1978 is enacted to read:

"ELECTRONIC FILING AND CERTIFICATION OF DOCUMENTS--USE OF ELECTRONIC PAYMENT OF FEES. --



A. The public regulation commission may adopt rules permitting the electronic filing of documents, including original documents, and the certification of electronically filed documents when filing or certification is required or permitted pursuant to a provision of Chapter 53 NMSA 1978. The rules shall provide for the appropriate treatment of electronic filings for the purposes of satisfying requirements for original documents or copies and shall provide the requirements for signature with respect to electronic filings. As used in this section "electronic filing" means filing by facsimile, email or other electronic transmission. If the commission accepts the filing of a document by electronic transmission, it may accept for filing a document containing a copy of a signature, however made.

B. The public regulation commission may accept a credit or debit card, in lieu of cash or check, or other means of payment specified in its rules, as payment of a fee pursuant to a provision of Chapter 53 NMSA 1978. The commission shall determine those credit or debit cards or other means of payment that may be accepted for payment. "

Section 14. A new section of Chapter 53, Article 4 NMSA 1978 is enacted to read:

"SHORT TITLE. -- Chapter 53, Article 4 NMSA 1978 may be cited as the "Cooperative Association Act". "

Section 15. Section 53-4-5 NMSA 1978 (being Laws 1939,

Chapter 164, Section 5, as amended by Laws 1993, Chapter 311, Section 3 and also by Laws 1993, Chapter 318, Section 1) is amended to read:

"53-4-5. ARTICLES OF INCORPORATION-- CONTENTS. --

Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the presidents and the secretaries, if associations, before an officer authorized to take acknowledgments. Within the limitations set forth in the Cooperative Association Act, the articles shall contain:

- A. a statement as to the purpose for which the association is formed;
- B. the name of the association, which shall include the word "cooperative";
- C. the term of existence of the association, which may be perpetual;
- D. the location and address of the principal office of the association;
- E. the names and addresses of the incorporators of the association;
- F. the names and addresses of the directors who will manage the affairs of the association for the first year, unless sooner changed by the members;
- G. a statement of whether the association is organized with or without shares and the number of shares or memberships subscribed for;

H. if the association organized with shares, the amount of authorized capital, the number and types of shares and the par value thereof, which may be placed at any figure, and the rights, preferences and restrictions of each type of share;

I. the minimum number of shares of the association that shall be owned in order to qualify for membership;

J. the maximum amount or percentage of capital of the association that may be owned or controlled by any member;

K. the method by which any surplus, upon dissolution of the association, shall be distributed in conformity with the requirements of the Cooperative Association Act for division of such surplus; and

L. the address of the initial registered office of the association and the name of the initial registered agent at that address.

The articles may also contain any other provisions not inconsistent with the Cooperative Association Act."

Section 16. Section 53-4-6 NMSA 1978 (being Laws 1939, Chapter 164, Section 6, as amended) is amended to read:

"53-4-6. ARTICLES OF INCORPORATION-- FILING-- RECORDATION-- FEES.--The articles of incorporation of the association shall be filed with the public regulation commission together with a fee of fifty dollars (\$50.00) and

shall be recorded with the county clerk of the county where the principal office of the association is located for a fee of one dollar (\$1.00). "

Section 17. Section 53-4-7 NMSA 1978 (being Laws 1939, Chapter 164, Section 7, as amended) is amended to read:

"53-4-7. ARTICLES OF INCORPORATION--AMENDMENTS--FEE. --

A. Amendments to the articles of incorporation may be proposed by a two-thirds' vote of the board of directors or by petition of one-tenth of the association's members. Notice of the meeting to consider the amendment shall be sent by the secretary at least thirty days in advance to each member at his last known address, accompanied by the full text of the proposal and by that part of the articles to be amended. Two-thirds of the members voting may adopt the amendment and, when verified by the president and the secretary, it shall be filed with the public regulation commission within thirty days of its adoption, and a fee of twenty-five dollars (\$25.00) shall be paid.

B. If the amendment is to alter the preferences of outstanding shares of any type or to authorize the issuance of shares having preferences superior to outstanding shares of any type, the vote of two-thirds of the members owning the outstanding shares affected by the change shall also be required for the adoption of the amendment.

C. The amount of capital and the number and par value of shares may be diminished or increased by amendment of the articles, but the capital shall not be diminished below the amount of paid-up capital existing at the time of amendment. "

Section 18. Section 53-4-34 NMSA 1978 (being Laws 1939, Chapter 164, Section 34, as amended) is amended to read:

"53-4-34. ANNUAL REPORT. --

A. An association shall, annually within sixty days of the close of its operations for that year, make a report of its condition sworn to by the president and the secretary, which report shall be filed with the public regulation commission. The report shall state:

(1) the name and principal address of the association;

(2) the names and addresses of the officers and directors and the name and address of the initial registered agent and registered office of the association;

(3) the amount and nature of the association's authorized, subscribed and paid-in capital, the number of its shareholders, the par value of its shares and the rate at which any interest-dividends have been paid. For nonshare associations, the annual report shall state the total number of members, the number admitted or withdrawn during the year and the amount of membership fees received;

and

(4) the receipts, expenditures, assets and liabilities of the association.

B. A copy of the report required pursuant to Subsection A of this section shall be kept on file at the principal office of the association.

C. A person who signs or verifies a report required pursuant to Subsection A of this section that contains a false statement, known to that person to be false, shall upon conviction be fined not exceeding five hundred dollars (\$500) or imprisoned not exceeding one year, or both.

D. Every association shall pay an annual fee of ten dollars (\$10.00) upon filing the report.

E. A supplemental report shall be filed with the public regulation commission within thirty days if, after filing of the annual report, a change is made in:

(1) the mailing address, street address, rural route number, box number, or the geographical location of its registered office in this state;

(2) the name of the agent at the address of the registered office upon whom process against the association may be served; or

(3) the name or address of any of the directors or officers of the association or the date when term of office expires. "

Section 19. Section 53-4-35 NMSA 1978 (being Laws 1939, Chapter 164, Section 35) is amended to read:

"53-4-35. NOTICE OF DELINQUENT REPORTS--FORFEITURES--REINSTATEMENT.--If an association fails to make a report within the required period of sixty days, the public regulation commission shall, within sixty days from the expiration of the period, send the association a registered letter, directed to its principal office, stating the delinquency and its consequences. If the association fails to file the report within sixty days from the mailing of such notice, the commission shall notify it by registered letter that its corporate rights stand forfeited, shall remove its name from its list of live corporations and notify the attorney general, who shall cause its affairs to be wound up. If, within sixty days from such forfeiture, the association files the report and pays a penalty of ten dollars (\$10.00) and all actual expenses of any suit begun to wind it up, the commission shall set aside the forfeiture, the suit shall be dismissed and the association shall be reinstated to its former rights and legal status."

Section 20. Section 53-4-37 NMSA 1978 (being Laws 1939, Chapter 164, Section 37) is amended to read:

"53-4-37. USE OF NAME "COOPERATIVE"--PENALTY.--

A. Only the following entities are entitled to use the term "cooperative" or an abbreviation or derivation of that term as part of their business names or to represent

themselves as conducting business on a cooperative basis:

(1) associations organized pursuant to the Cooperative Association Act;

(2) groups organized on a cooperative basis pursuant to any other law of this state; and

(3) foreign corporations authorized to do business in this state on a cooperative basis pursuant to the Cooperative Association Act or any other law of this state.

B. Any person, firm or corporation violating the provisions of Subsection A of this section shall be guilty of a misdemeanor, punishable by a fine of not more than two hundred dollars (\$200), and the attorney general or any aggrieved individual or association or group organized on a cooperative basis may sue to enjoin an alleged violation of this section.

C. Should the courts or the attorney general or the public regulation commission decide that any person, firm or corporation, using the name "cooperative" prior to these provisions and not organized on a cooperative basis, is entitled to continue in such use, any such business shall always place immediately after its name, the words "does not comply with the cooperative laws of New Mexico" in the same kind of type and in letters not less than two-thirds as large as those used in the term "cooperative". "

Section 21. Section 53-4-40 NMSA 1978 (being Laws



1939, Chapter 164, Section 40) is amended to read:

"53-4-40. EXISTING COOPERATIVE CORPORATIONS. -- A group incorporated under another law of this state and operating on a cooperative basis may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by the provisions of the Cooperative Association Act and shall amend its articles and bylaws not in conformity with those provisions. A certified copy of the amended articles shall be filed with the public regulation commission and a fee of twenty-five dollars (\$25.00) shall be paid."

Section 22. Section 53-4-41 NMSA 1978 (being Laws 1939, Chapter 164, Section 41) is amended to read:

"53-4-41. FOREIGN CORPORATIONS. -- A foreign corporation operating on a cooperative basis and complying with the applicable laws of the state in which it is organized is entitled to receive from the public regulation commission a certificate authorizing it to do business in this state as a foreign cooperative corporation."

Section 23. A new section of the Cooperative Association Act is enacted to read:

"REGISTERED OFFICE AND REGISTERED AGENT. -- An association shall have and continuously maintain in New Mexico:

A. a registered office, which may be the same as its principal office; and

B. a registered agent that may be:

(1) an individual resident in the state whose business office is identical with the registered office of the association;

(2) a for-profit or not-for-profit domestic corporation having an office identical with the registered office of the association; or

(3) a for-profit or not-for-profit foreign corporation authorized to transact business or conduct affairs in New Mexico and having an office identical with the registered office of the corporation. "

Section 24. A new section of the Cooperative Association Act is enacted to read:

"CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT. --

A. An association may change its registered office or its registered agent, or both, by filing in the office of the public regulation commission a statement that includes:

(1) the name of the association;

(2) the address of the association's registered office;

(3) if the address of its registered office is changed, the address to which the registered office is changed;

(4) the name of the association's registered agent;

(5) if the association's registered agent

is changed:

- (a) the name of its successor registered agent; and
- (b) if the successor registered agent is an individual, an affidavit executed by the successor registered agent in which he acknowledges his acceptance of the appointment by the filing association as its registered agent; or
- (c) if the successor registered agent is a corporation, an affidavit executed by the president or vice president of the corporation in which the officer acknowledges the corporation's acceptance of the appointment by the filing association as its registered agent;
- (6) a statement that the address of the association's registered office and the address of the office of its registered agent, as changed, will be identical; and
- (7) a statement that the change was authorized by resolution duly adopted by the association's board of directors.

B. The statement made pursuant to the provisions of Subsection A of this section shall be executed by the association by any two members and delivered to the public regulation commission. If the commission finds that the statement conforms to the provisions of the Cooperative Association Act, it shall file the statement in the office

of the commission. The change of address of the registered office, or the appointment of a new registered agent, or both, shall become effective upon filing of the statement required by this section.

C. A registered agent of an association may resign as agent upon filing a written notice thereof, executed in duplicate, with the public regulation commission. The commission shall mail a copy immediately to the association in care of an officer, who is not the resigning registered agent, at the address of the officer as shown by the most recent annual report of the association. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission. "

Section 25. A new section of the Cooperative Association Act is enacted to read:

"SERVICE OF PROCESS ON ASSOCIATION. --The registered agent appointed by an association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served. Nothing in this section limits or affects the right for process, notice or demand to be served upon an association in any other manner permitted by law. "

Section 26. A new section of the Corporate Reports Act is enacted to read:

"CANCELED CORPORATIONS STRICKEN FROM PUBLIC REGULATION

COMMISSION FILES. -- A domestic corporation whose certificate of incorporation has been canceled by the public regulation commission pursuant to Section 53-5-7 NMSA 1978 shall be stricken from the files of the commission without further proceedings. A foreign corporation whose certificate of authority to do business in the state has been canceled by the commission pursuant to Section 53-5-7 NMSA 1978 shall be stricken from the files of the commission without further proceedings. "

Section 27. Section 53-5-2 NMSA 1978 (being Laws 1978, Chapter 9, Section 1, as amended) is amended to read:

"53-5-2. CORPORATE AND SUPPLEMENTAL REPORTS. --

A. Pursuant to rules that the public regulation commission adopts to implement this section, a domestic or foreign corporation that is not exempted shall file in the office of the commission within thirty days after the date on which its certificate of incorporation or its certificate of authority, as the case may be, is issued by the commission, and biennially thereafter on or before the fifteenth day of the third month following the end of its taxable year, a corporate report in the form prescribed and furnished to the corporation not less than thirty days prior to such reporting date, by the commission, and signed and sworn to by the chairman of the board, president, vice president, secretary, principal accounting officer or authorized agent of the corporation, showing among other

information prescribed by the commission:

(1) the current status of:

(a) the name of the corporation;

(b) the mailing address and 1) street address if within a municipality; or 2) rural route number and box number, or the geographical location, using well-known landmarks, if outside a municipality, of the corporation's registered office in this state and the name of the agent upon whom process against the corporation may be served;

(c) the names and addresses of all the directors and officers of the corporation and when the term of office of each expires;

(d) the address of the corporation's principal place of business within the state and, if a foreign corporation, the address of its registered office in the state or country under the laws of which it is incorporated and the principal office of the corporation, if different from the registered office; and

(e) the date for the next annual meeting of the shareholders for the election of directors; and

(2) the corporation's taxpayer identification number issued by the revenue processing division of the taxation and revenue department.

B. When the public regulation commission receives

a report required to be filed by a corporation under the Corporate Reports Act, it shall determine if the report conforms to the requirements of this section. If the commission finds that the report conforms, it shall be filed. If the commission finds that the report does not conform, it shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed in the Corporate Reports Act for failure to file the report in the time provided shall not apply if the report is corrected and returned to the commission within thirty days from the date on which it was mailed to the corporation by the commission.

C. The public regulation commission may refuse to file a corporate report or a supplemental report received from a corporation which has not paid all fees, including penalties and interest due and payable to the commission at the time of filing. However, if the corporation and the commission are engaged in any adversary proceeding over the assessment of any fees or franchise taxes, the commission shall file the report of the corporation upon its submission to the commission.

D. A supplemental report shall be filed with the public regulation commission within thirty days if, after the filing of the corporate report required under the Corporate Reports Act, a change is made in:

- (1) the mailing address, street address,

rural route number, box number or the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;

(2) the name or address of any of the directors or officers of the corporation or the date when the term of office of each expires; or

(3) its principal place of business within or without the state."

Section 28. Section 53-5-3 NMSA 1978 (being Laws 1959, Chapter 181, Section 3) is amended to read:

"53-5-3. PUBLIC REGULATION COMMISSION TO SUPPLY DEFINITIONS. -- The public regulation commission shall prepare and make available with appropriate corporate report forms a list of definitions of corporate and financial terms used in the annual corporate reports."

Section 29. Section 53-5-6 NMSA 1978 (being Laws 1959, Chapter 181, Section 6, as amended) is amended to read:

"53-5-6. APPLICATION FOR PERIOD OF EXTENSION. --

A. A corporation may, upon application to the public regulation commission by the date upon which a report is required to be filed under the Corporate Reports Act, petition the commission for an extension of time in which to file the required report.

B. For good cause shown, the public regulation commission may extend for no more than a total of twelve



months the date on which any return required by the provisions of the Corporate Reports Act must be filed or the date on which the payment of any fee is required for a specific corporation subject to the Corporate Reports Act. No extension shall prevent the accrual of interest as otherwise provided by law.

C. The public regulation commission shall, when an extension of time has been granted a corporation under the United States Internal Revenue Code of 1986 for the time in which to file a return, grant the corporation the same extension of time to file the required return and to pay the required fees and tax if a copy of the approved federal extension of time is attached to the corporation's annual report. No extension of time granted shall prevent the accrual of interest as otherwise provided by law.

D. Nothing contained in this section shall prevent the collection of any tax, penalty or interest due upon the failure of any corporation to submit the required report. "

Section 30. Section 53-5-7 NMSA 1978 (being Laws 1959, Chapter 181, Section 7, as amended) is amended to read:

"53-5-7. FAILURE TO FILE CORPORATE REPORTS--PENALTY. --

A. Every domestic corporation required to file an annual corporate report, as provided in the Corporate Reports Act, that fails to submit the report within the time prescribed for any reporting period shall incur a civil

penalty of one hundred dollars (\$100) in addition to the fee for filing the report, such civil penalty to be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to its registered agent and also to the principal office of the corporation as shown in the last corporate report filed with the public regulation commission, the corporation shall have its certificate of incorporation canceled by the commission without further proceedings, unless the report is filed and all fees, franchise taxes, penalties and interest are paid within that sixty-day period.

B. A foreign corporation required to file an annual corporate report that fails to submit the report within the time prescribed for any reporting period shall incur a civil penalty of one hundred dollars (\$100) in addition to the fee for filing the report. The civil penalty shall be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to a corporation's registered agent and also either to the principal office of the corporation in the state or country under the laws of which it is incorporated or to the principal office of the corporation as each address is shown in the last corporate report filed with the public regulation commission, the corporation shall have its certificate of authority to do business in this state canceled by the commission without further proceedings,

unless the report is filed and all fees, franchise taxes, penalties and interest are paid within that sixty-day period. Nothing in this section authorizes a forfeiture of the right or privilege of engaging in interstate commerce.

C. Every domestic or foreign corporation not exempted from filing a supplemental report, as provided in the Corporate Reports Act, that fails to submit the required report within the time prescribed for any reporting period shall incur a civil penalty of one hundred dollars (\$100) in addition to the fee for filing the report, such civil penalty to be paid upon filing the report.

D. Any order of the public regulation commission may be appealed to the district court of Santa Fe county within sixty days of the date it was issued by the commission.

E. If any report required under the Corporate Reports Act is mailed, the public regulation commission shall allow three additional days when considering the postmark as the date of submission when determining if a filing is timely."

Section 31. Section 53-5-8 NMSA 1978 (being Laws 1959, Chapter 181, Section 8, as amended) is amended to read:

"53-5-8. PUBLIC REGULATION COMMISSION MAY FURNISH FORMS--RELEASE OF INFORMATION--PENALTY.--

A. The public regulation commission may, upon application, furnish the necessary blank forms used in the

preparation of the annual corporate reports.

B. The public regulation commission shall provide pursuant to the provisions of the Public Records Act for the retention, storage and destruction of annual corporate reports filed with the commission.

C. Information obtained from reports filed pursuant to the provisions of the Corporate Reports Act shall be made available to interested persons during proper hours, except that data contained in Paragraph (2) of Subsection A of Section 53-5-2 NMSA 1978 shall not be released unless in statistical form classified to prevent identification of particular corporations.

D. All reports required under the Corporate Reports Act may be used as evidence at any trial or hearing of the public regulation commission.

E. All reports required under the Corporate Reports Act shall be made available to the revenue processing division of the taxation and revenue department upon written request and the revenue processing division shall be subject to the same restrictions upon revealing the information as are imposed by this section upon the public regulation commission.

F. Any other state agency or department or United States agency or department upon written request to the public regulation commission may examine reports filed with the commission upon a showing that the corporate reports

sought to be examined are germane to an investigation being conducted by the petitioning agency or department, and any information revealed is subject to Subsection G of this section.

G. Any person who releases information contrary to the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) nor less than one hundred dollars (\$100) or by imprisonment in the county jail not more than ninety days nor less than thirty days or by both fine and imprisonment in the discretion of the judge. "

Section 32. Section 53-5-9 NMSA 1978 (being Laws 1959, Chapter 181, Section 9, as amended) is amended to read:

"53-5-9. DORMANT CORPORATIONS--STATEMENT IN LIEU OF CORPORATE REPORT. --

A. Whenever a corporation is no longer engaged in active business in this state or in carrying out the purposes of its incorporation, two of its shareholders, directors or officers may unite in signing a statement to that effect; the statement shall be filed with the public regulation commission in lieu of the required corporate report. Upon the filing of this statement and the payment of all fees, franchise taxes, penalties and interest, the commission is authorized to strike the name of the corporation from the list of active corporations in this state; but this action shall not be construed in any sense

as a formal dissolution of the corporation and the corporation shall not be relieved thereby from any outstanding obligation. A dormant corporation may be fully revived by the resumption of active business and the filing of a corporate report.

B. A dormant corporation may continue in dormant status by filing a statement of renewal every five years to the effect that it is not engaged in active business in this state and is not carrying out the purposes of its incorporation. Sixty days after written notice of failure to file a statement of renewal has been mailed to its registered agent and also to the principal office of the corporation as shown in the last corporate report filed with the commission, the corporation shall have its certificate of incorporation or authority canceled by the commission without further proceedings unless the statement of renewal is filed and all fees are paid within that sixty-day period."

Section 33. Section 53-6-12 NMSA 1978 (being Laws 1963, Chapter 16, Section 12) is amended to read:

"53-6-12. DISQUALIFICATION--DISSOLUTION.--If any officer, shareholder, agent or employee of a professional corporation who has been rendering professional service to the public becomes legally disqualified to render the professional service within this state, or is elected to a public office that, pursuant to existing law, is a

restriction or limitation upon rendering of a professional service, or accepts employment that, pursuant to existing law, places restriction or limitations upon his continued rendering of the professional service, he shall sever all employment with, and financial interest in, the professional corporation forthwith. A professional corporation's failure to require compliance with this section shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a professional corporation's failure to comply with this section is brought to the attention of the public regulation commission, the commission shall certify to the attorney general that fact for appropriate action to dissolve the professional corporation. "

Section 34. Section 53-7-35 NMSA 1978 (being Laws 1983, Chapter 312, Section 18) is amended to read:

"53-7-35. AMENDMENT OF ARTICLES OF INCORPORATION. --

A. The articles of incorporation may be amended by the votes of the stockholders and the members, voting separately by classes, and the amendments shall require approval of two-thirds of the votes of the stockholders and two-thirds of the votes of the members. No amendment of the articles of incorporation that is inconsistent with the general purposes expressed in the Business Development Corporation Act authorizes any additional class of capital stock to be issued or eliminates or curtails the right of

the director of the financial institutions division of the regulation and licensing department to examine the corporation or the obligation of the corporation to make reports as provided in Section 53-7-39 NMSA 1978 shall be made. No amendment of the articles of incorporation that increases the obligation of a member to make loans to the corporation or makes any change in the principal amount, interest rate, maturity date or in the security or credit position of any outstanding loan of a member to the corporation shall be made without the consent of each member affected by the amendment.

B. Within thirty days after any meeting at which an amendment of the articles of incorporation has been adopted, the articles of amendment, setting forth the amendment and the adoption of it, shall be signed and sworn to by the president, the treasurer and a majority of the directors. The articles of amendment shall be submitted to the director of the financial institutions division, who shall examine the amendment. If the director of the financial institutions division finds that the amendment conforms to the requirements of the Business Development Corporation Act, he shall so certify and endorse his approval on the articles of amendment. The articles of amendment shall be filed in the office of the public regulation commission. No amendment shall take effect until the articles of amendment have been filed."



Section 35. Section 53-7-36 NMSA 1978 (being Laws 1983, Chapter 312, Section 19) is amended to read:

"53-7-36. LEGISLATIVE AMENDMENTS--IMPLEMENTATION.-- Within sixty days after the effective date of any legislative amendment to the Business Development Corporation Act, the stockholders and the members of the corporation shall vote to modify the articles of incorporation pursuant to the amendment at a meeting duly called for that purpose. The purpose of the vote shall be solely to determine whether any member may be allowed to withdraw. If the amendment to the articles of incorporation is not approved by at least two-thirds of the votes of the stockholders and two-thirds of the votes of the members, any member voting against approval of the amendment has the right to withdraw from membership. Within thirty days after a meeting at which the amendment to the articles of incorporation has been voted on, a certificate signed and sworn to by the recording officer of the corporation, setting forth the action taken at the meeting with respect to the amendment and each member's vote, shall be filed in the office of the public regulation commission and the office of the financial institutions division."

Section 36. Section 53-7-39 NMSA 1978 (being Laws 1983, Chapter 312, Section 22) is amended to read:

"53-7-39. ANNUAL REPORT--OTHER INFORMATION.--The corporation shall be subject to the examination of the

director of the financial institutions division. The corporation shall make reports of its condition not less than annually to the director of the financial institutions division and to the public regulation commission, and the corporation shall furnish such other information as may from time to time be required by the director of the financial institutions division. "

Section 37. Section 53-8-18 NMSA 1978 (being Laws 1975, Chapter 217, Section 18) is amended to read:

"53-8-18. NUMBER AND ELECTION OF DIRECTORS. --

A. The number of directors of a corporation shall be not less than three. Subject to that limitation, the number of directors shall be fixed by, or determined in the manner provided in, the articles of incorporation or the bylaws, except that the number of the first board of directors shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. If the number of directors is not fixed by, or determined in a manner provided in, the articles of incorporation or the bylaws, the number shall be the same as that stated in the

articles of incorporation.

B. The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

C. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor is elected or appointed and qualified.

D. A director may be removed from office pursuant to any procedure provided in the articles of incorporation or the bylaws. "

Section 38. Section 53-8-54 NMSA 1978 (being Laws 1975, Chapter 217, Section 54) is amended to read:

"53-8-54. ISSUANCE OF CERTIFICATE OF REVOCATION. --

A. Upon revoking any certificate of incorporation, the commission shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the corporation at its registered office a notice of the revocation accompanied by one of the certificates.

B. Upon the issuance of a certificate of revocation, the authority of the corporation to conduct affairs in New Mexico ceases.

C. A corporation administratively revoked under Section 53-8-53 NMSA 1978 may apply to the commission for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation's name satisfies the requirements of Section 53-8-7 NMSA 1978.

D. If the commission determines that the application contains the information required by Subsection C of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

E. When the reinstatement is effective, it

relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred. "

Section 39. Section 53-8-83 NMSA 1978 (being Laws 1975, Chapter 217, Section 83, as amended) is amended to read:

"53-8-83. FILING OF ANNUAL REPORT--INITIAL REPORT--  
SUPPLEMENTAL REPORT--EXTENSION OF TIME.--

A. The annual report of a domestic or foreign corporation shall be delivered to the commission on or before the fifteenth day of the fifth month following the end of its taxable year, except that the first annual report of a domestic or foreign corporation shall be filed within thirty days of the date on which its certificate of incorporation or its certificate of authority was issued by the commission.

B. A supplemental report shall be filed with the commission within thirty days if, after the filing of the annual report required under the Nonprofit Corporation Act, a change is made in:

- (1) the name of the corporation;
- (2) the mailing address, street address or the geographical location of the corporation's registered office in this state and the name of the agent upon whom process against the corporation may be served;

(3) the name or address of any of the directors or officers of the corporation or the date when the term of office of each expires; or

(4) the corporation's principal place of business within or without the state.

C. Proof to the satisfaction of the commission that prior to the due date of any report required by Subsection A or B of this section the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed compliance with the requirements of this section. If the commission finds that the report conforms to the requirements of the Nonprofit Corporation Act, it shall file the same. If the commission finds that it does not so conform, it shall promptly return the report to the corporation for any necessary corrections, in which event the penalties prescribed for failure to file the report within the time provided shall not apply, if the report is corrected to conform to the requirements of the Nonprofit Corporation Act and returned to the commission within thirty days from the date on which it was mailed to the corporation by the commission.

D. Upon application by a corporation and for good cause shown, the commission may extend, for no more than a total of twelve months, the date on which a return required by the provisions of the Nonprofit Corporation Act must be

filed or the date on which the payment of any fee is required, but no extension shall prevent the accrual of interest as otherwise provided by law. The commission shall, when an extension of time has been granted a nonprofit corporation under the United States Internal Revenue Code of 1986 for the time in which to file a return, grant the corporation the same extension of time to file the required return and to pay the required fees if a copy of the approved federal extension of time is attached to the corporation's report. An extension shall not prevent the accrual of interest as otherwise provided by law.

E. Nothing in this section prevents the collection of a fee or penalty due upon the failure of any corporation to submit the required report.

F. No annual or supplemental report required to be filed under this section shall be deemed to have been filed if the fees accompanying the report have been paid by check and the check is dishonored upon presentation."

Section 40. Section 53-11-1 NMSA 1978 (being Laws 1967, Chapter 81, Section 1, as amended) is amended to read:

"53-11-1. SHORT TITLE. -- Chapter 53, Articles 11 through 18 NMSA 1978 may be cited as the "Business Corporation Act". "

Section 41. Section 53-11-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 2, as amended) is amended to read:

"53-11-2. DEFINITIONS. -- As used in the Business

Corporation Act, unless the text otherwise requires:

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

B. "foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose for which a corporation may be organized under the Business Corporation Act;

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

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

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

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

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

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

I. "distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness, by a corporation to or for



the benefit of any of its shareholders in respect of any of its shares, whether by dividend or by purchase redemption or other acquisition of its shares, or otherwise;

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

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

L. "commission" means the public regulation commission or its delegate;

M. "address" means:

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

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

N. "delivery" means:

(1) if personally served, the date on which the documentation is received by the corporations bureau of the commission; and

(2) if mailed, the date of the postmark plus three days, upon proof thereof by the party delivering the documentation."

Section 42. Section 53-11-5 NMSA 1978 (being Laws 1967, Chapter 81, Section 5, as amended) is amended to read:

"53-11-5. POWER OF CORPORATION TO ACQUIRE ITS OWN SHARES. --

A. As used in this section, "treasury shares" means shares of a corporation issued and subsequently acquired by the corporation but that have not been restored to the status of unissued shares.

B. A corporation has the power to purchase, redeem, receive, take or otherwise acquire, own and hold, sell, lend, exchange, transfer or otherwise dispose of and to pledge, use and otherwise deal in and with its own shares.

C. Treasury shares do not carry voting rights or participate in distributions, may not be counted as outstanding shares for any purpose and may not be counted as assets of the corporation for the purpose of computing the amount available for distributions. Unless the articles of incorporation provide otherwise, treasury shares may be retired and restored to the status of authorized and unissued shares without an amendment to the articles of incorporation or may be disposed of for such consideration as the board of directors may determine.

D. This section does not limit the right of a corporation to vote its shares held by it in a fiduciary capacity.

E. If the articles of incorporation provide that treasury shares that are retired shall not be reissued, the authorized shares shall be reduced by the number of treasury shares retired.

F. If the number of authorized shares is reduced by a retirement of treasury shares, the corporation shall, on or before the time for filing its next corporate report under the Corporate Reports Act with the commission, file a statement of reduction showing the reduction in the authorized shares. The statement of reduction shall be executed by the corporation by an officer of the corporation and shall set forth:

- (1) the name of the corporation;
- (2) the number of authorized shares reduced, itemized by classes and series; and
- (3) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such reduction."

Section 43. Section 53-11-12 NMSA 1978 (being Laws 1967, Chapter 252, Section 3) is amended to read:

"53-11-12. FAILURE TO APPOINT AND MAINTAIN REGISTERED AGENT--PENALTY--REINSTATEMENT.--

A. If a corporation fails for a period of thirty days to appoint and maintain a registered agent in this state or has failed for thirty days after change of its registered office or registered agent to file in the office of the commission a statement of the change, the commission shall notify the corporation of its delinquency by certified letter to the corporation's principal office. If the delinquency is not corrected within sixty days from the date

the letter is mailed, the commission shall issue a certificate of revocation that recites the grounds for revocation and its effective date.

B. A corporation administratively revoked pursuant to this section may apply to the commission for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation's name satisfies the requirements of Section 53-11-7 NMSA 1978.

C. If the commission determines that the application contains the information required by Subsection B of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

D. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred. "

Section 44. Section 53-11-13 NMSA 1978 (being Laws

1967, Chapter 81, Section 12, as amended) is amended to read:

"53-11-13. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT. --

A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the commission a statement setting forth:

(1) the name of the corporation;  
(2) the address of its registered office;  
(3) if the address of its registered office is to be changed, the address to which the registered office is to be changed;

(4) the name of its registered agent;  
(5) if its registered agent is to be changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

B. The statement shall be executed by the corporation by an authorized officer and delivered to the commission. If the commission finds that the statement conforms to the provisions of the Business Corporation Act, it shall file the statement in its office, and, upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, becomes effective, and, upon filing, fulfills the requirement to file a supplemental report under Section 53-5-5 NMSA 1978.

C. Any registered agent of a corporation may resign upon filing a written notice of resignation with the commission. The commission shall mail a copy immediately to the corporation at its principal place of business as shown on the records of the commission. The appointment of the resigning agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission.

D. If a registered agent changes his business address to another place within the same county, he may change the address and the address of the registered office of any corporation of which he is the registered agent by filing a statement as required by this section except that it need be signed only by the registered agent and need not

be responsive to Paragraph (5) of Subsection A of this section and shall recite that a copy of the statement has been mailed to the corporation. "

Section 45. Section 53-11-19 NMSA 1978 (being Laws 1967, Chapter 81, Section 18, as amended) is repealed and a new Section 53-11-19 is enacted to read:

"53-11-19. PAYMENT FOR SHARES. --

A. The board of directors may authorize shares to be issued for consideration consisting of tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

B. Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

C. When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

D. The corporation may place in escrow shares issued for a contract for future services or benefits or a

promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid or the benefits received. If the services are not performed, the note is not paid or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or part. "

Section 46. Section 53-11-20 NMSA 1978 (being Laws 1967, Chapter 81, Section 19, as amended) is amended to read:

"53-11-20. STOCK RIGHTS AND OPTIONS. --Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in the manner approved by the board of directors and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which the shares may be purchased from the corporation upon the exercise of any such right or option. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received



for the rights or options is conclusive."

Section 47. Section 53-11-28 NMSA 1978 (being Laws 1967, Chapter 81, Section 27, as amended) is amended to read:

"53-11-28. MEETINGS OF SHAREHOLDERS. --

A. Meetings of shareholders may be held at any place within or without this state in accordance with the bylaws. If no other place is designated in, or fixed in accordance with, the bylaws, meetings shall be held at the principal place of business of the corporation.

B. An annual meeting of the shareholders shall be held at the time designated in or fixed in accordance with the bylaws. If the annual meeting is not held within any thirteen-month period, the district court may, on the application of any shareholder, order a meeting to be held.

C. Special meetings of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting or such other persons as may be authorized in the articles of incorporation or the bylaws."

Section 48. Section 53-11-33 NMSA 1978 (being Laws 1967, Chapter 81, Section 32, as amended) is amended to read:

"53-11-33. VOTING OF SHARES. --

A. Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a

vote at a meeting of shareholders, except as otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in the Business Corporation Act to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast. The articles of incorporation may grant, either absolutely or conditionally to the holders of bonds, debentures or other obligations of the corporation the power to vote on specified matters, including the election of directors, and this right shall not be terminated except upon written assent of the holders of a majority in aggregate face amount of the bonds or debentures.

B. Shares held by another corporation, domestic or foreign, if a majority of the shares entitled to vote for the election of directors of the other corporation is held by the corporation, shall not be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

C. The articles of incorporation may provide that at each election for directors every shareholder entitled to vote at the election has the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving

one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of the candidates. A statement in the articles of incorporation that cumulative voting exists is sufficient to confer such right.

D. Shares standing in the name of another corporation, domestic or foreign, may be voted by the officer, agent or proxy as the bylaws of the other corporation may prescribe, or, in the absence of such provisions, as the board of directors of the other corporation may determine.

E. Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of the shares into his name. Shares standing in the name of a trustee, or a custodian for a minor, may be voted by him, either in person or by proxy, but only after a transfer of the shares into his name.

F. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

G. Shares standing in the name of a receiver or bankruptcy trustee may be voted by the receiver or

bankruptcy trustee, and shares held by or under the control of a receiver or bankruptcy trustee may be voted by him without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which the receiver or bankruptcy trustee was appointed.

H. A shareholder whose shares are pledged may vote the shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee may vote the shares so transferred.

I. Shares standing in the name of a partnership may be voted by any partner, and shares standing in the name of a limited partnership may be voted by any general partner.

J. Shares standing in the name of a person as life tenant may be voted by him, either in person or by proxy.

K. From the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, the shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

L. Without limiting the manner in which a shareholder may authorize another person or persons to act

for the shareholder as proxy pursuant to Subsection F of this section, the following shall constitute valid means by which a shareholder may grant that authority:

(1) a shareholder may execute a writing authorizing another person or persons to act for that shareholder as proxy, and execution may be by the shareholder or the shareholder's authorized officer, director, employee or agent signing the writing or causing the person's signature to be affixed to the writing by any reasonable means, including by facsimile signature;

(2) a shareholder may authorize another person or persons to act for that shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, facsimile transmission, email or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided that the electronic transmission shall either set forth, or be submitted with information from which it can be determined, that the electronic transmission was authorized by the shareholder. If it is determined that an electronic transmission is valid, the inspector, or if there is no inspector, the person making that determination, shall specify the information upon which he relied.

M A copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to Subsection L of this section may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used, if that copy, facsimile telecommunication or other reproduction is a complete reproduction of the entire original writing or transmission. "

Section 49. Section 53-11-37 NMSA 1978 (being Laws 1967, Chapter 81, Section 36) is amended to read:

"53-11-37. CLASSIFICATION OF DIRECTORS. -- When the board of directors consists of two or more members, in lieu of electing the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after the classification, the number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting, if there are two classes, or until the third succeeding annual

meeting, if there are three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders. "

Section 50. Section 53-11-39 NMSA 1978 (being Laws 1967, Chapter 81, Section 38, as amended) is amended to read:

"53-11-39. REMOVAL OF DIRECTORS. --

A. At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Except as provided in Subsection D of this section, a director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

B. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he is a part.

C. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section apply, in respect to the removal of a director or directors so elected, to the vote of the holders

of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

D. Unless the articles of incorporation provide otherwise, in the case of a corporation whose board is classified as provided in Section 53-11-37 NMSA 1978, shareholders may remove directors only for cause. "

Section 51. Section 53-12-3 NMSA 1978 (being Laws 1967, Chapter 81, Section 51, as amended) is amended to read:

"53-12-3. FILING OF ARTICLES OF INCORPORATION. --

A. An original of the articles of incorporation together with a copy, which may be signed, photocopied or conformed, and a statement executed by the designated registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation, shall be delivered to the commission. If the commission finds that the articles of incorporation and the statement conform to law, it shall, when all fees and franchise taxes have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing



thereof;

(2) file the original and the statement in its office; and

(3) issue a certificate of incorporation to which it shall affix the file-stamped copy.

B. The certificate of incorporation, together with the file-stamped copy of the articles of incorporation affixed to it shall be returned by the commission to the incorporators or their representative. "

Section 52. Section 53-13-3 NMSA 1978 (being Laws 1967, Chapter 81, Section 57, as amended) is amended to read:

"53-13-3. CLASS VOTING ON AMENDMENTS. --The holders of the outstanding shares of a class may vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

A. effect an exchange, reclassification or cancellation of all or part of the shares or the class;

B. effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of the class;

C. change the designations, preferences, limitations or relative rights of the shares of the class;

D. change the shares of the class into the same or a different number of shares of the same class or another

class;

E. create a new class of shares having rights and preferences prior and superior to the shares of the class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of the class;

F. in the case of a preferred or special class of shares, divide the shares of the class into series and fix and determine the designation of the series and the variations in the relative rights and preferences between the shares of the series or authorize the board of directors to do so;

G. limit or deny the existing preemptive rights of the shares of the class; or

H. cancel or otherwise affect dividends on the shares of the class which have accrued but have not been declared. "

Section 53. Section 53-13-4 NMSA 1978 (being Laws 1967, Chapter 81, Section 58, as amended) is amended to read:

"53-13-4. ARTICLES OF AMENDMENT.--The articles of amendment shall be executed by the corporation by an authorized officer and shall set forth:

A. the name of the corporation;

B. the amendment adopted;

C. the date of the adoption of the amendment by

the shareholders or by the board of directors where no shares have been issued;

D. the number of shares outstanding and the number of shares entitled to vote on the amendment and, if the shares of any class are entitled to vote on it as a class, the designation and number of outstanding shares entitled to vote of each class;

E. the number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote on the amendment as a class, the number of shares of each class voted for and against the amendment, respectively, or if no shares have been issued, a statement to that effect; and

F. if the amendment provides for an exchange, reclassification or cancellation of issued shares and if the manner in which the action shall be effected is not set forth in the amendment, then a statement of the manner in which it shall be effected."

Section 54. Section 53-13-7 NMSA 1978 (being Laws 1975, Chapter 64, Section 32, as amended) is amended to read:

"53-13-7. RESTATED ARTICLES OF INCORPORATION. --

A. A domestic corporation may at any time restate its articles of incorporation, as amended, by a resolution adopted by the board of directors.

B. Upon the adoption of such resolution, restated

articles of incorporation shall be executed by the corporation by an authorized officer and shall set forth all of the operative provisions of the articles of incorporation as amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as amended and that the restated articles of incorporation supersede the original articles of incorporation and all previous amendments.

C. The original of the restated articles of incorporation together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the restated articles of incorporation conform to law, it shall, when all fees have been paid:

- (1) endorse on the original and a copy the word "filed" and the month, day and year of the filing;
- (2) file the original in its office; and
- (3) issue a restated certificate of incorporation to which it shall affix the file-stamped copy.

D. The restated certificate of incorporation, together with the file-stamped copy of the restated articles of incorporation affixed to it shall be returned by the commission to the corporation or its representative. Unless the commission disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, upon delivery of the restated

articles of incorporation to the commission, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all previous amendments. "

Section 55. Section 53-13-8 NMSA 1978 (being Laws 1967, Chapter 81, Section 62, as amended) is amended to read:

"53-13-8. AMENDMENT OF ARTICLES OF INCORPORATION IN REORGANIZATION PROCEEDINGS. --

A. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only those provisions that may be lawfully contained in original articles of incorporation at the time of making the amendment. The articles of incorporation may be amended for the foregoing purpose to:

(1) change the corporate name, period of duration or corporate purposes of the corporation;

(2) repeal, alter or amend the bylaws of

the corporation;

(3) change the aggregate number of shares or shares of any class that the corporation has authority to issue;

(4) change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify or cancel all or any part of the shares, whether issued or unissued;

(5) authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(6) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of, or in addition to, all or any of the directors or officers then in office.

B. Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(1) articles of amendment approved by decree or order of court shall be executed by the person the court designates or appoints for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of

the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered and a statement that the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States;

(2) an original of the articles of amendment together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the articles of amendment conform to law, it shall, when all fees have been paid:

(a) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(b) file the original in its office;  
and

(c) issue a certificate of amendment to which it shall affix the file-stamped copy; and

(3) the certificate of amendment, together with the file-stamped copy of the articles of amendment affixed to it shall be returned by the commission to the corporation or its representative. Unless the commission disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978, the amendment shall become effective upon delivery of the articles of amendment to the commission or on a later date, not more than thirty days subsequent to the delivery

of the articles to the commission, as shall be provided for in the articles of amendment without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation. "

Section 56. Section 53-14-4 NMSA 1978 (being Laws 1967, Chapter 81, Section 71, as amended) is amended to read:

"53-14-4. ARTICLES OF MERGER, CONSOLIDATION OR EXCHANGE. --

A. Upon receiving the approvals required by Sections 53-14-1, 53-14-2 and 53-14-3 NMSA 1978, articles of merger or articles of consolidation shall be executed by each corporation by an authorized officer and shall set forth:

(1) the plan of merger or the plan of consolidation;

(2) as to each corporation, either:

(a) the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(b) a statement that the vote of shareholders is not required by virtue of Subsection D of Section 53-14-3 NMSA 1978;



(3) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the plan, respectively; and

(4) as to the acquiring corporation in a plan of exchange, a statement that the adoption plan and performance of its terms were duly approved by its board of directors and such other requisite corporate action, if any, as may be required of it.

B. The original of the articles of merger, consolidation or exchange together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the articles conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of merger, consolidation or exchange to which it shall affix the file-stamped copy.

C. The certificate of merger, consolidation or exchange, together with the file-stamped copy of the articles affixed to it shall be returned by the commission to the surviving, new or acquiring corporation or its

representative. "

Section 57. Section 53-14-5 NMSA 1978 (being Laws 1967, Chapter 81, Section 72, as amended) is amended to read:

"53-14-5. MERGER OF SUBSIDIARY CORPORATION. --

A. Any corporation owning at least ninety percent of the outstanding shares of each class of another corporation may merge the other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall by resolution approve a plan of merger setting forth:

(1) the name of the subsidiary corporation and the name of the corporation owning at least ninety percent of its shares, which is hereinafter designated as the "surviving corporation"; and

(2) the manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

B. A copy of the plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

C. Articles of merger shall be executed by the surviving corporation by an authorized officer and shall set forth:

(1) the plan of merger;

(2) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(3) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

D. On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver of the mailing requirement by the holders of all outstanding shares, an original of the articles of merger together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the articles conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of merger to which it shall affix the file-stamped copy.

E. The certificate of merger, together with the file-stamped copy affixed to it shall be returned by the commission to the surviving corporation or its representative. "

1967, Chapter 81, Section 79, as amended) is amended to read:

"53-16-1. VOLUNTARY DISSOLUTION BY INCORPORATORS. -- A corporation that has not commenced business and has not issued any shares may be voluntarily dissolved by its incorporators in the following manner:

A. articles of dissolution shall be executed by a majority of the incorporators and shall set forth:

- (1) the name of the corporation;
- (2) the date of issuance of its certificate of incorporation;
- (3) that none of its shares has been issued;
- (4) that the corporation has not commenced business;
- (5) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;
- (6) that no debts of the corporation remain unpaid; and
- (7) that a majority of the incorporators elect that the corporation be dissolved;

B. the original of the articles of dissolution together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the

commission finds that the articles of dissolution conform to law and that the corporation has complied with the Tax Administration Act and has paid all contributions required by the Unemployment Compensation Law, it shall, when all fees and franchise taxes have been paid:

- (1) endorse on the original and copy the word "filed" and the month, day and year of the filing;
- (2) file the original in its office; and
- (3) issue a certificate of dissolution to which it shall affix the file-stamped copy; and

C. the certificate of dissolution, together with the file-stamped copy of the articles of dissolution affixed to it shall be returned by the commission to the incorporators or their representative. Upon the issuance of the certificate of dissolution by the commission the existence of the corporation shall cease."

Section 59. Section 53-16-2 NMSA 1978 (being Laws 1967, Chapter 81, Section 80) is amended to read:

"53-16-2. VOLUNTARY DISSOLUTION BY CONSENT OF SHAREHOLDERS. --A corporation may be voluntarily dissolved by the written consent of all of its shareholders. Upon the execution of the written consent, a statement of intent to dissolve shall be executed by the corporation by an authorized officer, which statement shall set forth:

- A. the name of the corporation;
- B. the names and respective addresses of its

officers;

C. the names and respective addresses of its directors;

D. a copy of the written consent signed by all shareholders of the corporation; and

E. a statement that the written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys in fact authorized to consent on their behalf. "

Section 60. Section 53-16-3 NMSA 1978 (being Laws 1967, Chapter 81, Section 81, as amended) is amended to read:

"53-16-3. VOLUNTARY DISSOLUTION BY ACT OF CORPORATION. --A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

A. the board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

B. written notice shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in the Business Corporation Act for the giving of notice of meetings of shareholders and, whether the meeting is an annual or special meeting, shall state that the purpose, or one of the

purposes, of the meeting is to consider the advisability of dissolving the corporation;

C. at the meeting, a vote of shareholders entitled to vote shall be taken on a resolution to dissolve the corporation, and the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote on the resolution, unless any class of shares is entitled to vote on it as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote on it as a class and of the total shares entitled to vote on the resolution; and

D. upon the adoption of the resolution, a statement of intent to dissolve shall be executed by the corporation by an authorized officer, which statement shall set forth:

- (1) the name of the corporation;
- (2) the names and respective addresses of its officers;
- (3) the names and respective addresses of its directors;
- (4) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;
- (5) the number of shares outstanding and, if the shares of any class are entitled to vote as a class,

the designation and number of outstanding shares of each such class; and

(6) the number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class for and against the resolution, respectively. "

Section 61. Section 53-16-7 NMSA 1978 (being Laws 1967, Chapter 81, Section 85) is amended to read:

"53-16-7. REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS BY CONSENT OF SHAREHOLDERS. -- By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the commission, revoke voluntary dissolution proceedings. Upon the execution of the written consent, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by an authorized officer, which statement shall set forth:

- A. the name of the corporation;
- B. the names and respective addresses of its officers;
- C. the names and respective addresses of its directors;
- D. a copy of the written consent signed by all shareholders of the corporation revoking the voluntary dissolution proceedings; and



E. that the written consent has been signed by all shareholders of the corporation or signed in their names by their authorized attorneys. "

Section 62. Section 53-16-8 NMSA 1978 (being Laws 1967, Chapter 81, Section 86, as amended) is amended to read:

"53-16-8. REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS BY ACT OF CORPORATION. --By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the commission, revoke voluntary dissolution proceedings taken, in the following manner:

A. the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of revocation be submitted to a vote at a special meeting of shareholders;

B. written notice stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in the Business Corporation Act for the giving of notice of special meetings of shareholders;

C. at the meeting, a vote of the shareholders entitled to vote shall be taken on a resolution to revoke

the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon; and

D. upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by an authorized officer, which statement shall set forth:

- (1) the name of the corporation;
- (2) the names and respective addresses of its officers;
- (3) the names and respective addresses of its directors;
- (4) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;
- (5) the number of shares outstanding; and
- (6) the number of shares voted for and against the resolution, respectively."

Section 63. Section 53-16-9 NMSA 1978 (being Laws 1967, Chapter 81, Section 87) is amended to read:

"53-16-9. FILING STATEMENT OF REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS.--An original of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the statement conforms to law, it

shall, when all fees and franchise taxes have been paid:

- A. endorse on the original and copy the word "filed" and the month, day and year of the filing;
- B. file the original in its office; and
- C. return the file-stamped copy to the corporation or its representative. "

Section 64. Section 53-16-11 NMSA 1978 (being Laws 1967, Chapter 81, Section 89) is amended to read:

"53-16-11. ARTICLES OF DISSOLUTION. -- If voluntary dissolution proceedings have not been revoked, then, when all debts, liabilities and obligations of the corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by an authorized officer, which statement shall set forth:

- A. the name of the corporation;
- B. that the commission has previously filed a statement of intent to dissolve the corporation and the date on which the statement was filed;
- C. that all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
- D. that all the remaining property and assets of the corporation have been distributed among its shareholders

in accordance with their respective rights and interests;  
and

E. that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in any pending suit."

Section 65. Section 53-16-12 NMSA 1978 (being Laws 1967, Chapter 81, Section 90) is amended to read:

"53-16-12. FILING OF ARTICLES OF DISSOLUTION. --

A. An original of articles of dissolution together with a copy, which may be signed, photocopied or conformed shall be delivered to the commission. If the commission finds that the articles of dissolution conform to law and that the corporation has complied with the Tax Administration Act and has paid all contributions required by the Unemployment Compensation Law, it shall, when all fees and franchise taxes have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of dissolution to which it shall affix the file-stamped copy.

B. The certificate of dissolution, together with the file-stamped copy of the articles of dissolution affixed to it shall be returned by the commission to the representative of the dissolved corporation. Upon the

issuance of the certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in the Business Corporation Act. "

Section 66. Section 53-17-5 NMSA 1978 (being Laws 1967, Chapter 81, Section 107, as amended) is amended to read:

"53-17-5. APPLICATION FOR CERTIFICATE OF AUTHORITY. --

A. A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application to the commission, which application shall set forth:

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) if the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one of these words, the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

(3) the date of incorporation and the period of duration of the corporation;

(4) the address of the registered office of the corporation in the state or country under the laws of which it is incorporated and the address of the principal

office of the corporation, if different;

(5) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(6) the purpose of the corporation that it proposes to pursue in the transaction of business in this state;

(7) the names and respective addresses of the directors and officers of the corporation who have consented to serve;

(8) a statement of the aggregate number of shares that the corporation has authority to issue, itemized by classes and by series, if any, within a class;

(9) a statement of the aggregate number of issued shares, itemized by class and by series, if any, within each class;

(10) an estimate expressed in dollars of:

(a) the gross amount of business which will be transacted by it during its current fiscal year at or from places of business located in the state;

(b) the gross amount of business that will be transacted by it during its current fiscal year, wherever transacted;

(c) the value of all property to be owned by it and located in the state during its current fiscal year; and

(d) the value of all property to be owned by it during its current fiscal year, wherever located; and

(11) additional information necessary or appropriate in order to enable the commission to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees and franchise taxes payable.

B. The application shall be made on forms prescribed by the commission and shall be executed by the corporation by an authorized officer. "

Section 67. Section 53-17-6 NMSA 1978 (being Laws 1967, Chapter 81, Section 108, as amended) is amended to read:

"53-17-6. FILING OF APPLICATION FOR CERTIFICATE OF AUTHORITY. --

A. A corporation applying for a certificate of authority shall deliver to the commission:

(1) an original of the application of the corporation for a certificate of authority together with a copy, which may be signed, photocopied or conformed;

(2) a certificate of good standing and compliance issued by the appropriate official of the state or country under the laws of which the corporation is incorporated, current within thirty days and which has not expired at the time of receipt by the commission; and

(3) a statement executed by the designated registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the designated registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation.

B. If the commission finds that the application and the statement conform to law, it shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file in its office the original of the application, the statement and the copy of the articles of incorporation and amendments thereto; and

(3) issue a certificate of authority to transact business in this state to which it shall affix the file-stamped copy.

C. The certificate of authority, together with the file-stamped copy of the application affixed to it shall be returned by the commission to the corporation or its representative. "

Section 68. Section 53-17-10 NMSA 1978 (being Laws 1967, Chapter 81, Section 111, as amended) is amended to



read:

"53-17-10. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION. --

A. A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the commission a statement setting forth:

(1) the name of the corporation;  
(2) the address of its registered office;  
(3) if the address of its registered office is changed, the address to which the registered office is to be changed;

(4) the name of its registered agent;  
(5) if its registered agent is changed:

(a) the name of its successor registered agent; and

(b) a statement executed by the successor registered agent acknowledging his acceptance of the appointment by the filing corporation as its registered agent, if the agent is an individual, or a statement executed by an authorized officer of a corporation that is the successor registered agent in which the officer acknowledges the corporation's acceptance of the appointment by the filing corporation as its registered agent, if the agent is a corporation; and

(6) that the address of its registered

office and the address of the business office of its registered agent, as changed, will be identical.

B. The statement shall be executed by the corporation by an authorized officer and delivered to the commission. If the commission finds that the statement conforms to the provisions of the Business Corporation Act, it shall file the statement in its office, and upon the filing, the change of address of the registered office or the appointment of a new registered agent, or both, shall become effective.

C. A registered agent of a foreign corporation may resign as agent upon filing a written notice of resignation with the commission, which shall mail immediately a copy of it to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of the agent shall terminate upon the expiration of thirty days after receipt of the notice by the commission.

D. If a registered agent changes his business address to another place within the same county, he may change the address and the address of the registered office of any corporations of which he is a registered agent by filing a statement as required in Subsection A of this section, except that it need be signed only by the registered agent and need not be responsive to Paragraph (5) of that subsection and must recite that a copy of the

statement has been mailed to each corporation."

Section 69. Section 53-17-13 NMSA 1978 (being Laws 1967, Chapter 81, Section 114, as amended) is amended to read:

"53-17-13. MERGER OR CONVERSION OF FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE. --Whenever a foreign corporation authorized to transact business in this state is a party to a statutory merger or conversion permitted by the laws of the state or country under the laws of which it is incorporated, it shall, within thirty days after the merger or conversion becomes effective, file with the commission a copy of the articles of merger or conversion duly authenticated by the proper officer of the state or country under the laws of which the statutory merger or conversion was effected. It is not necessary for the corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of the corporation is changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state or unless the surviving corporation is to transact business in New Mexico but has not procured a certificate of authority to transact business in this state."

Section 70. Section 53-17-15 NMSA 1978 (being Laws 1967, Chapter 81, Section 116, as amended) is amended to

read:

"53-17-15. WITHDRAWAL OF FOREIGN CORPORATION. --

A. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the commission a certificate of withdrawal. In order to procure the certificate of withdrawal, the foreign corporation shall deliver to the commission an application for withdrawal, which shall set forth:

- (1) the name of the corporation and the state or country under the laws of which it is incorporated;
- (2) a statement that the corporation is not transacting business in this state;
- (3) a statement that the corporation surrenders its authority to transact business in this state;
- (4) a statement that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on the corporation by service thereof on the secretary of state;
- (5) an address to which the secretary of state may mail a copy of any process against the corporation that may be served on it;

- (6) a statement of the aggregate number of

shares that the corporation has authority to issue, itemized by class and by series, if any, within each class, as of the date of the application;

(7) a statement of the aggregate number of issued shares, itemized by class and by series, if any, within each class, as of the date of the application; and

(8) additional information as necessary or appropriate in order to enable the commission to determine and assess any unpaid fees or franchise taxes payable by the foreign corporation.

B. The application for withdrawal shall be made on forms prescribed by the commission and shall be executed by the corporation by an authorized officer or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by the receiver or trustee. "

Section 71. Section 53-17-16 NMSA 1978 (being Laws 1967, Chapter 81, Section 117) is amended to read:

"53-17-16. FILING OF APPLICATION FOR WITHDRAWAL. --

A. An original of an application for withdrawal together with a copy, which may be signed, photocopied or conformed, shall be delivered to the commission. If the commission finds that the application conforms to the provisions of the Business Corporation Act and that the corporation has complied with the Tax Administration Act and has paid all contributions required by the Unemployment

Compensation Law, it shall, when all fees and franchise taxes have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of withdrawal to which it shall affix the file-stamped copy.

B. The certificate of withdrawal, together with the file-stamped copy of the application for withdrawal affixed to it shall be returned by the commission to the corporation or its representative. Upon the issuance of the certificate of withdrawal, the authority of the corporation to transact business in this state shall cease."

Section 72. Section 53-17-18 NMSA 1978 (being Laws 1967, Chapter 81, Section 119, as amended) is amended to read:

"53-17-18. ISSUANCE OF CERTIFICATE OF REVOCATION-- REINSTATEMENT. --

A. Upon revoking any certificate of authority, the commission shall:

(1) issue a certificate of revocation in triplicate;

(2) file one of the certificates in its office; and

(3) mail a notice of revocation accompanied by one of the certificates to the corporation at its

registered office in this state and also either to its principal office in the state or country under the laws of which it is incorporated or to the principal office of the corporation at the addresses as shown in the last annual report filed with the commission.

B. Upon the issuance of the certificate of revocation, the authority of the corporation to transact business in this state shall cease.

C. A corporation administratively revoked under Section 53-17-17 NMSA 1978 may apply to the commission for reinstatement within two years after the effective date of revocation. The application shall:

(1) recite the name of the corporation and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the corporation name satisfies the requirements of Section 53-17-3 NMSA 1978.

D. If the commission determines that the application contains the information required by Subsection C of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation.

E. When the reinstatement is effective, it

relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred. "

Section 73. Section 53-18-6.1 NMSA 1978 (being Laws 1983, Chapter 304, Section 72) is amended to read:

"53-18-6.1. VOTING REQUIREMENTS--EXISTING CORPORATIONS.--

A. The provisions of the 1983 amendments to the Business Corporation Act lowering voting requirements from a two-thirds majority to a simple majority shall not apply to a corporation that was in existence on June 17, 1983, until the corporation, by amendment to its articles of incorporation, chooses to become subject to those provisions, except as provided in Subsection B of this section.

B. Corporations in existence on June 17, 1983 that, as of July 1, 2001, are listed on a national securities exchange, or whose shares are publicly traded on an over-the-counter basis and have more than four hundred fifty shareholders of record, shall be subject to the lower voting requirements established by the 1983 amendments to the Business Corporation Act upon adoption of a bylaws provision by the board of directors making the corporation subject to the lower voting requirements. The bylaws provision adopted pursuant to this subsection may be



rescinded only by submission to the shareholders of a proposal to amend the articles of incorporation to establish a greater voting requirement in accordance with the provisions of Section 53-18-6 NMSA 1978, which proposal may be made by any shareholder of record. "

Section 74. A new section of the Limited Liability Company Act is enacted to read:

"ADMINISTRATIVE REVOCATION. -- A limited liability company may be revoked by the commission if:

A. the limited liability company has failed for a period of thirty days to appoint and maintain a registered agent as required by the Limited Liability Company Act; or

B. the limited liability company has failed for a period of thirty days, after change of its registered office or registered agent, to file in the office of the commission a statement of the change as required by the Limited Liability Company Act. "

Section 75. A new section of the Limited Liability Company Act is enacted to read:

"REINSTATEMENT FOLLOWING ADMINISTRATIVE REVOCATION. --

A. A limited liability company administratively revoked pursuant to the Limited Liability Company Act may apply to the commission for reinstatement within two years after the effective date of revocation. The application must:

(1) recite the name of the limited liability company and the effective date of its administrative revocation;

(2) state that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) state that the limited liability company's name satisfies the requirements of Section 53-19-3 NMSA 1978.

B. If the commission determines that the application contains the information required by Subsection A of this section and that the information is correct, it shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the limited liability company.

C. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the limited liability company resumes carrying on its business as if the administrative revocation had never occurred. "

Section 76. Section 53-19-48 NMSA 1978 (being Laws 1993, Chapter 280, Section 48) is amended to read:

"53-19-48. REGISTRATION. -- Before transacting business in New Mexico, a foreign limited liability company shall register with the commission by submitting an original

signed application for registration as a foreign limited liability company, together with a duplicate copy that may be a signed, photocopied or conformed copy, executed by a person with authority to do so under the laws of the state or other jurisdiction of its organization and an original certificate of good standing and compliance issued by the appropriate official of the state or jurisdiction under the laws of which the organization is organized, current within thirty days and that has not expired at time of receipt by the commission. The application shall set forth:

A. the name of the foreign limited liability company and, if different, the name under which it proposes to transact business in New Mexico;

B. the state or other jurisdiction where the foreign limited liability company was organized and the date of its organization;

C. the name and address of a registered agent for service of process, which agent meets the requirements of Section 53-19-5 NMSA 1978, whose original, signed affidavit, together with a duplicate copy, to the effect that such person accepts designation as the registered agent of the foreign limited liability company shall be submitted with the application;

D. a statement that the secretary of state is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed or, if

appointed, the agent's authority has been revoked or the agent cannot be found or served in the exercise of reasonable diligence;

E. the address of the office required to be maintained in the state or other jurisdiction of its organization by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company;

F. a statement that the foreign limited liability company is a foreign limited liability company as defined in Section 53-19-2 NMSA 1978; and

G. the identity of persons in whom management of the foreign limited liability company is vested."

Section 77. Section 53-19-51 NMSA 1978 (being Laws 1993, Chapter 280, Section 51) is amended to read:

"53-19-51. AMENDED CERTIFICATE OF REGISTRATION.--

A. The application for registration of a foreign limited liability company may be amended by filing an amended certificate of registration with the commission signed by a person with authority to do so under the laws of the state or other jurisdiction of its organization. The application for an amended certificate of registration shall set forth:

(1) the name of the foreign limited liability company;

(2) the date the original application for

registration was filed; and

(3) the amendment to the application for registration.

B. The application for registration may be amended in any way, so long as the application for registration as amended contains only provisions that, at the time of the amendment, may be lawfully contained in an application for registration.

C. An application for registration shall be amended to reflect any change in the identity of the persons in whom management of the foreign limited liability company is vested.

D. The requirements in respect to the form and contents of the application for amended certificate of registration, the manner of its execution, the filing of an original and copy with the commission, the issuance of an amended certificate of registration and the effect thereof, shall be the same as in the case of an original application for a certificate of registration. In addition to these requirements, the application shall be accompanied by an authenticated copy of the amended articles of organization."

Section 78. Section 53-19-60 NMSA 1978 (being Laws 1995, Chapter 213, Section 8) is amended to read:

"53-19-60. CONVERSIONS AND MERGERS--CONVERSION OF CORPORATION, PARTNERSHIP OR LIMITED PARTNERSHIP TO LIMITED LIABILITY COMPANY.--

A. A corporation, partnership or limited partnership may be converted to a limited liability company pursuant to this section.

B. The terms and conditions of a conversion of a corporation, partnership or limited partnership to a limited liability company shall be approved in the manner provided for by the document, instrument, agreement or other writing governing the internal affairs of the corporation, partnership or limited partnership or, in the absence of such a provision, by all of the shareholders or partners, as the case may be.

C. An agreement of conversion shall set forth the terms and conditions of the conversion of the owners' interests in the converting entity into interests in the converted entity or the cash or other consideration to be paid or delivered as a result of the conversion of the owners' interests or a combination of these.

D. After a conversion is approved under Subsection B of this section, the corporation, partnership or limited partnership being converted shall file articles of organization with the commission that satisfy the requirements of Section 53-19-8 NMSA 1978 and that also contain:

(1) a statement that the corporation or partnership was converted to a limited liability company from a corporation, partnership or limited partnership;

(2) its former name;

(3) a statement of the number of votes cast by the shareholders or partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under Subsection B of this section; and

(4) in the case of a corporation or a limited partnership, a statement that the certificate of incorporation or certificate of limited partnership is to be canceled as of the date the conversion takes effect.

E. In the case of a corporation or a limited partnership, the filing of articles of organization under Subsection D of this section cancels its certificate of incorporation or certificate of limited partnership as of the date the conversion took effect.

F. A conversion takes effect when articles of organization are filed with the commission or at any later date specified in the articles of organization.

G. A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

H. A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the

company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion took effect."

Section 79. A new section of the Limited Liability Company Act, Section 53-19-60.1 NMSA 1978, is enacted to read:

"53-19-60.1. CONVERSIONS AND MERGERS-- CONVERSION OF LIMITED LIABILITY COMPANY TO CORPORATION, PARTNERSHIP OR LIMITED PARTNERSHIP. --

A. A limited liability company may be converted to a corporation, partnership or limited partnership pursuant to this section.

B. The terms and conditions of a conversion of a limited liability company to a corporation, partnership or limited partnership shall be approved by all of the members or by a number or percentage of the members or managers required for conversion in the operating agreement.

C. An agreement of conversion shall set forth the terms and conditions of the conversion of the members' interest in the limited liability company into interests in the corporation, partnership or limited partnership or the cash or other consideration to be paid or delivered as a result of the conversion of the members' interests, or a combination of these.

D. After a conversion is approved under



Subsection B of this section, the limited liability company shall file with the commission, if the converted entity is a partnership, a statement containing the items set forth below, if the converted entity is a corporation, articles of incorporation and a statement containing the items set forth below and if the converted entity is a limited partnership, a certificate of limited partnership and a statement containing the items set forth below:

(1) a statement that the corporation, partnership or limited partnership was converted from a limited liability company;

(2) the former name of the limited liability company;

(3) a statement of the number of votes cast by the members or managers entitled to vote for and against the conversion and, if the vote is other than a unanimous vote of the members, the number or percentage of members or managers required to approve the conversion under Subsection B of this section; and

(4) a statement that the articles of organization of the limited liability company are to be canceled as of the date the conversion takes effect.

E. The filing of articles of incorporation for a corporation, a statement for a partnership or a certificate of limited partnership for a limited partnership resulting from a conversion pursuant to this section, cancels the

articles of organization of the limited liability company as of the date the conversion takes effect.

F. A conversion takes effect when articles of incorporation, a certificate of limited partnership or statement required if the converted entity is a partnership, are filed with the commission or at any later date specified in the filed document. "

Section 80. Section 53-19-61 NMSA 1978 (being Laws 1995, Chapter 213, Section 9) is amended to read:

"53-19-61. CONVERSIONS AND MERGERS--EFFECT OF CONVERSION. --

A. A corporation, partnership, limited liability company or limited partnership that has been converted pursuant to Section 53-19-60 or 53-19-60.1 NMSA 1978 is for all purposes the same entity that existed before the conversion.

B. When a conversion takes effect:

(1) all property owned by the converting entity is vested in the converted entity;

(2) all debts, liabilities and other obligations of the converting entity continue as obligations of the converted entity;

(3) an action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all

of the rights, privileges, immunities, powers and purposes of the converting entity are vested in the converted entity; and

(5) except as otherwise provided in the agreement of conversion under Subsection C of Section 53-19-60 NMSA 1978, all of the owners of the converting entity continue as owners of the converted entity."

Section 81. Section 53-19-63 NMSA 1978 (being Laws 1993, Chapter 280, Section 63, as amended) is amended to read:

"53-19-63. FILING, SERVICE AND COPYING FEES. --The commission shall charge and collect:

A. for filing the original articles of organization and issuing a certificate of organization, a fee of fifty dollars (\$50.00);

B. for filing amended or restated articles of merger and issuing a certificate of amended or restated articles, a fee of fifty dollars (\$50.00);

C. for filing articles of merger, conversion or consolidation and issuing a certificate of consolidation, a fee of one hundred dollars (\$100);

D. for filing articles of dissolution or revocation of dissolution, a fee of twenty-five dollars (\$25.00);

E. for issuing a certificate for any purpose not otherwise specified, a fee of twenty-five dollars (\$25.00);

F. for furnishing written information on any limited liability company, a fee of twenty-five dollars (\$25.00);

G. for providing from the commission's records any document or instrument, a fee of one dollar (\$1.00) per page, but in one case less than ten dollars (\$10.00), and a fee of twenty-five dollars (\$25.00) for certification of documents or instruments;

H. for accepting an application for reservation of a name or for filing a notice of the transfer of any name reservation, a fee of twenty dollars (\$20.00);

I. for filing a statement of change of address of registered office or registered agent, or both, a fee of twenty dollars (\$20.00);

J. for issuing a registration to a foreign limited liability company, a fee of one hundred dollars (\$100);

K. for filing an amendment of the registration of a foreign limited liability company, a fee of fifty dollars (\$50.00); and

L. for filing an application for cancellation of registration of a foreign limited liability company and issuing a certificate of cancellation, a fee of twenty-five dollars (\$25.00). "

Section 82. Section 73-5-2 NMSA 1978 (being Laws 1909, Chapter 76, Section 2, as amended) is amended to read:

"73-5-2. CERTIFICATE OF ORGANIZATION-- CONTENTS. -- The incorporators of a water users' association shall execute a certificate setting forth:

A. the name of the association. No name shall be assumed that is in use by another association or corporation in this state, or so nearly similar as to lead to uncertainty or confusion;

B. the names of the incorporators;

C. the location of the association's principal office in this state;

D. the objects and purposes of the association, the county or counties in which its operations are to be carried on and the general description of the lands to be irrigated and the reservoirs, canals, ditches or works to be constructed, enlarged, combined or used under the management of the association;

E. the amount of capital stock and number and denomination of the shares, or if the incorporators do not desire to issue shares of stock, the plan and manner of acquiring membership and of providing funds or means for the acquisition, construction, improvement and maintenance of its works and for its necessary expenses;

F. the period if any limited for the duration of the association;

G. the number and manner of electing the board of directors, trustees or governing board of the association,

and may name the persons who shall serve as such for the first three months or until their successors are elected and qualified;

H. the address of its initial registered office and the name of its initial registered agent at that address; and

I. any provision, not inconsistent with Chapter 73, Article 5 NMSA 1978 or other law of this state, which the incorporators may choose to insert for the regulation and conduct of the business and affairs of the association, extending its membership, enlarging or changing the scope of its operations, creating and enforcing a lien upon the lands, reservoirs, canals, ditches, works and water rights of the association or its members for the cost of acquisition, construction, repair, improvement and maintenance of reservoirs, canals, ditches and other works, collecting the necessary funds for expenses and purposes of the association, defining or limiting its powers and for its dissolution and the distribution or other disposition of its property. "

Section 83. SHORT TITLE. --Sections 84 through 100 of this act may be cited as the "Foreign Business Trust Registration Act".

Section 84. DEFINITIONS. --As used in the Foreign Business Trust Registration Act:

A. "business trust" means an entity engaged in a

trade or business that is created by a declaration of trust that transfers property to trustees, to be held and managed by them for the benefit of persons holding certificates representing the beneficial interest in the trust estate and assets; and

B. "foreign business trust" means a business trust formed under the laws of a state other than New Mexico.

Section 85. CERTIFICATE OF AUTHORITY--NECESSITY TO OBTAIN TO TRANSACT BUSINESS--WHAT CONSTITUTES NOT TRANSACTING BUSINESS. --

A. A foreign business trust shall not transact business in this state unless it first obtains a certificate of authority from the public regulation commission. A foreign business trust is not entitled to obtain a certificate of authority to transact a business in this state that it is not permitted to transact in the state or country in which it was created.

B. The following activities do not constitute transacting business within the meaning of Subsection A of this section:

(1) maintaining, defending or effecting the settlement of an action, suit or administrative or arbitration proceeding, or effecting the settlement of claims or disputes;

(2) maintaining bank accounts;

(3) maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;

(4) soliciting or procuring orders when the orders require acceptance outside of this state before becoming binding contracts;

(5) transacting business in interstate commerce;

(6) holding meetings of the board of trustees or holders of beneficial interest or carrying on other activities concerning internal affairs;

(7) selling through independent contractors;

(8) creating or procuring indebtedness, mortgages and security interests in real and personal property;

(9) conducting an isolated transaction that is completed within a period of thirty days and not in the course of a number of repeated transactions of a similar nature;

(10) securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or

(11) owning without more, real or personal property.



Section 86. NAME OF FOREIGN BUSINESS TRUST. --

A. The name of a foreign business trust set forth in its certificate of trust shall be distinguishable from the name shown in the records of the public regulation commission of any corporation, limited partnership, limited liability company, investment trust or limited liability partnership reserved, registered, formed or organized under the laws of New Mexico or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign limited liability company, foreign investment trust or foreign limited liability partnership in New Mexico; except that a foreign business trust may register under any name that is not distinguishable from the name shown in the records of the commission of a domestic or foreign corporation, limited partnership, limited liability company, investment trust or limited liability partnership reserved, registered, formed or organized under the laws of New Mexico if the foreign business trust has the written consent of the other entity to use the name and if the written consent is filed with the commission.

B. The name of a foreign business trust set forth in its certificate of trust may contain the name of a beneficial owner, a trustee or any other person.

C. The name of a foreign business trust set forth in its certificate of trust may contain the following words: "company", "association", "club", "foundation", "fund",

"institute", "society", "union", "syndicate", "limited" or "trust" or abbreviations of similar import.

D. The exclusive right to the use of a name may be reserved by a foreign business trust in accordance with the Business Corporation Act.

Section 87. PROHIBITED CHANGE OF NAME--PENALTIES. -- If a foreign business trust authorized to transact business in this state changes its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of the foreign business trust shall be suspended, and it shall not thereafter transact business in this state until it changes its name to a name that is available to it under the laws of this state and obtains a certificate of correction or amendment.

Section 88. APPLICATION FOR CERTIFICATE OF AUTHORITY. -

A. A foreign business trust, in order to obtain a certificate of authority to transact business in this state, shall make application to the public regulation commission. The application shall set forth:

(1) the name of the foreign business trust and, if different, the name under which it proposes to transact business in this state;

(2) the date of declaration of trust;

(3) the address of the principal office of

the foreign business trust in the state or country under the laws of which it is organized;

(4) the address of the registered office of the foreign business trust in this state, the name of its registered agent in this state at that address and an acceptance of the appointment signed by the agent appointed; and

(5) the purposes of the foreign business trust that it proposes to pursue in the transaction of business in this state.

B. The application shall be made on forms prescribed and furnished by the public regulation commission and shall be executed by a person with authority to do so under the laws of the state or jurisdiction of its formation.

C. A foreign business trust shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of trust records in the state or jurisdiction under whose law it is created.

Section 89. ISSUANCE OF CERTIFICATE OF AUTHORITY. --

A. If the public regulation commission finds that the application for a certificate of authority meets the requirements of the Foreign Business Trust Registration Act and the requisite fees have been paid, it shall:

(1) endorse on the original the word "filed" and the month, day and year of the filing;

(2) file in its office the original of the application; and

(3) issue a certificate of authority to transact business in this state to which it shall affix a copy of the application.

B. The certificate of authority, together with a copy of the application affixed to it, shall be returned by the public regulation commission to the business trust or its representative.

Section 90. CHANGES AND AMENDMENTS. --If a statement in the application for certificate of authority of a foreign business trust was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign business trust shall promptly file with the public regulation commission a certificate, signed by an authorized person, correcting the statement, together with the fee required by Section 98 of the Foreign Business Trust Registration Act.

Section 91. REGISTERED OFFICE AND REGISTERED AGENT-- REQUIREMENT OF MAINTENANCE IN STATE. --A foreign business trust authorized to transact business in this state shall have and continuously maintain in this state:

A. a registered office, which may be the same as its place of business in this state; and

B. a registered agent, which may be either an individual resident in this state whose business office is identical with the registered office, or a domestic or foreign corporation, limited partnership, limited liability company, limited liability partnership or investment trust authorized to transact business in this state, having a business office identical with the registered office of the foreign business trust.

Section 92. REGISTERED OFFICE AND REGISTERED AGENT--  
CHANGE--RESIGNATION OF REGISTERED AGENT.--

A. A foreign business trust authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing with the public regulation commission a statement setting forth:

- (1) the name of the foreign business trust;
- (2) the address of the its registered office;
- (3) if the address of its registered office is changed, the address to which it is to be changed;
- (4) the name of the foreign business trust's registered agent;
- (5) if its registered agent is changed, the name of the successor registered agent;
- (6) a statement that the address of its registered office and the address of the business office of

its registered agent, as changed, will be identical; and

(7) that the change was authorized by resolution duly adopted by its trustees.

B. The statement shall be executed by the foreign business trust by an authorized person and delivered to the public regulation commission. If the commission finds that the statement meets the requirements of this section, it shall file the statement, and when filed the change of address of the registered office, or the appointment of the new registered agent, or both, shall become effective. A registered agent of a foreign business trust may resign as registered agent by filing a written notice of resignation with the commission, and the commission shall mail immediately a copy of the notice to the foreign business trust at its principal office in the state or country under the laws of which it is organized. The appointment of the agent terminates upon the expiration of thirty days after receipt of the notice by the commission.

Section 93. SERVICE OF PROCESS. --

A. The registered agent appointed by a foreign business trust authorized to transact business in this state shall be an agent of the foreign business trust upon whom may be served any process, notice or demand required or permitted by law to be served upon the foreign business trust.

B. A foreign business trust may be served by

registered or certified mail, return receipt requested, addressed to a trustee of the foreign business trust at its principal office shown on its application for a certificate of authority if the foreign business trust:

- (1) has no registered agent or its registered agent cannot be served with reasonable diligence;
- (2) has withdrawn from transacting business in New Mexico; or
- (3) has had its certificate of authority revoked.

C. Service is perfected under Subsection B of this section at the earliest of:

- (1) the date the foreign business trust receives the mail;
- (2) the date shown on the return receipt, if signed on behalf of the foreign business trust; or
- (3) five days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

D. This section does not prescribe the only means, or necessarily the required means, of serving a foreign business trust described in Subsection B of this section.

Section 94. CERTIFICATE OF WITHDRAWAL-- APPLICATION AND FILING. --

A. A foreign business trust authorized to

transact business in this state may withdraw from this state upon obtaining from the public regulation commission a certificate of withdrawal. To obtain the certificate, the foreign business trust shall deliver to the commission an application for withdrawal. The application shall set forth:

(1) the name of the foreign business and the state or country under the laws of which it is organized;

(2) that the foreign business trust is not transacting business in this state;

(3) that the foreign business trust surrenders its authority to transact business in this state;

(4) that the foreign business trust revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based on a cause of action arising in this state during the time the foreign business trust was authorized to transact business in this state may thereafter be made on the foreign business trust by service on the secretary of state;

(5) an address to which the secretary of state may mail a copy of any process against the foreign business trust served on the secretary of state;

(6) a commitment to notify the commission in the future of any change in its mailing address; and



(7) additional information necessary or appropriate to enable the commission to determine and assess any unpaid fees or taxes payable by the foreign business trust.

B. The application for withdrawal shall be made on forms prescribed and furnished by the public regulation commission and shall be executed by the trust by an authorized person, or if the foreign business trust is in the hands of a receiver or trustee, by the receiver or trustee.

Section 95. CERTIFICATE OF WITHDRAWAL--ISSUANCE.--

A. An application of a foreign business trust for withdrawal shall be delivered to the public regulation commission. If the commission finds that the application meets the requirements of the Foreign Business Trust Registration Act, when all fees and taxes prescribed by law have been paid it shall:

- (1) endorse on the application the word "filed" and the month, day and year of the filing;
- (2) file the application in its office; and
- (3) issue a certificate of withdrawal.

B. The certificate of withdrawal, together with a copy of the application for withdrawal affixed thereto by the public regulation commission, shall be returned to the foreign business trust or its representative. Upon the issuance of the certificate of withdrawal, the authority of

the foreign business trust to transact business in this state shall cease.

Section 96. CERTIFICATE OF AUTHORITY--REVOCATION--CAUSES.--

A. The certificate of authority of a foreign business trust to transact business in this state may be revoked by the public regulation commission pursuant to this section when:

(1) the foreign business trust has failed to pay any fees prescribed by law when they become due and payable;

(2) the foreign business trust has failed to appoint and maintain a registered agent in this state;

(3) the foreign business trust has failed, after change of its registered office or registered agent, to file with the commission a statement of the change as required by law; or

(4) a misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by such foreign business trust pursuant to law.

B. No certificate of authority of a foreign business trust shall be revoked by the public regulation commission unless:

(1) it has given the foreign business trust not less than sixty days' prior notice of revocation by mail

addressed to its registered office in this state; and

(2) the foreign business trust prior to revocation fails to pay fees or taxes owed, file the required statement of change of registered agent or registered office or correct the misrepresentation.

**Section 97. CERTIFICATE OF AUTHORITY-- REVOCATION  
PROCEDURE. --**

A. Upon revoking a certificate of authority of a foreign business trust, the public regulation commission shall:

(1) issue a certificate of revocation in duplicate;

(2) file one of the certificates in its office; and

(3) mail to the foreign business trust at its registered office in this state a notice of the revocation accompanied by the other certificate.

B. Upon issuance of the certificate of revocation, the authority of the foreign business trust to transact business in this state ceases.

**Section 98. CONSEQUENCES OF TRANSACTING BUSINESS  
WITHOUT AUTHORITY. --**

A. A foreign business trust transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

B. The successor to a foreign business trust that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign business trust or its successor obtains a certificate of authority.

C. A court may stay a proceeding commenced by a foreign business trust, its successor or assignee until it determines whether the foreign business trust or its successor requires a certificate of authority. If it so determines, the court may further stay a proceeding until the foreign business trust or its successor obtains a certificate.

D. A foreign business trust is liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year it transacts business in this state without a certificate of authority. The attorney general may enforce the civil liability imposed pursuant to this subsection.

E. The failure of a foreign business trust to obtain a certificate of authority does not impair the validity of any contract or act of the foreign business trust or prevent it from defending any action, suit or proceeding in any court of this state.

Section 99. FEES. --The public regulation commission

shall charge and collect from a foreign business trust for:

- A. filing a statement of change of address of registered office or change of registered agent, or both, twenty-five dollars (\$25.00);
- B. filing an application of a foreign business trust for a certificate of authority to transact business in this state and issuing a certificate of authority, two hundred fifty dollars (\$250);
- C. filing a certificate of correction or amendment of a foreign business trust authorized to transact business in this state, fifty dollars (\$50.00);
- D. filing an application for withdrawal of a foreign business trust and issuing a certificate of withdrawal, twenty-five dollars (\$25.00);
- E. filing any other statement of a foreign business trust, twenty-five dollars (\$25.00); and
- F. for furnishing a certified copy of any document, instrument or paper relating to a foreign business trust, one dollar (\$1.00) per page and ten dollars (\$10.00) for the certificate and affixing the seal thereto.

Section 100. TEMPORARY PROVISION--LAWS APPLICABLE TO FOREIGN BUSINESS TRUST PREVIOUSLY TRANSACTING BUSINESS IN THIS STATE. --

- A. Foreign business trusts that are transacting business in this state at the time the Foreign Business Trust Registration Act takes effect, for a purpose or

purposes for which a foreign business trust might secure authority under that law, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to the rights and privileges applicable to foreign business trusts obtaining certificates of authority to transact business and shall be subject to the limitations, restrictions, liabilities and duties prescribed in that act for foreign business trusts obtaining certificates of authority to transact business in this state.

B. Within one year from the effective date of the Foreign Business Trust Registration Act, foreign business trusts transacting business within the state at the time of the effective date of that act shall secure a certificate of authority or be subject to the penalties, restrictions and limitations provided in the act.

Section 101. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2001. \_\_\_\_\_