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SENATE BILL 380

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

JOHN ARTHUR SMITH

AN ACT

RELATING TO GAMING; ENACTING THE VIDEO GAMING ACT; PROVIDING FOR VIDEO MACHINE GAMING AT RACETRACKS, LICENSED RESORTS, LICENSED LIQUOR ESTABLISHMENTS AND LICENSED CLUBS; CREATING A FUND AND PROVIDING FOR DISTRIBUTION OF REVENUE; PROVIDING FOR A DEDUCTION AGAINST GROSS RECEIPTS FROM RECEIPTS FROM THE OPERATION OF VIDEO GAMING MACHINES; PROVIDING FOR LOCAL OPTION REFERENDA ON CERTAIN VIDEO GAMING; PROVIDING PENALTIES; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING APPROPRIATIONS.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 43 of this act may be cited as the "Video Gaming Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the Video Gaming Act is to:

- A. establish video gaming to provide revenue that

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1 will benefit the state and its citizens;

2 B. regulate the use and operation of video gaming
3 machines in the state; and

4 C. take all actions necessary to ensure the
5 integrity, reliability and security of all games of chance not
6 otherwise subject to regulation by another agency or authority
7 created by state or federal law.

8 Section 3. [NEW MATERIAL] PUBLIC POLICY OF STATE
9 CONCERNING GAMING. --The legislature finds and declares it to be
10 the public policy of this state that:

11 A. regulation of video gaming is critical to ensure
12 that it is conducted honestly and uniformly throughout New
13 Mexico;

14 B. the public's confidence and trust in the conduct
15 of permitted video gaming activities can be obtained and
16 maintained only through strict regulation of all persons,
17 locations, practices, associations and activities related
18 directly or indirectly to nontribal video gaming conducted in
19 the state; and

20 C. a holder of a license issued pursuant to the
21 Video Gaming Act to conduct permitted gaming activities does not
22 acquire any vested interest or right in or under the license and
23 has only a revocable privilege.

24 Section 4. [NEW MATERIAL] DEFINITIONS. --As used in the
25 Video Gaming Act:

. 109241.3

1 A. "associated equipment" means any proprietary
2 device, machine or part used in the manufacture or maintenance
3 of a video gaming machine, including but not limited to
4 integrated circuit chips, printed wired assembly, printed wire
5 boards, printing mechanisms, video display monitors and metering
6 devices;

7 B. "committee" means the legislative lottery and
8 gaming oversight committee that oversees the operation of video
9 gaming in the state and is created in the Video Gaming Act;

10 C. "director" means the director of the division;

11 D. "distributor" means any person who distributes or
12 sells video gaming machines or associated equipment in New
13 Mexico;

14 E. "division" means the alcohol and gaming division
15 of the regulation and licensing department;

16 F. "gaming administration personnel" means those
17 employees of the division who administer the provisions of the
18 Video Gaming Act and the regulations and rules adopted pursuant
19 to that act. "Gaming administration personnel" does not include
20 security division personnel;

21 G. "licensed club" means a nonprofit organization
22 that has been licensed pursuant to the Video Gaming Act;

23 H. "licensed liquor establishment" means a liquor
24 establishment that has been issued a license pursuant to the
25 Video Gaming Act as a video gaming licensee to permit the

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1 conduct of video gaming on the premises of the liquor
2 establishment;

3 I. "licensed resort" means a resort that has been
4 issued a license pursuant to the Video Gaming Act as a video
5 gaming licensee to permit the conduct of video gaming on the
6 premises of the resort;

7 J. "licensee" means any person who is granted a
8 license pursuant to the Video Gaming Act;

9 K. "liquor establishment" means a person who has
10 been issued a dispenser's license or a restaurant license
11 pursuant to the Liquor Control Act, whose licensed premises has
12 a permanent seating capacity for more than thirty patrons and
13 whose premises has a permanent physical barrier creating an age-
14 restricted area if persons under the age of twenty-one are
15 permitted on the licensed premises;

16 L. "lottery" means the New Mexico state lottery;

17 M. "major procurement" means any procurement or
18 contract for the purchase or lease of facilities, equipment,
19 goods or services used primarily for the regulation and control
20 of video gaming, the value of which is in excess of twenty
21 thousand dollars (\$20,000), including computer equipment,
22 accounting, consulting or other procurements deemed necessary by
23 the superintendent;

24 N. "manufacturer" means any person who assembles or
25 produces video gaming machines or associated equipment to be

1 sold or used in New Mexico;

2 0. "net take" means the total of all cash received
3 from patrons for the play of video gaming machines less the
4 total of all cash paid out in prizes;

5 P. "nonprofit organization" means any organization,
6 described in Section 501(c)(3) of the federal Internal Revenue
7 Code of 1986, exempt from federal income taxation pursuant to
8 Section 501(a) of that code and that has been issued a license
9 pursuant to Section 60-6A-5 NMSA 1978;

10 Q. "operator" means any person who sells, services
11 or places video gaming machines or associated equipment for sale
12 or use in this state;

13 R. "person" means an individual or any legal entity,
14 including a partnership, joint venture, limited partnership,
15 limited liability company or corporation;

16 S. "racetrack" means a horse racetrack in New Mexico
17 licensed pursuant to the Horse Racing Act;

18 T. "regulation" means a rule, regulation, order,
19 standard or statement of policy issued or adopted by the
20 superintendent regarding the regulation or operation of video
21 gaming in the state;

22 U. "resort" means a house or complex of buildings
23 that has available for public lodging at least one hundred fifty
24 guest rooms and that has on the same premises an affiliated
25 restaurant that has seating for and can serve meals to at least

1 two hundred patrons at one time;

2 V. "security division" means the gaming security
3 division of the regulation and licensing department;

4 W. "security director" means the director of the
5 security division;

6 X. "superintendent" means the superintendent of
7 regulation and licensing;

8 Y. "vendor" means any person who provides a major
9 procurement under contract with the division or security
10 division;

11 Z. "video amusement machine" means an electronic or
12 electromechanical device, contrivance or machine that may be
13 available for play upon the payment of consideration and when
14 played may, by reason of the skill of the player accompanied by
15 some chance, entitle the player to receive additional play on
16 the same or a similar video amusement machine or a voucher or
17 credit slip that may be exchanged for merchandise of
18 insignificant value;

19 AA. "video game" means a game of chance played on a
20 video gaming machine;

21 BB. "video gaming licensee" means a racetrack, a
22 nonprofit organization, a resort or a liquor establishment that
23 has obtained a license pursuant to the Video Gaming Act to have
24 video gaming machines in operation on the licensee's premises;

25 CC. "video gaming machine" means any electronic or

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1 electromechanical device, contrivance or machine that is
2 available for play upon the payment of consideration and when
3 played may entitle the player to receive or may deliver to the
4 player something of value, including cash, coins, premiums,
5 merchandise, credits, tokens or a voucher, whether by reason of
6 the skill of the player or application of the element of chance,
7 or both; "video gaming machine" does not include video amusement
8 machines; and

9 DD. "voucher" means a receipt, credit slip or other
10 tangible evidence printed out by a video gaming machine that
11 entitles the holder to receive something of value for having
12 played the machine and won its game.

13 Section 5. [NEW MATERIAL] SUPERINTENDENT-- DUTIES. --

14 A. The superintendent shall employ the director and
15 the security director, who shall report to and serve at the
16 pleasure of the superintendent.

17 B. The superintendent shall adopt all rules and
18 regulations necessary to administer the Video Gaming Act and to
19 assure the honest and secure operation of video gaming in the
20 state.

21 C. The superintendent shall clearly delegate areas
22 of authority to the director and to the security director to
23 prevent duplication of staff effort or confusion, but retains
24 the ultimate decision-making authority in all areas of operation
25 or administration of the Video Gaming Act.

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1 D. The superintendent shall oversee and review all
2 actions taken by the director or the security director.

3 Section 6. [NEW MATERIAL] LOTTERY AND GAMING OVERSIGHT
4 COMMITTEE--DUTIES--COMPENSATION.--

5 A. There is created a joint interim legislative
6 oversight committee, which shall be known as the "lottery and
7 gaming oversight committee". The committee shall function from
8 the date of its appointment until the first day of December
9 prior to the second session of the forty-fifth legislature.

10 B. The committee shall be composed of ten members.
11 Five members of the house of representatives shall be appointed
12 by the speaker of the house of representatives, and five members
13 of the senate shall be appointed by the committees' committee of
14 the senate or, if the senate appointments are made in the
15 interim, by the president pro tempore of the senate after
16 consultation with and agreement of a majority of the members of
17 the committees' committee. Members shall be appointed so that
18 there is a member from each of the major political parties from
19 each house. No person who has or later acquires an ownership
20 interest in any vendor or licensee shall serve on the committee.

21 C. The committee shall oversee the start-up,
22 operations and regulation of video gaming, as well as
23 periodically review and evaluate the success with which the
24 superintendent is accomplishing his duties and regulating video
25 gaming activity pursuant to the Video Gaming Act. The committee

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1 may conduct any independent audit or investigation of the gaming
2 functions of the regulation and licensing department it deems
3 necessary.

4 D. Members of the committee may receive per diem and
5 mileage in accordance with the provisions of the Per Diem and
6 Mileage Act when the legislature is not in session and shall
7 receive no other compensation, perquisite or allowance.

8 E. The committee shall report its findings and
9 recommendations on video gaming to each regular session of the
10 legislature.

11 F. The committee shall perform duties as required by
12 the New Mexico Lottery Act.

13 Section 7. [NEW MATERIAL] DIRECTOR--EMPLOYMENT--
14 QUALIFICATIONS.--

15 A. The director shall be employed by and serve at
16 the pleasure of the superintendent.

17 B. The director shall have had at least five years
18 of responsible administrative experience in public or business
19 administration.

20 C. A background investigation shall be conducted on
21 each applicant for the position of director who has reached the
22 final selection process. The superintendent may contract with
23 and pay the department of public safety for the performance of
24 the investigations. Such background investigations shall
25 include, but not be limited to, credit checks, police record

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1 checks, conviction record checks, national and statewide
2 criminal records clearinghouse checks and fingerprint checks.
3 All information obtained through a background investigation
4 shall be confidential, except that the superintendent may
5 exchange such confidential information with state, federal and
6 local law enforcement agencies.

7 D. Any individual convicted of a felony or any crime
8 involving gambling, moral turpitude, fraud or theft shall not be
9 eligible for the position of director. The director shall
10 report his arrest for or conviction of a felony or any crime
11 involving gambling, moral turpitude, fraud or theft to the
12 superintendent within three days of such arrest or conviction.

13 Section 8. [NEW MATERIAL] DIRECTOR--POWERS--DUTIES.--

14 A. The director has authority and shall exercise
15 strict control and close supervision over video gaming conducted
16 in this state to promote and ensure integrity, security, honesty
17 and fairness in the operation, administration and regulation of
18 video gaming and to maximize revenue to the state.

19 B. The director has authority to contract for,
20 purchase or lease equipment, goods or services, including
21 consultants, marketing representatives, financial services,
22 technical services and advertisers necessary for effectuating
23 the purposes of the Video Gaming Act.

24 C. The director shall regulate the operation of
25 video games. The director may approve new technologies in video

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1 games and video gaming as it becomes available. The director
2 may approve new video games for play in the state. The director
3 may exclude any game that is unfair or misleading or that is not
4 financially beneficial to the state.

5 D. The director shall authorize video gaming
6 licensees to begin to operate video games by February 1, 1997,
7 unless the superintendent determines in his sole discretion that
8 implementation by that date will compromise the secure operation
9 of video gaming in New Mexico.

10 E. The director shall implement all regulations
11 necessary to administer the Video Gaming Act.

12 F. The director has authority to determine the prize
13 structure for each game, including the authority to authorize
14 the payment of prizes in installments and to administer the
15 regulation of payment of video game prizes. However, any prize
16 paid in excess of two hundred fifty thousand dollars (\$250,000)
17 shall be paid with an annuity, the term of which shall be
18 determined by the director.

19 G. The director shall make a continuous study of the
20 Video Gaming Act, the regulations adopted pursuant to that act,
21 similar existing laws in other states and the concerns of
22 citizens regarding existing and potential features of video
23 gaming to ascertain any improvement and operational efficiencies
24 beneficial to the state or its residents. The director shall
25 report his findings to the superintendent and the committee for

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1 the purposes of making recommendations for improving the Video
2 Gaming Act, the regulations adopted pursuant to that act or the
3 regulation of video gaming in the state.

4 H. The director shall supervise the gaming
5 administration personnel.

6 I. The director shall cooperate and coordinate the
7 gaming administration activities of the division with the
8 security director whenever necessary and appropriate.

9 J. The director shall exercise the authority and
10 perform all duties delegated to him by the superintendent and
11 the Video Gaming Act.

12 Section 9. [NEW MATERIAL] REGULATIONS. --

13 A. The regulations adopted by the superintendent and
14 administered by the director and the security director pursuant
15 to the Video Gaming Act shall include but are not limited to
16 regulations governing:

17 (1) security for video games;

18 (2) application requirements for licensees,
19 including disclosure requirements related to the ownership and
20 control of licensees and other disclosures necessary to evaluate
21 the competence, background, integrity or character of the
22 licensee;

23 (3) the manner and schedule of implementation
24 of video gaming authorized by and consistent with the Video
25 Gaming Act;

1 (4) enforcement of prohibitions on the playing
2 of video games by or for an individual younger than twenty-one
3 years of age;

4 (5) the specific games to be conducted within
5 the categories of video games to ensure that no specific game is
6 operated that is unfair or misleading;

7 (6) the percentage payout for video gaming
8 machines and how it should be calculated, provided that at least
9 eighty-seven percent of the amount played or bet computed on a
10 regular and systematic basis shall be paid or awarded in cash or
11 credits;

12 (7) the number, types of locations and hours at
13 which video gaming machines may be operated;

14 (8) the procedures to be followed by a video
15 gaming licensee in payment of valid prizes, including annuities;

16 (9) the procedures to ensure that only valid
17 vouchers are paid;

18 (10) procedures for ensuring that winners of
19 substantial prizes owe no money for delinquent child support or
20 taxes;

21 (11) methods and limitations on marketing and
22 advertising;

23 (12) the qualifications of vendors or
24 licensees;

25 (13) minimum standards for video gaming

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1 machines;

2 (14) the operations of distributors and
3 operators to ensure their compliance with the Video Gaming Act;

4 (15) insurance and bonding requirements for
5 vendors or licensees;

6 (16) any other matter necessary or desirable as
7 determined by the superintendent to promote and ensure:

8 (a) the integrity, security, honesty and
9 fairness of the operation and administration of video gaming;

10 and

11 (b) the convenience of players;

12 (17) grievance procedures for gaming
13 administration personnel and security division personnel and for
14 video gaming patrons; and

15 (18) the registration of persons offering video
16 amusement machines for play and the periodic inspections of the
17 premises where video amusement machines are available for play.

18 B. The regulations adopted pursuant to this section
19 shall be valid for no longer than a period of ten years
20 following adoption unless earlier reviewed and approved by the
21 superintendent.

22 Section 10. [NEW MATERIAL] ADMINISTRATION-- HEARING--
23 REGULATIONS. --

24 A. Regulations shall be adopted, amended or repealed
25 only after a public hearing by the superintendent. Notice of

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1 the hearing shall be given at least twenty days in advance in a
2 newspaper of general circulation in the state and shall set
3 forth the proposed regulation, amendment or the regulation
4 proposed to be repealed. The superintendent shall either
5 approve or disapprove the proposed regulation, amendment or
6 repeal of the regulations within ten days following the hearing.

7 B. Certified copies of any approved regulations
8 shall be submitted to the committee and, as required, to the
9 records center pursuant to the State Rules Act. Copies of the
10 regulations in force shall be made available to any person upon
11 request.

12 C. The superintendent shall adopt and promulgate
13 regulations to implement this section and for the conduct of all
14 hearings.

15 Section 11. [NEW MATERIAL] ADMINISTRATIVE PERSONNEL. --

16 A. The director shall appoint all gaming
17 administration personnel necessary but shall not appoint
18 security division personnel. The gaming administration
19 personnel appointed by the director shall serve at the will of
20 the director. In no event shall the gaming administration
21 personnel appointed by the director exceed forty-five people,
22 without the consent of the superintendent and after notifying
23 the committee.

24 B. Gaming administration personnel are specifically
25 exempted from the Personnel Act. The director, subject to the

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1 approval of the superintendent, shall set the salaries of the
2 gaming administration personnel.

3 C. Personnel of the security division shall conduct
4 background investigations of all individuals seeking employment
5 with the director. The background investigations shall include
6 credit checks, police record checks, conviction record checks,
7 national and statewide criminal records clearinghouse checks and
8 fingerprint checks.

9 D. Any individual convicted of a felony or any crime
10 involving gambling, moral turpitude, fraud or theft shall not be
11 eligible for employment.

12 E. An individual employee of the gaming
13 administration personnel shall report his arrest for or
14 conviction of a felony or any crime involving gambling, moral
15 turpitude, fraud or theft to the director within three days of
16 such arrest or conviction.

17 Section 12. [NEW MATERIAL] SECURITY. --

18 A. The security director shall be employed by and
19 serve at the pleasure of the superintendent. He shall
20 administer the security division. The security director shall
21 be qualified by training and experience in law enforcement or
22 security to supervise, direct and administer the activities of
23 the security division. The security director shall report
24 directly to the superintendent. The security director shall
25 cooperate and coordinate the activities of the security division

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1 with the director in order to resolve security issues raised by
2 the director to the greatest extent possible. The security
3 director shall exercise the authority and perform the duties
4 delegated to him by the superintendent.

5 B. The security director may employ security
6 division personnel as he considers necessary and shall ensure
7 that security division personnel are commissioned as peace
8 officers. Security division personnel are specifically exempt
9 from the Personnel Act. Security division personnel serve at
10 the pleasure of the security director. The security director,
11 subject to approval of the superintendent, shall set the
12 salaries of the security division personnel.

13 C. The department of public safety shall perform a
14 full criminal background investigation of a prospective security
15 director, investigators or any other security division personnel
16 deemed to require background investigations by the security
17 director. The department of public safety shall report the
18 findings to the security director except for background
19 information on the security director, which shall be reported to
20 the superintendent. The background investigations shall
21 include, but not be limited to, credit checks, police record
22 checks, conviction record checks, national and statewide
23 criminal records clearinghouse checks and fingerprint checks.
24 The security division shall reimburse the department of public
25 safety for the actual costs of an investigation. All

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1 information obtained through a background investigation shall be
2 confidential, except that the security director may exchange
3 such confidential information with state, federal and local law
4 enforcement agencies.

5 D. Any individual convicted of a felony or any crime
6 involving gambling, moral turpitude, fraud or theft shall not be
7 eligible for the position of security director or other
8 employment in the security division.

9 E. An individual employee of the security division
10 personnel shall report his arrest for or conviction of a felony
11 or any crime involving gambling, moral turpitude, fraud or theft
12 to the security director within three days of such arrest or
13 conviction.

14 F. By January 1, 1998 and at least once every two
15 years thereafter, the superintendent shall employ an independent
16 firm that is experienced in security, including computer
17 security and systems security, to conduct a comprehensive
18 confidential study of all aspects of video gaming security,
19 including:

- 20 (1) regulation and licensing department
21 personnel security;
- 22 (2) vendor, licensee and racetrack security;
- 23 (3) security against fraudulent winning;
- 24 (4) computer system security, data
25 communications, database and systems security;

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1 (5) gaming administration and security premises
2 security;

3 (6) security of payment procedures;

4 (7) security of video gaming machines; and

5 (8) other security aspects of video gaming
6 regulatory operations.

7 G. The security director shall provide the governor,
8 the committee and the superintendent with a copy of the
9 confidential security study.

10 H. The security director, after consultation with
11 the committee, shall develop a plan to improve the security of
12 video gaming based upon the recommendations of the confidential
13 security study; however, nothing in this section requires the
14 security director to implement any of the recommendations made
15 in the security study.

16 I. The security director shall keep files that he
17 deems necessary for the secure and efficient operation of the
18 security division.

19 J. If at any time the volume of background
20 investigations required exceeds the capacity for the security
21 division to complete the investigations in a timely or effective
22 manner, the security director or superintendent may contract
23 with the department of public safety for completion of
24 background investigations as needed.

25 Section 13. [NEW MATERIAL] INFORMATION AND DATA--

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1 CONFIDENTIALITY- - DISCLOSURE. - -

2 A. All of the following information and data are
3 confidential and may be revealed in whole or in part only in the
4 course of the necessary administration of the Video Gaming Act
5 or upon the lawful order of a court of competent jurisdiction,
6 except that the security director may reveal confidential
7 information and data to an authorized agent of any governmental
8 agency pursuant to a reciprocal agreement with the other
9 governmental agency to share information and maintain
10 confidentiality of the information as provided in this section:

11 (1) security measures and internal security
12 reports;

13 (2) information and data provided by a
14 governmental agency required by that agency's governing law to
15 be kept confidential;

16 (3) trade secrets and proprietary information
17 of any applicant, licensee or vendor;

18 (4) personal data, including personal financial
19 data, not otherwise public and not directly related to the
20 license or major procurement contract; and

21 (5) data or information as otherwise authorized
22 by law.

23 B. Notice of the content of any information or data
24 furnished or released pursuant to Paragraphs (3) and (4) of
25 Subsection A of this section shall be given to any applicant or

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1 licensee in a manner prescribed by regulations adopted pursuant
2 to the Video Gaming Act.

3 Section 14. [NEW MATERIAL] DIVISION--RECORDS--
4 REQUIREMENTS.--

5 A. The director shall make and keep records that
6 accurately and fairly reflect transactions of video gaming
7 conducted pursuant to the Video Gaming Act, including the
8 receipt of funds, prize claims, prizes paid, expenses and all
9 other activities and financial transactions involving revenue
10 generated by video gaming, to permit preparation of financial
11 statements in conformity with generally accepted accounting
12 principles and to maintain daily accountability.

13 B. The director shall maintain a file of all
14 applications for licenses pursuant to the Video Gaming Act,
15 together with a record of all action taken with respect to those
16 applications. The file and record are open to public
17 inspection, except those portions declared by law to be
18 confidential.

19 C. The director may maintain such other files and
20 records as he deems desirable.

21 D. The superintendent may examine the records or
22 files maintained by the director at any time.

23 Section 15. [NEW MATERIAL] AUDITS.--

24 A. The superintendent shall provide for a certified
25 public accountant to conduct an independent audit for each

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1 fiscal year of all accounts and transactions related to video
2 gaming. The independent audit shall be reviewed by the state
3 auditor. The certified public accountant shall not have an
4 ownership interest in a vendor or licensee and shall report any
5 conflict of interest to the superintendent. The certified
6 public accountant shall present an audit report to the
7 superintendent, the governor and the committee not later than
8 December 31 of the year following the fiscal year for which the
9 audit was performed. The report shall contain recommendations
10 to improve the efficiency of video gaming regulatory operations.

11 B. Each vendor's or licensee's records relating to
12 the Video Gaming Act are subject to audit.

13 C. The superintendent, after consultation with the
14 committee, shall develop a plan to improve the efficiency of the
15 regulation of video gaming based upon the recommendations of the
16 certified public accountant; however, nothing in this section
17 requires the superintendent to implement any of the
18 recommendations made by the certified public accountant.

19 D. All records, accounts and transactions relating
20 to video gaming are exempt from the Audit Act.

21 Section 16. [NEW MATERIAL] INVESTIGATORY POWERS. --The
22 superintendent, director and security director have the power
23 to:

24 A. examine, under oath, any person or any officer,
25 employee or agent of any organization or corporation;

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1 B. compel by subpoena the production of records;

2 C. compel by subpoena the attendance of any person
3 in this state to testify before the superintendent, director or
4 security director when such investigation is necessary to the
5 proper administration of the Video Gaming Act; and

6 D. inspect the premises and records of any person
7 licensed pursuant to the Video Gaming Act without prior notice
8 during regular work hours.

9 Section 17. [NEW MATERIAL] ATTORNEY GENERAL--OTHER LAW
10 ENFORCEMENT AUTHORITY--POWERS AND DUTIES.--

11 A. The superintendent, security director or director
12 may confer with the attorney general as deemed necessary and
13 advisable for the proper administration of the Video Gaming Act.
14 Upon request of the superintendent, it is the duty of the
15 attorney general and any other law enforcement authority to whom
16 a violation is reported to investigate and cause appropriate
17 proceedings to be instituted without delay.

18 B. The attorney general and the department of public
19 safety shall furnish to the superintendent any information that
20 they may have in their possession as may be necessary to ensure
21 security, honesty, fairness and integrity in the operation and
22 administration of video gaming conducted pursuant to the Video
23 Gaming Act. The security division shall be considered to be a
24 criminal justice agency and shall be furnished that information
25 without charge upon proper written request from the

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1 superintendent or security director.

2 Section 18. [NEW MATERIAL] CONFLICTS OF INTEREST--
3 COMPLIANCE WITH OTHER LAWS-- VIOLATION-- REMOVAL FROM OFFICE. --

4 A. The superintendent, the committee, the director,
5 gaming administration personnel, the security director, security
6 division personnel or other restricted persons shall not,
7 directly or indirectly:

8 (1) knowingly hold a financial interest or
9 acquire stocks, bonds or any other interest in any entity that
10 is a licensee or vendor; or

11 (2) have a financial interest in the ownership
12 or leasing of property used in the conduct or regulation of
13 video gaming.

14 B. The superintendent, the committee, the director,
15 gaming administration personnel, the security director, security
16 division personnel or other restricted persons shall not ask
17 for, offer to accept or receive any gift, gratuity or other
18 thing of value that would inure to that person's benefit from

19 (1) any entity seeking to supply equipment,
20 materials or services for use in the conduct or regulation of
21 video gaming;

22 (2) any applicant for a license; or

23 (3) any vendor or licensee.

24 C. No person seeking to supply equipment, materials
25 or services for use in the conduct or regulation of video

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1 gaming, no applicant for a license and no vendor or licensee
2 shall offer or give to the superintendent, the committee, the
3 director, gaming administration personnel, the security
4 director, security division personnel or other restricted
5 persons, any gift, gratuity or other thing of value that would
6 inure to the recipient's personal benefit.

7 D. For purposes of this section:

8 (1) "gift, gratuity or other thing of value"
9 does not include the provision of a breakfast, luncheon, dinner
10 or other refreshment consisting of food and beverage provided
11 for immediate consumption; and

12 (2) "other restricted person" means anyone
13 living in the same household as the superintendent, the
14 director, a member of the committee, any gaming administration
15 personnel, the security director or security division personnel.

16 E. The superintendent, the director, gaming
17 administration personnel, the security director and security
18 division personnel shall comply with all state laws applicable
19 to ethics in government, conflict of interest and financial
20 disclosure.

21 F. If the director, the security director or any
22 gaming administration or security division personnel violates
23 this section, he may be removed from his position after notice
24 and a hearing before the superintendent.

25 Section 19. [NEW MATERIAL] APPLICATION OF STATE REVENUES

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1 FROM VIDEO GAMES-- STATE GAMING FUND ESTABLISHED--
2 DISTRIBUTIONS. --

3 A. The "state gaming fund" is established as a fund
4 within the state treasury. The fund consists of all revenue
5 received from video gaming, interest accrued on that money,
6 license and application fees charged pursuant to the Video
7 Gaming Act and all money credited to the fund from any other
8 fund or source pursuant to law.

9 B. Money in the state gaming fund may be used only
10 for the following purposes and shall be distributed as follows:

11 (1) for the payment of costs incurred in the
12 operation and administration of the Video Gaming Act, including
13 any fees paid to a vendor;

14 (2) to a reserve account established within the
15 state gaming fund in order to ensure that adequate money exists
16 for the payment of expenses for the administration and operation
17 of video gaming regulation;

18 (3) five percent of the balance, after creation
19 of the reserve account:

20 (a) among municipalities in the same
21 proportion as the state's share of revenue raised from video
22 gaming operations located within the municipality bears to the
23 total of the state's share of revenue raised throughout the
24 state from all video gaming operations in the state, including
25 the share raised in the municipalities; and

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1 (b) among counties in the same proportion
2 as the state's share of revenue raised from video gaming located
3 in a county outside of the boundaries of any municipality bears
4 to the total of the state's share of the revenue raised from all
5 video gaming operations in the state, including those raised
6 within the counties and municipalities;

7 (4) one-fourth of one percent of the revenue
8 raised from the net take of video gaming machine operation shall
9 be dedicated to providing treatment and prevention programs and
10 services for compulsive gamblers; and

11 (5) the balance, after distributions as
12 required by this section are made, shall be paid into the public
13 school capital outlay fund to be expended pursuant to the Public
14 School Capital Outlay Act.

15 C. Money received pursuant to the sale of personal
16 tangible property, the use of which is to aid in the regulation
17 of gaming, with limited or no application in any other activity
18 and that is owned by the division or the security division shall
19 be deposited in the state gaming fund.

20 Section 20. [NEW MATERIAL] PROCUREMENT OF GOODS OR
21 SERVICES-- DIRECTOR-- POWERS-- LIMITATION. --All procurements shall
22 be subject to the Video Gaming Act and shall be exempt from the
23 Procurement Code and any other state law concerning the purchase
24 of any goods or services. The director, subject to the approval
25 of the superintendent, shall enter into all contracts for

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1 procurement.

2 Section 21. [NEW MATERIAL] MAJOR PROCUREMENT--VENDOR--
3 DISCLOSURES REQUIRED--CONTRACT APPROVAL--REQUIREMENTS. --

4 A. The director shall request proposals for major
5 procurements for effectuating the purpose of the Video Gaming
6 Act. In awarding contracts in response to requests for
7 proposals, the director shall award contracts to the responsible
8 party who submits the best proposal that maximizes the benefits
9 to the state in relation to the cost in the areas of security,
10 competence, quality of product, capability, timely performance
11 and maximization of net revenue. No contract for a major
12 procurement may be assigned by a vendor except by a written
13 agreement approved and signed by the director.

14 B. The director may require persons making major
15 procurement proposals to disclose information to enable him to
16 review and evaluate the responses to the requests for proposals
17 on the basis of competence, background, integrity, character and
18 nature of the ownership and control of vendors and to ensure
19 compliance with the provisions of the Video Gaming Act.

20 C. The director shall investigate, as part of the
21 process for analyzing responses to requests for proposals for
22 any major procurement, the financial responsibility, security
23 and integrity of any party whose proposal is under final
24 consideration. The director shall require a background
25 investigation to be conducted by the security division of any

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1 person with a substantial interest, as defined by the director,
2 in a party whose proposal is under final consideration. A
3 background investigation shall include credit checks, police
4 record checks, conviction record checks, national and statewide
5 criminal records clearinghouse checks and fingerprint checks.
6 Each party whose proposal is under final consideration shall pay
7 the costs of that party's background investigation.

8 D. No major procurement shall be entered into if any
9 person with a substantial interest, as defined by the director,
10 in the person making a major procurement proposal has been
11 convicted of a felony or a crime involving gambling, moral
12 turpitude, fraud or theft.

13 E. A vendor shall report any arrest for or
14 conviction of a felony or any crime or gambling, moral
15 turpitude, fraud or theft for any person with a substantial
16 interest in that vendor to the director within three days of
17 such arrest or conviction.

18 F. No major procurement proposal shall be approved
19 by the director if the person making the proposal makes a
20 material misrepresentation of fact in his proposal or during the
21 proposal review process, or if the person making the proposal
22 fails to comply with this section. Any contract entered into
23 with a vendor who has made a material misrepresentation of fact
24 or has failed to comply with this section shall be void.

25 G. This section shall be construed broadly and

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1 liberally to achieve the end of full disclosure of all
2 information necessary to allow for a full, complete and ongoing
3 evaluation by the director of the competence, integrity,
4 background, character and nature of the ownership and control of
5 vendors.

6 Section 22. [NEW MATERIAL] MAJOR PROCUREMENT--VENDOR--
7 PERFORMANCE BOND.--Each vendor shall post a performance bond
8 with the director, using a surety acceptable to the director, in
9 consultation with the superintendent of insurance in an amount
10 equal to the full amount estimated to be paid annually to the
11 vendor under the contract. Nothing in the Video Gaming Act
12 shall be construed to restrict the authority of the director to
13 specify liquidated or other damages in contracts with vendors.

14 Section 23. [NEW MATERIAL] LICENSING.--

15 A. No person may sell, service, install or allow
16 play on video gaming machines or sell, service or install
17 associated equipment without first obtaining a video gaming
18 license pursuant to the Video Gaming Act from the director.

19 B. The director shall adopt regulations concerning
20 licensing criteria. The regulations shall require that he
21 consider an applicant's financial responsibility, the security
22 of the applicant's place of business or activity and the
23 integrity and reputation of the applicant. It is unlawful to
24 consider political affiliation, activities or monetary
25 contributions to political organizations or candidates for any

1 public office.

2 C. Video gaming licensees shall be granted a license
3 to operate a specific number of machines on premises identified
4 in the license application consistent with the Video Gaming Act.
5 In the event that a video gaming licensee desires to change the
6 number of machines in operation on his premises, the licensee
7 shall apply to the director for an amendment to his license
8 authorizing a change in the number of machines.

9 D. Applicants for licensure, renewal or amendment
10 shall pay a fee to the division to be submitted with the
11 application not to exceed the following:

12 (1) video gaming licensees, five hundred
13 dollars (\$500) for each video gaming machine;

14 (2) operators, seven thousand five hundred
15 dollars (\$7,500);

16 (3) distributors, ten thousand dollars
17 (\$10,000); and

18 (4) manufacturers, twenty thousand dollars
19 (\$20,000).

20 E. Licenses issued pursuant to the Video Gaming Act
21 shall be valid for one year. Upon application for renewal, the
22 director may require such additional information as he deems
23 necessary to evaluate the renewal application.

24 F. The director shall require background
25 investigations of any person with a substantial interest, as

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1 defined by the director, in an applicant. Background
2 investigations to be conducted by the security division may
3 include, but not be limited to, credit checks, police record
4 checks, conviction record checks, national and statewide
5 criminal records clearinghouse checks and fingerprint checks.
6 The applicant shall pay the costs of the background
7 investigation.

8 G. No license shall be granted to an applicant if
9 any person with a substantial interest, as defined by the
10 director, in the applicant has been convicted of a felony or any
11 crime involving gambling, moral turpitude, fraud or theft within
12 ten years prior to the application.

13 H. The licensee shall report his arrest for or
14 conviction of a felony or any crime involving gambling, moral
15 turpitude, fraud or theft for any person with a substantial
16 interest in that licensee to the director within three days of
17 his arrest or conviction.

18 I. No license shall be granted by the director if
19 the applicant makes a material misrepresentation of fact in his
20 application or during the application process, or if the
21 applicant fails to comply with this section. Any license
22 granted to an applicant who has made a material
23 misrepresentation of fact or has failed to comply with this
24 section shall be void. The director may deny any application
25 for or limit or condition any license.

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1 J. The burden of proving qualifications for
2 licensure is on the applicant.

3 K. If an application is denied, the director shall
4 prepare and make available to the applicant a written decision
5 upon which the order denying the application is based.

6 L. No video gaming licensee shall engage in business
7 primarily to operate video gaming machines.

8 M. No licensee may transfer a license to another
9 person. For purposes of this section, "transfer" means a change
10 in ownership or control of the licensee involving five percent
11 or more of the ownership or control interest of the licensee. A
12 licensee shall notify the director of any transfer.

13 N. The holder of any license does not acquire any
14 vested interest or right in or under the license, and a license
15 issued pursuant to the Video Gaming Act is a revocable
16 privilege.

17 O. This section shall be construed broadly and
18 liberally to achieve the end of full disclosure of all
19 information necessary to allow for a full and complete
20 evaluation by the director of an applicant's fitness.

21 Section 24. [NEW MATERIAL] LICENSURE--LICENSED CLUBS--
22 VIDEO GAMING--NET TAKE DISTRIBUTIONS. --

23 A. A nonprofit organization that is licensed
24 pursuant to Section 60-6A-5 NMSA 1978 may apply for and may be
25 issued a license as a video gaming licensee by the director to

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1 offer video gaming on its club premises pursuant to the Video
2 Gaming Act and the regulations adopted to implement and enforce
3 that act. A nonprofit organization that is a video licensee is
4 a licensed club.

5 B. No more than twenty-five video gaming machines,
6 including those commonly known as slot machines, may be offered
7 for operation and play on the premises of a licensed club.

8 C. No video gaming machine on the premises of a
9 licensed club may pay out a prize that exceeds one thousand
10 dollars (\$1,000).

11 D. Licensed clubs shall pay:

12 (1) twenty percent of the net take of each
13 video gaming machine, of which one-fourth of one percent shall
14 be used for compulsive gambling education and prevention
15 programs, to the state gaming fund in a manner specified by the
16 director; and

17 (2) a minimum of twenty percent of the net take
18 of each video gaming machine to organizations that are described
19 in Section 501(c)(3) of the Internal Revenue Code of 1986 and
20 have received an exemption from payment of federal income taxes
21 pursuant to Section 501(a) of that act.

22 E. Licensed clubs shall submit an accounting of
23 distributions made pursuant to Paragraph (2) of Subsection D of
24 this section to the director by December 31 of each calendar
25 year.

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1 F. No video gaming machine shall be played on the
2 premises of a licensed club during the hours that the licensed
3 club is prohibited from selling or serving alcoholic beverages.

4 Section 25. [NEW MATERIAL] LICENSURE--RACETRACKS--VIDEO
5 GAMING--NET TAKE DISTRIBUTIONS.--

6 A. A racetrack licensed by the state racing
7 commission pursuant to the Horse Racing Act to conduct live
8 horse races or simulcast races may apply for and be issued a
9 license as a video gaming licensee by the director to offer
10 video gaming on its clubhouse premises pursuant to the Video
11 Gaming Act and the rules and regulations adopted to implement
12 and enforce the Video Gaming Act. No racetrack located on
13 property owned by the state may apply for or be issued a license
14 as a video gaming licensee.

15 B. A racetrack's video gaming license to operate
16 video gaming machines shall automatically become void if:

17 (1) the racetrack no longer holds an active
18 license to conduct pari-mutuel wagering; or

19 (2) the racetrack fails to maintain ninety
20 percent of the number of racing days and conduct ninety percent
21 of the number of live horse races as it did in the 1994 calendar
22 year, unless otherwise approved by the director in consultation
23 with the state racing commission.

24 C. The video gaming license of any racetrack that
25 did not conduct live racing in 1994 shall automatically become

1 void if:

2 (1) the racetrack no longer holds an active
3 license to conduct pari-mutuel wagering; or

4 (2) the racetrack fails to conduct that number
5 of live horse races on that number of racing days that would
6 represent the minimum number of the horse races and racing days
7 conducted by any racetrack in New Mexico in the 1994 calendar
8 year, unless otherwise approved by the director in consultation
9 with the state racing commission.

10 D. No license shall be issued to a racetrack that
11 has dismantled or removed any part of the facilities required
12 for the operation of the track, including offices, stables,
13 sheds or patron seating or shelter, prior to the date on which
14 the Video Gaming Act becomes effective.

15 E. A video gaming licensee that is a racetrack may
16 have an unlimited number of video gaming machines, including
17 those machines commonly known as slot machines; provided,
18 however, that the number of video gaming machines to be located
19 on the licensee's premises is specified in the licensee's video
20 gaming license.

21 F. A video gaming licensee that is a racetrack is
22 not subject to limitations regarding maximum prize amounts;
23 provided, however, video gaming licensees that are racetracks
24 shall comply with all prize and payout requirements of the Video
25 Gaming Act, except those that specifically apply to licensed

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1 clubs, and all regulations adopted pursuant to that act.

2 G. Video gaming licensees that are racetracks shall
3 pay:

4 (1) twenty-five percent of the net take of each
5 video gaming machine, of which one-fourth of one percent shall
6 be used for compulsive gambling education and prevention
7 programs, to the state gaming fund in a manner specified by the
8 director; and

9 (2) twenty percent of the net take of each
10 video gaming machine to the horsemen and breeders who had horses
11 racing at the video gaming licensee's facility during that
12 calendar year. The method of distribution among the video
13 gaming licensees and the horsemen and breeders shall be
14 determined by an agreement among the parties. The agreement
15 shall be presented to the director for approval.

16 G. Video gaming licensees that are racetracks shall
17 submit an accounting of distributions made pursuant to Paragraph
18 (2) of Subsection F of this section to the director by December
19 31 of each calendar year.

20 Section 26. [NEW MATERIAL] LICENSURE-- LIQUOR
21 ESTABLISHMENTS-- NET TAKE DISTRIBUTIONS. --

22 A. A liquor establishment may apply for and be
23 issued a license as a video gaming licensee by the director to
24 offer video gaming on its premises pursuant to the Video Gaming
25 Act and the regulations adopted to implement and enforce that

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1 act.

2 B. No more than five video gaming machines,
3 including those commonly known as slot machines, may be offered
4 for play on the premises of a licensed liquor establishment.

5 C. No video gaming machine located on the premises
6 of a licensed liquor establishment shall pay out a prize that
7 exceeds one thousand dollars (\$1,000).

8 D. No video gaming machines shall be played during
9 the hours that the licensed liquor establishment is prohibited
10 from selling or serving alcoholic beverages.

11 E. Licensed liquor establishments shall pay thirty-
12 four percent of the net take of each video gaming machine
13 located on its premises, of which one-fourth of one percent is
14 appropriated for use in compulsive gaming education, prevention
15 or treatment programs, to the state gaming fund in a manner
16 prescribed by the director.

17 F. The license issued to a liquor establishment
18 pursuant to the Video Gaming Act becomes automatically void on
19 the date that a video licensee:

- 20 (1) no longer holds an active dispenser's
21 license to sell alcoholic beverages;
22 (2) transfers the liquor establishment to a new
23 location; or
24 (3) transfers the entire ownership interest in
25 the license issued pursuant to the Liquor Control Act or in the

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1 premises licensed pursuant to that act or transfers any
2 ownership interest regardless of how small to a person on whom a
3 background check has not been completed by the security
4 division.

5 G. If the license issued pursuant to the Video
6 Gaming Act becomes void due to a transfer of ownership, the
7 owner shall not apply for or be issued a license to operate
8 video gaming machines pursuant to the Video Gaming Act on the
9 liquor establishment's premises for a period of two years from
10 the date of the transfer of ownership of the liquor license.

11 Section 27. [NEW MATERIAL] LICENSURE--RESORTS--NET TAKE
12 DISTRIBUTIONS.--

13 A. A resort may apply for and be issued a license as
14 a video gaming licensee by the director to offer video gaming on
15 its premises pursuant to the Video Gaming Act and the rules and
16 regulations adopted to implement and enforce that act.

17 B. A licensed resort may have an unlimited number of
18 video gaming machines, including those machines commonly known
19 as slot machines, provided that the number of video gaming
20 machines to be located on the licensee's premises is specified
21 in the licensee's video gaming license.

22 C. A licensed resort is not subject to limitations
23 regarding maximum prize amounts; provided, however a licensed
24 resort shall comply with all prize and payout requirements of
25 the Video Gaming Act and all rules and regulations adopted

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1 pursuant to that act, except those that specifically apply to
2 licensed clubs and liquor establishments.

3 D. Video gaming machines may be played on the
4 premises of a licensed resort from Monday through Sunday from
5 7:00 a.m. until midnight and from Tuesday through Sunday from
6 midnight to 2:00 a.m.

7 E. Licensed resorts shall pay thirty-four percent of
8 the net take of each video gaming machine located on its
9 premises, of which one-fourth of one percent is appropriated for
10 use in compulsive gaming education, prevention or treatment
11 programs, to the state gaming fund in a manner prescribed by the
12 director.

13 Section 28. [NEW MATERIAL] VIDEO GAMING LICENSEES--
14 GENERAL RESTRICTIONS--PLAYER AGE LIMIT--RULES FOR PLACEMENT. --

15 A. No person under twenty-one years of age may play
16 a video gaming machine licensed pursuant to the Video Gaming
17 Act.

18 B. Video gaming machines may only be available for
19 play in an area restricted to persons twenty-one years of age or
20 older. A video gaming licensee may erect "permanent physical
21 barrier" to allow for multiple uses of the premises by persons
22 of all ages. For purposes of this section, "permanent physical
23 barrier" means a floor-to-ceiling wall separating the general
24 areas from the restricted areas. The entrance to the area where
25 video gaming machines are located shall display a sign that the

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1 premises are restricted to persons twenty-one years or older.
2 Persons under the age of twenty-one shall not enter the premises
3 where video gaming machines are located.

4 C. A person who violates the provisions of this
5 section is guilty of a misdemeanor and upon conviction shall be
6 sentenced pursuant to the provisions of Section 31-19-1 NMSA
7 1978.

8 D. Nothing in the Video Gaming Act shall prevent a
9 video gaming licensee from owning the video gaming machines
10 located on that licensee's premises provided that the machines
11 comply with the Video Gaming Act and regulations adopted
12 pursuant to that act.

13 E. A video gaming licensee shall report any transfer
14 of ownership interest in the licensed premises to the director
15 within fifteen days following the date of transfer. Any
16 transfer of ownership interest that might affect the status of
17 the license issued to the video gaming licensee shall be
18 reported prior to the transfer so that a background
19 investigation may be completed on the new owner prior to the
20 date of the transfer.

21 Section 29. [NEW MATERIAL] LOCAL OPTION. --

22 A. In any county or municipality in which the local
23 option provision of the Video Gaming Act has been accepted by
24 the voters, the use of video gaming machines is prohibited or
25 permitted in accordance with the outcome of the referendum.

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1 B. Placement or use of video gaming machines on the
2 premises of a racetrack clubhouse is not subject to prohibition
3 by a local option referendum.

4 Section 30. [NEW MATERIAL] LOCAL OPTION ELECTION--
5 NONPROFIT ORGANIZATIONS--LICENSED LIQUOR ESTABLISHMENTS--
6 RESORTS--PROCEDURE.--

7 A. A county, not including incorporated
8 municipalities within its boundaries, or an incorporated
9 municipality, becomes a local option district if:

10 (1) the option of prohibiting video gaming on
11 the premises of nonprofit organizations or liquor establishments
12 in that county or incorporated municipality is adopted by the
13 registered voters of that county or municipality; or

14 (2) the option of permitting video gaming in
15 resorts in that county or incorporated municipality is adopted
16 by the registered voters of that county or municipality.

17 B. An incorporated municipality may have a local
18 option referendum in that municipality, even if the county in
19 which the incorporated municipality is located has had a
20 referendum and resolved the local option question for the
21 county.

22 C. Based on the content of the petition, a local
23 governing body of a proposed local option district shall place
24 one or both of the following questions on the ballot:

25 (1) "Shall video gaming that is now permitted

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1 at certain nonprofit clubs and liquor establishments be
2 prohibited in (name of proposed local option district),
3 effective July 1, 19__? _____YES _____NO"; or

4 (2) "Shall video gaming be permitted at resorts
5 in (name of proposed local option district), effective July 1,
6 19__? _____YES _____NO".

7 D. The procedures for adopting the local option
8 regarding video gaming are:

9 (1) at any time from the effective date of the
10 Video Gaming Act, the registered voters of any proposed local
11 option district may petition the governing body by filing one or
12 more petitions in the appropriate office to hold a referendum to
13 determine whether the proposed local option district shall adopt
14 a local option provision of the Video Gaming Act. Each petition
15 shall state the question that will be present on the ballot. If
16 the aggregate of the signatures of the registered voters on all
17 the petitions equals or exceeds five percent of the number of
18 registered voters of the proposed local option district at the
19 time of the last general election, the governing body shall call
20 an election within seventy-five days of the verification of the
21 petition. The date of the filing of the petition shall be three
22 months after the date on which the first signature was obtained;

23 (2) the election shall be called and conducted
24 and votes shall be counted and canvassed substantially in the
25 manner provided by law for general elections within the county

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1 or pursuant to the Municipal Election Code for an incorporated
2 municipality except as otherwise provided in this section;

3 (3) except as otherwise provided in this
4 section, contests, recounts and rechecks shall be permitted as
5 provided for in the case of candidates for county offices in
6 general elections or as provided for in the Municipal Election
7 Code for candidates for municipal office. Applications for
8 contests, recounts or rechecks may be filed by any person who
9 voted in the election, and service shall be made upon the county
10 clerk or municipal clerk. The payment of the costs and expenses
11 of the contest, recount or recheck shall be assessed in the
12 manner provided by the Election Code for contests in a general
13 election of candidates for county offices or pursuant to the
14 Municipal Election Code for candidates for municipal office;

15 (4) if a majority of all the votes cast at an
16 election:

17 (a) seeking to prohibit video gaming on
18 the premises of nonprofit organizations and liquor
19 establishments is in favor of the local option provision to
20 prohibit video gaming in the local option district, the chairman
21 of the governing body shall declare by order entered upon the
22 records of the local option district that the local option
23 district has adopted the local option provision of the Video
24 Gaming Act prohibiting video gaming on the premises of nonprofit
25 organizations and liquor establishments and shall notify the

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1 superintendent of the results; or

2 (b) seeking to permit video gaming at
3 resorts is in favor of the local option provision to permit
4 video gaming machines in the local option district, the chairman
5 of the governing body shall declare by order entered upon the
6 records of the local option district that the local option
7 district has adopted the local option provision of the Video
8 Gaming Act permitting video gaming machines to be operated on
9 the premises of licensed resorts and shall notify the
10 superintendent of the results; and

11 (5) no election shall be held pursuant to this
12 section within forty-two days of any primary, general, municipal
13 or school district election unless the election is held on the
14 day of any primary, general, municipal or school district
15 election.

16 Section 31. [NEW MATERIAL] RESUBMISSION OF LOCAL OPTION
17 QUESTION. --

18 A. In a local option district in which a local
19 option provision of the Video Gaming Act has been rejected by
20 the voters, it is permissible after the expiration of three
21 years from the date of the election at which the local option
22 provision was rejected to have another local option election in
23 the district by following the procedure provided for in the
24 Video Gaming Act.

25 B. In a local option district in which a local

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1 option provision of the Video Gaming Act has been accepted by
2 the voters, it is permissible after the expiration of twelve
3 years from the date of election at which the local option
4 provision was accepted to have another local option election
5 that may allow voters to rescind the local option previously
6 adopted in the county or municipality by following the
7 procedures provided for in the Video Gaming Act.

8 Section 32. [NEW MATERIAL] MULTIPLE TYPES OF LICENSES
9 PROHIBITED. --

10 A. Except as set forth in Subsection B of this
11 section, a manufacturer, distributor or operator shall not be
12 licensed as or own, manage or control a video gaming licensee.
13 A manufacturer shall not be licensed as or own, manage or
14 control an operator.

15 B. Nothing in the Video Gaming Act shall prevent an
16 applicant that is otherwise eligible for a license as a video
17 gaming licensee and that is owned, in whole or in part, by a
18 manufacturer on the date of passage of that act from applying
19 for a license as a video gaming licensee. However, no more than
20 thirty-five percent of the video gaming machines or associated
21 equipment operated by the video gaming licensee may be
22 manufactured by the manufacturer that owns the licensee. If a
23 video gaming licensee operates or uses any video gaming machines
24 or associated equipment that are manufactured by the
25 manufacturer that owns the video gaming licensee, the

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1 manufacturer shall not qualify as a vendor of equipment or
2 communications systems that regulates or audits video gaming
3 operations in the state.

4 Section 33. [NEW MATERIAL] REVOCATION-- CONTRACT--
5 LICENSE. --

6 A. Failure by a licensee to comply with any
7 provision of the Video Gaming Act or the rules and regulations
8 adopted pursuant to that act shall be sufficient cause for
9 suspension or termination of a procurement contract; provided,
10 however, suspension or termination of a procurement contract
11 shall not relieve the vendor from prosecution for any of the
12 alleged violations or from imposition of fines and penalties.

13 B. If a licensee fails to respond to a written
14 request from the director or the security director or violates
15 any provision of the Video Gaming Act or any regulation adopted
16 pursuant to that act, the license of the offending licensee may
17 be suspended, canceled or revoked by the superintendent;
18 provided, however, the licensee shall have reasonable notice and
19 opportunity to be heard before the superintendent before
20 suspension, cancellation, limitation or revocation; and
21 provided, further, the suspension, cancellation, limitation or
22 revocation of any license does not relieve the licensee from
23 prosecution for any of the alleged violations or from imposition
24 of fines and penalties.

25 C. The superintendent may levy a fine against a

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1 vendor or licensee for violation of the provisions of the Video
2 Gaming Act or rules or regulations adopted pursuant to that act,
3 not to exceed one hundred thousand dollars (\$100,000) per
4 violation; provided, however, the licensee has a reasonable
5 opportunity to be heard by the superintendent before the
6 imposition of the fine. Nothing in this section limits the
7 superintendent from pursuing contractual remedies, including
8 assessing penalties, pursuant to the terms of a contract with a
9 vendor.

10 Section 34. [NEW MATERIAL] EMERGENCY ORDERS OF
11 SUPERINTENDENT. --

12 A. The superintendent may issue an emergency order
13 for suspension or limitation of a license.

14 B. An emergency order may be issued only when the
15 superintendent finds that:

16 (1) a licensee has failed to report, pay or
17 truthfully account for and remit any fee or money imposed by or
18 owed under the provisions of the Video Gaming Act or attempted
19 in any manner to evade or defeat a fee or debt or required
20 payment;

21 (2) a licensee has violated any provision of
22 the Video Gaming Act and the violation impairs the security of
23 video gaming activities; or

24 (3) a licensee is convicted of a crime
25 involving a felony or gambling, moral turpitude, fraud or theft.

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1 C. The emergency order shall set forth the grounds
2 upon which it is issued, including a statement of facts
3 constituting the alleged emergency necessitating the action.

4 D. An emergency order may be issued only with the
5 approval of and upon signature of the superintendent.

6 E. The emergency order is effective immediately upon
7 issuance and service upon the licensee or resident agent of the
8 licensee. The emergency order remains effective until further
9 order of the superintendent or final disposition of the case.

10 F. The licensee may request that a hearing be held
11 by the superintendent regarding the issuance and maintenance of
12 the emergency order. The superintendent shall then hold a
13 hearing within twenty days.

14 Section 35. [NEW MATERIAL] COMMUNICATIONS SYSTEM -- Each
15 video gaming machine and voucher validation system shall be
16 linked to a central communications system to provide auditing
17 program and financial information as required by the director.
18 No communications system required by the director shall limit
19 participation to only one manufacturer of video gaming machines
20 by either cost of implementing the necessary program
21 modifications to communicate or the inability to communicate
22 with the communications system.

23 Section 36. [NEW MATERIAL] ADVERTISEMENT-- LIMITATIONS. --
24 No licensee may use a name or trade name that contains the words
25 casino, gambling, names of traditional casino style games,

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1 including poker, blackjack or keno, or the name of any city
2 outside this state in which a casino exists unless the name has
3 been used by the licensee for one year prior to the effective
4 date of the Video Gaming Act. However, the director may
5 authorize vendors or licensees whose physical location is in San
6 Miguel county to use the words "Las Vegas" in their names.

7 Section 37. [NEW MATERIAL] VIDEO GAMING LICENSEE--STATE
8 REVENUE--DEPOSITS--PROHIBITIONS--DELINQUENT CHILD SUPPORT.--

9 A. The director may require each video gaming
10 licensee to deposit all money owed to the state into financial
11 institutions designated by the director for credit to the state
12 gaming fund.

13 B. The director may authorize the electronic
14 transfer of money from the accounts of video gaming licensees to
15 the state gaming fund.

16 C. No video gaming machine shall be played by and no
17 prize shall be awarded to any video gaming licensee or business
18 that is engaged in supplying associated equipment, supplies or
19 services being used in the operation of video gaming machines or
20 any officer, member of the board of directors, employee or owner
21 of a licensee or associated equipment business unless authorized
22 in writing by the director for research purposes. However, no
23 prize may be awarded as a result of play for research purposes.

24 D. The director shall investigate the feasibility of
25 implementing a policy to recover delinquent child support

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1 payments or outstanding state tax liability from payment of
2 video gaming prizes in excess of six hundred dollars (\$600). If
3 the director determines that the policy is feasible, the
4 director shall implement a policy to credit any video gaming
5 prize first against any delinquent child support owed by the
6 winner and second against any outstanding state tax liability
7 owed by the winner and shall pay the balance of the prize to the
8 winner. The policy shall ensure that any person who
9 investigates the money owed by the prizewinner shall have no
10 liability to a person to whom a delinquent child support payment
11 may be owed, the human services department or the taxation and
12 revenue department if the investigator fails to discover that a
13 winner owes money that is to be applied according to the policy.

14 Section 38. [NEW MATERIAL] REQUIREMENTS FOR LICENSED
15 VIDEO GAMING MACHINES. --

16 A. Each video gaming machine licensed pursuant to
17 the Video Gaming Act:

18 (1) shall offer only games authorized by the
19 director;

20 (2) shall not have any means of manipulation
21 that affects the random probabilities of winning;

22 (3) shall have nonresettable meters that keep a
23 permanent record of all cash inserted into the machine and all
24 awards of prizes, whether in cash or by voucher; and

25 (4) shall be linked to a central communications

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1 system to provide auditing program information as required by
2 the director.

3 B. The department shall, on or before January 1,
4 1997, adopt by regulation mechanical and electronic standards
5 for video gambling machines and slot machines, ensuring the
6 integrity, honesty and security of the machines, which standards
7 shall not be more lenient than those applied to similar machines
8 in lawful use within the United States by any other jurisdiction
9 regulating the conduct of video machine and slot machine
10 gambling.

11 C. The director shall examine prototypes of video
12 gaming machines of licensed manufacturers. The director shall
13 require the manufacturer seeking the examination and approval of
14 a video gaming machine or associated equipment to pay the
15 anticipated actual costs of the examination in advance and,
16 after the completion of the examination, shall refund
17 overpayments or charge and collect amounts sufficient to
18 reimburse the director for underpayments of actual costs. The
19 director may contract for the examination of video gaming
20 machines and associated equipment as required by this section.

21 D. Each video gaming machine shall be licensed by
22 the director before placement or operation on the premises of a
23 video gaming licensee. Each machine shall have the license
24 prominently displayed on it in such a way that an attempt at
25 alteration will result in a mutilation of the license. Any

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1 machine that does not display the license required by this
2 section is contraband and a public nuisance subject to
3 confiscation by any law enforcement or peace officer.

4 Section 39. [NEW MATERIAL] PROHIBITED ACTS-- VIOLATIONS--
5 PENALTIES. --

6 A. It is a misdemeanor for a video gaming licensee
7 to fail to make available to the director all records pertaining
8 to accounts maintained for revenue derived from the operation of
9 video gaming machines.

10 B. It is a misdemeanor for any video gaming licensee
11 to knowingly allow any person under twenty-one years of age to
12 play a video gaming machine.

13 C. It is a misdemeanor for a person under twenty-one
14 years of age to play a video gaming machine.

15 D. It is a misdemeanor to release any information
16 obtained through a background investigation performed by the
17 security division or the department of public safety without the
18 prior written consent of the subject of the investigation except
19 as provided otherwise in the Video Gaming Act.

20 E. It is a fourth degree felony to tamper with a
21 video gaming machine with intent to interfere with the proper
22 operation and reporting of the video gaming machine.

23 F. It is a fourth degree felony to tamper with or
24 falsify a voucher or to tamper with a video gaming machine with
25 intent to manipulate the outcome or payoff of the video gaming

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1 machine.

2 G. It is a fourth degree felony to possess an
3 unlicensed video gaming machine.

4 H. It is a fourth degree felony to provide false
5 information or to intentionally make a material
6 misrepresentation of fact to the director or the security
7 director for purposes of applying for a contract or a license or
8 for purposes of completing a background investigation pursuant
9 to the Video Gaming Act.

10 I. Any person convicted of a violation of
11 Subsections A through D of this section shall be sentenced
12 pursuant to the provisions of Section 31-19-1 NMSA 1978. Any
13 person convicted of a violation of Subsections E through H of
14 this section shall be sentenced pursuant to the provisions of
15 Section 31-18-15 NMSA 1978.

16 Section 40. [NEW MATERIAL] DISTRICT COURT OF SANTA FE
17 COUNTY-- JURISDICTION-- APPEAL. --The district court of Santa Fe
18 county has exclusive original jurisdiction of all legal
19 proceedings, except criminal actions, related to the
20 administration, enforcement or fulfillment of the
21 responsibilities, duties or functions performed pursuant to the
22 Video Gaming Act. An aggrieved party, including a party subject
23 to a fine, may seek review of an order or decision of the
24 superintendent by filing an appeal with the district court of
25 Santa Fe county within thirty days after the date of the order

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1 or decision.

2 Section 41. [NEW MATERIAL] EXEMPTION FROM LOCAL TAXES. --
3 Video gaming machines licensed and operated pursuant to the
4 Video Gaming Act are exempt from any local tax assessed by any
5 political subdivision of the state having the power to levy,
6 assess or collect such a tax.

7 Section 42. [NEW MATERIAL] LOCAL LAWS PREEMPTED--
8 APPLICABILITY OF OTHER LAWS. --The Video Gaming Act shall be
9 applied uniformly throughout the state and to all political
10 subdivisions of the state, and no local authority shall enact
11 any ordinances, rules or regulations that expand or conflict
12 with the provisions of that act.

13 Section 43. [NEW MATERIAL] VIDEO AMUSEMENT MACHINES--
14 REGISTRATION. --

15 A. Video amusement machines are not subject to the
16 licensure provisions of the Video Gaming Act.

17 B. A person who offers video amusement machines for
18 use by the public shall:

- 19 (1) register with the division; and
20 (2) be subject to inspection by the director or
21 the security director.

22 Section 44. Section 6-24-9 NMSA 1978 (being Laws 1995,
23 Chapter 155, Section 9) is amended to read:

24 "6-24-9. LOTTERY OVERSIGHT COMMITTEE-- [BIPARTISAN]
25 DUTIES. --

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1 ~~[A. There is created a joint interim legislative~~
2 ~~committee, which shall be known as the "lottery oversight~~
3 ~~committee".~~

4 ~~B. The lottery oversight committee shall be composed~~
5 ~~of four members. Two members of the house of representatives~~
6 ~~shall be appointed by the speaker of the house of~~
7 ~~representatives, and two members of the senate shall be~~
8 ~~appointed by the committees' committee of the senate or, if the~~
9 ~~senate appointments are made in the interim, by the president~~
10 ~~pro tempore of the senate after consultation with and agreement~~
11 ~~of a majority of the members of the committees' committee.~~
12 ~~Members shall be appointed so that there is a member from each~~
13 ~~of the major political parties from each house. No member who~~
14 ~~has a financial interest in any lottery contractor, lottery~~
15 ~~retailer or lottery vendor shall be appointed to the committee.~~

16 ~~C.]~~ A. The lottery and gaming oversight committee
17 shall oversee the operations of the authority, as well as
18 periodically review and evaluate the success with which the
19 authority is accomplishing its duties and operating the lottery
20 pursuant to the New Mexico Lottery Act. The committee may
21 conduct any independent audit or investigation of the lottery or
22 the authority it deems necessary.

23 ~~D.]~~ B. The lottery and gaming oversight committee
24 shall report annually its findings and recommendations on the
25 lottery and the operation of the authority to each regular

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1 session of the legislature. "

2 Section 45. Section 6-24-27 NMSA 1978 (being Laws 1995,
3 Chapter 155, Section 27) is amended to read:

4 "6-24-27. REVENUE AND BUDGET REPORTS--RECORDS--INDEPENDENT
5 AUDITS.--

6 A. The board shall:

7 (1) submit quarterly and annual reports to the
8 governor, legislative finance committee and lottery and gaming
9 oversight committee disclosing the total lottery revenue,
10 prizes, commissions, ticket costs, operating expenses and net
11 revenues of the authority during the reporting period and, in
12 the annual report, describe the organizational structure of the
13 authority and summarize the functions performed by each
14 organizational division within the authority;

15 (2) maintain weekly or more frequent records of
16 lottery transactions, including the distribution of lottery
17 tickets to retailers, revenue received, claims for prizes,
18 prizes paid, prizes forfeited and other financial transactions
19 of the authority; and

20 (3) use the state government fiscal year.

21 B. The board shall provide, for informational
22 purposes, to the department of finance and administration and
23 the legislative finance committee, by December 1 of each year, a
24 copy of the annual proposed operating budget for the authority
25 for the succeeding fiscal year. This budget proposal shall also

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1 be accompanied by an estimate of the net revenues to be
2 deposited in the public school capital outlay fund and the
3 lottery tuition fund for the current and succeeding fiscal
4 years.

5 C. The board shall contract with an independent
6 certified public accountant or firm for an annual financial
7 audit of the authority. The certified public accountant or firm
8 shall have no financial interest in any lottery contractor. The
9 certified public accountant or firm shall present an audit
10 report no later than March 1 for the prior fiscal year. The
11 certified public accountant or firm shall evaluate the internal
12 auditing controls in effect during the audit period. The cost
13 of this financial audit shall be an operating expense of the
14 authority. The legislative finance committee may, at any time,
15 order an audit of any phase of the operations of the authority,
16 at the expense of the authority, and shall receive a copy of the
17 annual independent financial audit. A copy of any audit
18 performed by the certified public accountant or ordered by the
19 legislative finance committee shall be transmitted to the
20 governor, the speaker of the house of representatives, the
21 president pro tempore of the senate, the legislative finance
22 committee and the lottery and gaming oversight committee."

23 Section 46. Section 6-24-28 NMSA 1978 (being Laws 1995,
24 Chapter 155, Section 28) is amended to read:

25 "6-24-28. INTERNAL AUDITOR-- APPOINTMENT-- DUTIES. --

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1 A. The board, with the recommendation and assistance
2 of the chief executive officer, shall employ an internal
3 auditor. The internal auditor, who shall be an employee of the
4 authority, shall be qualified by training and experience as an
5 auditor and management analyst and have at least five years of
6 auditing experience. The internal auditor shall take direction
7 as needed from the chief executive officer and be accountable to
8 the board.

9 B. The internal auditor shall conduct and coordinate
10 comprehensive audits for all aspects of the lottery, provide
11 management analysis expertise and carry out any other duties
12 specified by the board and by law. The internal auditor shall
13 specifically:

- 14 (1) conduct, or provide for through a
15 competitive bid process, an annual financial audit and
16 observation audits of drawings;
- 17 (2) create an annual audit plan to be approved
18 by the board;
- 19 (3) search for means of better efficiency and
20 cost savings and waste prevention;
- 21 (4) examine the policy and procedure needs of
22 the lottery and determine compliance;
- 23 (5) ensure that proper internal controls exist;
- 24 (6) perform audits that meet or exceed
25 governmental audit standards; and

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1 (7) submit audit reports on a quarterly basis
2 to the board, the chief executive officer, the state auditor,
3 the lottery and gaming oversight committee and the legislative
4 finance committee.

5 C. The internal auditor shall conduct audits as
6 needed in the areas of:

- 7 (1) personnel security;
8 (2) lottery retailer security;
9 (3) lottery contractor security;
10 (4) security of manufacturing operations of
11 lottery contractors;
12 (5) security against lottery ticket
13 counterfeiting and alteration and other means of fraudulently
14 winning;
15 (6) security of drawings among entries or
16 finalists;
17 (7) computer security;
18 (8) data communications security;
19 (9) database security;
20 (10) systems security;
21 (11) lottery premises and warehouse security;
22 (12) security in distribution;
23 (13) security involving validation and payment
24 procedures;
25 (14) security involving unclaimed prizes;

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1 (15) security aspects applicable to each
2 particular lottery game;

3 (16) security of drawings in games whenever
4 winners are determined by drawings;

5 (17) the completeness of security against
6 locating winners in lottery games with preprinted winners by
7 persons involved in their production, storage, distribution,
8 administration or sales; and

9 (18) any other aspects of security applicable
10 to any particular lottery game and to the lottery and its
11 operations.

12 D. Specific audit findings related to security
13 invasion techniques are confidential and may be reported only to
14 the chief executive officer or his designee, the board, the
15 governor and the attorney general. "

16 Section 47. Section 6-24-33 NMSA 1978 (being Laws 1995,
17 Chapter 155, Section 33) is amended to read:

18 "6-24-33. UNLAWFUL PURCHASE OF LOTTERY TICKET--PENALTY.--

19 A. It is unlawful for the following persons to
20 purchase a lottery ticket or to share knowingly in the lottery
21 winnings of another person:

22 (1) the chief executive officer, a board
23 member, a member of the lottery and gaming oversight committee
24 or an employee of the authority; or

25 (2) an owner, officer or employee of a lottery

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1 vendor or, in the case of a corporation, an owner of five
2 percent or more of the corporate stock of a lottery vendor.

3 B. Notwithstanding the provisions of Subsection A of
4 this section, the chief executive officer may authorize in
5 writing any employee of the authority and any employee of a
6 lottery contractor to purchase a lottery ticket for the purposes
7 of verifying the proper operation of the lottery with respect to
8 security, systems operation and lottery retailer contract
9 compliance. Any prize awarded as a result of such ticket
10 purchase shall become the property of the authority and shall be
11 added to the prize pools of subsequent lottery games.

12 C. Nothing in this section shall prohibit lottery
13 retailers or their employees from purchasing lottery tickets or
14 from being paid a prize for a winning ticket.

15 D. Certain classes of persons who, because of the
16 unique nature of the supplies or services they provide for use
17 directly in the operation of the lottery, may be prohibited, in
18 accordance with rules adopted by the board, from participating
19 in any lottery in which such supplies or services are used.

20 E. Any person who violates any provision of this
21 section for the first time is guilty of a misdemeanor and shall
22 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
23 1978.

24 F. Any person who violates any provision of this
25 section for a second or subsequent time is guilty of a fourth

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1 degree felony and shall be sentenced pursuant to the provisions
2 of Section 31-18-15 NMSA 1978. "

3 Section 48. A new section of the Gross Receipts and
4 Compensating Tax Act is enacted to read:

5 " [NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX. --Receipts
6 of video gaming licensees from the operation of video gaming
7 machines pursuant to the Video Gaming Act may be deducted from
8 gross receipts. "

9 Section 49. Section 9-16-4 NMSA 1978 (being Laws 1983,
10 Chapter 297, Section 20, as amended) is amended to read:

11 "9-16-4. DEPARTMENT ESTABLISHED. --There is created in the
12 executive branch the "regulation and licensing department". The
13 department shall not be a cabinet department. The department
14 shall consist of but not be limited to [~~five~~] seven divisions as
15 follows:

- 16 A. the administrative services division;
17 B. the construction industries division;
18 C. the financial institutions division;
19 D. the securities division; [~~and~~]
20 E. the manufactured housing division;
21 F. the alcohol and gaming division; and
22 G. the gaming security division. "

23 Section 50. Section 10-15-1 NMSA 1978 (being Laws 1974,
24 Chapter 91, Section 1, as amended) is amended to read:

25 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN

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1 MEETINGS-- EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS. --

2 A. In recognition of the fact that a representative
3 government is dependent upon an informed electorate, it is
4 declared to be public policy of this state that all persons are
5 entitled to the greatest possible information regarding the
6 affairs of government and the official acts of those officers
7 and employees who represent them. The formation of public
8 policy or the conduct of business by vote shall not be conducted
9 in closed meeting. All meetings of any public body except the
10 legislature and the courts shall be public meetings, and all
11 persons so desiring shall be permitted to attend and listen to
12 the deliberations and proceedings. Reasonable efforts shall be
13 made to accommodate the use of audio and video recording
14 devices.

15 B. All meetings of a quorum of members of any board,
16 commission, administrative adjudicatory body or other
17 policymaking body of any state agency, any agency or authority
18 of any county, municipality, district or any political
19 subdivision, held for the purpose of formulating public policy,
20 including the development of personnel policy, rules,
21 regulations or ordinances, discussing public business or for the
22 purpose of taking any action within the authority of or the
23 delegated authority of any board, commission or other
24 policymaking body are declared to be public meetings open to the
25 public at all times, except as otherwise provided in the

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1 constitution of New Mexico or the Open Meetings Act. No public
2 meeting once convened that is otherwise required to be open
3 pursuant to the Open Meetings Act shall be closed or dissolved
4 into small groups or committees for the purpose of permitting
5 the closing of the meeting.

6 C. If otherwise allowed by law or rule of the public
7 body, a member of a public body may participate in a meeting of
8 the public body by means of a conference telephone or other
9 similar communications equipment when it is otherwise difficult
10 or impossible for the member to attend the meeting in person,
11 provided that each member participating by conference telephone
12 can be identified when speaking, all participants are able to
13 hear each other at the same time and members of the public
14 attending the meeting are able to hear any member of the public
15 body who speaks during the meeting.

16 D. Any meetings at which the discussion or adoption
17 of any proposed resolution, rule, regulation or formal action
18 occurs and at which a majority or quorum of the body is in
19 attendance, and any closed meetings, shall be held only after
20 reasonable notice to the public. The affected body shall
21 determine at least annually in a public meeting what notice for
22 a public meeting is reasonable when applied to that body. That
23 notice shall include broadcast stations licensed by the federal
24 communications commission and newspapers of general circulation
25 that have provided a written request for such notice.

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1 E. A public body may recess and reconvene a meeting
2 to a day subsequent to that stated in the meeting notice if,
3 prior to recessing, the public body specifies the date, time and
4 place for continuation of the meeting, and, immediately
5 following the recessed meeting, posts notice of the date, time
6 and place for the reconvened meeting on or near the door of the
7 place where the original meeting was held and in at least one
8 other location appropriate to provide public notice of the
9 continuation of the meeting. Only matters appearing on the
10 agenda of the original meeting may be discussed at the
11 reconvened meeting.

12 F. Meeting notices shall include an agenda
13 containing a list of specific items of business to be discussed
14 or transacted at the meeting or information on how the public
15 may obtain a copy of such an agenda. Except in the case of an
16 emergency, the agenda shall be available to the public at least
17 twenty-four hours prior to the meeting. Except for emergency
18 matters, a public body shall take action only on items appearing
19 on the agenda. For purposes of this subsection, an "emergency"
20 refers to unforeseen circumstances that, if not addressed
21 immediately by the public body, will likely result in injury or
22 damage to persons or property or substantial financial loss to
23 the public body.

24 G. The board, commission or other policymaking body
25 shall keep written minutes of all its meetings. The minutes

1 shall include at a minimum the date, time and place of the
2 meeting, the names of members in attendance and those absent,
3 the substance of the proposals considered and a record of any
4 decisions and votes taken that show how each member voted. All
5 minutes are open to public inspection. Draft minutes shall be
6 prepared within ten working days after the meeting and shall be
7 approved, amended or disapproved at the next meeting where a
8 quorum is present. Minutes shall not become official until
9 approved by the policymaking body.

10 H. The provisions of Subsections A, B and G of this
11 section do not apply to:

12 (1) meetings pertaining to issuance,
13 suspension, renewal or revocation of a license, except that a
14 hearing at which evidence is offered or rebutted shall be open.
15 All final actions on the issuance, suspension, renewal or
16 revocation of a license shall be taken at an open meeting;

17 (2) limited personnel matters; provided that
18 for purposes of the Open Meetings Act, "limited personnel
19 matters" means the discussion of hiring, promotion, demotion,
20 dismissal, assignment or resignation of or the investigation or
21 consideration of complaints or charges against any individual
22 public employee; provided further that this subsection is not to
23 be construed as to exempt final actions on personnel from being
24 taken at open public meetings, nor does it preclude an aggrieved
25 public employee from demanding a public hearing. Judicial

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1 candidates interviewed by any commission shall have the right to
2 demand an open interview;

3 (3) deliberations by a public body in
4 connection with an administrative adjudicatory proceeding. For
5 purposes of this paragraph, an "administrative adjudicatory
6 proceeding" means a proceeding brought by or against a person
7 before a public body in which individual legal rights, duties or
8 privileges are required by law to be determined by the public
9 body after an opportunity for a trial-type hearing. Except as
10 otherwise provided in this section, the actual administrative
11 adjudicatory proceeding at which evidence is offered or rebutted
12 and any final action taken as a result of the proceeding shall
13 occur in an open meeting;

14 (4) the discussion of personally identifiable
15 information about any individual student, unless the student,
16 his parent or guardian requests otherwise;

17 (5) meetings for the discussion of bargaining
18 strategy preliminary to collective bargaining negotiations
19 between the policymaking body and a bargaining unit representing
20 the employees of that policymaking body and collective
21 bargaining sessions at which the policymaking body and the
22 representatives of the collective bargaining unit are present;

23 (6) that portion of meetings at which a
24 decision concerning purchases in an amount exceeding two
25 thousand five hundred dollars (\$2,500) that can be made only

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1 from one source, that portion of a meeting dealing with
2 confidential or proprietary information regarding procurement
3 made pursuant to the Video Gaming Act and that portion of
4 meetings at which the contents of competitive sealed proposals
5 solicited pursuant to the Procurement Code are discussed during
6 the contract negotiation process. The actual approval of
7 purchase of the item or final action regarding the selection of
8 a contractor shall be made in an open meeting;

9 (7) meetings subject to the attorney-client
10 privilege pertaining to threatened or pending litigation in
11 which the public body is or may become a participant;

12 (8) meetings for the discussion of the
13 purchase, acquisition or disposal of real property or water
14 rights by the public body; and

15 (9) those portions of meetings of committees or
16 boards of public hospitals that receive less than fifty percent
17 of their operating budget from direct public funds and
18 appropriations where strategic and long-range business plans are
19 discussed.

20 I. If any meeting is closed pursuant to the
21 exclusions contained in Subsection H of this section, the
22 closure:

23 (1) if made in an open meeting, shall be
24 approved by a majority vote of a quorum of the policymaking
25 body; the authority for the closure and the subject to be

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1 discussed shall be stated with reasonable specificity in the
2 motion calling for the vote on a closed meeting; the vote shall
3 be taken in an open meeting; and the vote of each individual
4 member shall be recorded in the minutes. Only those subjects
5 announced or voted upon prior to closure by the policymaking
6 body may be discussed in a closed meeting; and

7 (2) if called for when the policymaking body is
8 not in an open meeting, shall not be held until public notice,
9 appropriate under the circumstances, stating the specific
10 provision of the law authorizing the closed meeting and stating
11 with reasonable specificity the subject to be discussed is given
12 to the members and to the general public.

13 J. Following completion of any closed meeting, the
14 minutes of the open meeting that was closed or the minutes of
15 the next open meeting if the closed meeting was separately
16 scheduled shall state that the matters discussed in the closed
17 meeting were limited only to those specified in the motion for
18 closure or in the notice of the separate closed meeting. This
19 statement shall be approved by the public body under Subsection
20 G of this section as part of the minutes. "

21 Section 51. Section 13-1-98 NMSA 1978 (being Laws 1984,
22 Chapter 65, Section 71, as amended) is amended to read:

23 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE. --The
24 provisions of the Procurement Code [~~shall~~] do not apply to:

25 A. procurement of items of tangible personal

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1 property or services by a state agency or a local public body
2 from a state agency, a local public body or external procurement
3 unit except as otherwise provided in Sections 13-1-135 through
4 13-1-137 NMSA 1978;

5 B. procurement of tangible personal property or
6 services for the governor's mansion and grounds;

7 C. printing and duplicating contracts involving
8 materials [~~which~~] that are required to be filed in connection
9 with proceedings before administrative agencies or state or
10 federal courts;

11 D. purchases of publicly provided or publicly
12 regulated gas, electricity, water, sewer and refuse collection
13 services;

14 E. purchases of books and periodicals from the
15 publishers or copyright holders thereof;

16 F. travel or shipping by common carrier or by
17 private conveyance or to meals and lodging;

18 G. purchase of livestock at auction rings or to the
19 procurement of animals to be used for research and
20 experimentation or exhibit;

21 H. contracts with businesses for public school
22 transportation services;

23 I. procurement of tangible personal property or
24 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
25 by the corrections industries division of the corrections

. 109241.3

Underscored material = new
[bracketed material] = delete

1 department pursuant to regulations adopted by the corrections
2 [~~industries~~] commission, which shall be reviewed by the
3 purchasing division of the general services department prior to
4 adoption;

5 J. minor purchases consisting of magazine
6 subscriptions, conference registration fees and other similar
7 purchases where prepayments are required;

8 K. municipalities having adopted home rule charters
9 and having enacted their own purchasing ordinances;

10 L. the issuance, sale and delivery of public
11 securities pursuant to the applicable authorizing statute, with
12 the exception of bond attorneys and general financial
13 consultants;

14 M contracts entered into by a local public body
15 with a private independent contractor for the operation, or
16 provision and operation, of a jail pursuant to Sections 33-3-26
17 and 33-3-27 NMSA 1978;

18 N. contracts for maintenance of grounds and
19 facilities at highway rest stops and other employment
20 opportunities, excluding those intended for the direct care and
21 support of persons with handicaps, entered into by state
22 agencies with private, nonprofit, independent contractors who
23 provide services to persons with handicaps;

24 O. contracts and expenditures for services to be
25 paid or compensated by money or other property transferred to

. 109241.3

Underscored material = new
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1 New Mexico law enforcement agencies by the United States
2 department of justice drug enforcement administration;

3 P. contracts for retirement and other benefits
4 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978; ~~[and]~~

5 Q. contracts with professional entertainers; and

6 R. any procurement made pursuant to the Video Gaming
7 Act. "

8 Section 52. Section 30-19-1 NMSA 1978 (being Laws 1963,
9 Chapter 303, Section 19-1, as amended) is amended to read:

10 "30-19-1. DEFINITIONS RELATING TO GAMBLING. --As used in
11 Chapter 30, Article 19 NMSA 1978:

12 A. "antique gambling device" means a gambling device
13 twenty-five years of age or older and substantially in original
14 condition that is not used for gambling or commercial gambling
15 or located in a gambling place;

16 B. "bet" means a bargain in which the parties agree
17 that, dependent upon chance, even though accompanied by some
18 skill, one stands to win or lose anything of value specified in
19 the agreement. A "bet" does not include:

20 (1) bona fide business transactions that are
21 valid under the law of contracts, including ~~[without~~
22 ~~limitation]~~:

23 (a) contracts for the purchase or sale,
24 at a future date, of securities or other commodities; and

25 (b) agreements to compensate for loss

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1 caused by the happening of the chance, including [~~without~~
2 ~~limitation~~] contracts for indemnity or guaranty and life or
3 health and accident insurance;

4 (2) offers of purses, prizes or premiums to the
5 actual contestants in any bona fide contest for the
6 determination of skill, speed, strength or endurance or to the
7 bona fide owners of animals or vehicles entered in such contest;

8 (3) a lottery as defined in this section; or

9 (4) betting otherwise permitted by law;

10 C. "lottery" means an enterprise [~~other than the New~~
11 ~~Mexico state lottery established and operated pursuant to the~~
12 ~~New Mexico Lottery Act~~] wherein, for a consideration, the
13 participants are given an opportunity to win a prize, the award
14 of which is determined by chance, even though accompanied by
15 some skill. "Lottery" does not include the New Mexico state
16 lottery established and operated pursuant to the New Mexico
17 Lottery Act or video gaming that is licensed and operated
18 pursuant to the Video Gaming Act. As used in this subsection,
19 "consideration" means anything of pecuniary value required to be
20 paid to the promoter in order to participate in such enterprise;

21 D. "gambling device" means a contrivance other than
22 an antique gambling device that, for a consideration, affords
23 the player an opportunity to obtain anything of value, the award
24 of which is determined by chance, even though accompanied by
25 some skill, [~~and~~] whether or not the prize is automatically paid

Underscored material = new
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1 by the device and that is not licensed for use pursuant to the
2 Video Gaming Act; and

3 E. "gambling place" means [any] a building or tent,
4 [any] a vehicle, whether self-propelled or not, or [any] a room
5 within any of them, that is not within the premises of a person
6 licensed as a lottery retailer or to provide video gaming
7 pursuant to the New Mexico Lottery Act or the Video Gaming Act
8 and one of whose principal uses is:

9 (1) making and settling of bets;

10 (2) receiving, holding, recording or forwarding
11 bets or offers to bet;

12 (3) conducting lotteries; or

13 (4) playing gambling devices."

14 Section 53. Section 30-19-6 NMSA 1978 (being Laws 1963,
15 Chapter 303, Section 19-6, as amended) is amended to read:

16 "30-19-6. PERMISSIVE LOTTERY. --

17 A. Nothing in [~~Article 19~~] Chapter 30, Article 19
18 NMSA 1978 shall be construed to apply to any sale or drawing of
19 any prize at any fair held in this state for the benefit of any
20 church, public library or religious society situate or being in
21 this state, or for charitable purposes when all the proceeds of
22 [~~such~~] the fair shall be expended in this state for the benefit
23 of [~~such~~] the church, public library, religious society or
24 charitable purposes.

25 A lottery shall be operated for the benefit of the

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1 organization or charitable purpose only when the entire proceeds
2 of the lottery go to the organization or charitable purpose and
3 no part of such proceeds go to any individual member or employee
4 thereof.

5 B. Nothing in [~~Article 19~~] Chapter 30, Article 19
6 NMSA 1978 shall be held to prohibit any bona fide motion picture
7 theater from offering prizes of cash or merchandise for
8 advertising purposes, in connection with such business or for
9 the purpose of stimulating business, whether or not any
10 consideration other than a monetary consideration in excess of
11 the regular price of admission is exacted for participation in
12 drawings for prizes.

13 C. Nothing in [~~Article 19~~] Chapter 30, Article 19
14 NMSA 1978 shall be held to apply to any bona fide county fair,
15 including fairs for more than one county, which shall have been
16 held annually at the same location for at least two years and
17 which shall offer prizes of livestock or poultry in connection
18 with [~~such~~] the fair when the proceeds of [~~such~~] the drawings
19 shall be used for the benefit of [~~said~~] the fair.

20 D. Nothing in [~~Article 19~~] Chapter 30, Article 19
21 NMSA 1978 shall be construed to apply to any lottery operated by
22 an organization exempt from the state income tax pursuant to
23 Subsection [~~E~~] B of Section 7-2-4 NMSA 1978 and not subject to
24 the provisions of Subsection A of this section; provided that:

- 25 (1) no more than two lotteries shall be

1 operated in any year by such an organization;

2 (2) all the gross proceeds less the reasonable
3 cost of prizes of any lottery operated by such an organization
4 shall be expended in the state for the benefit of the
5 organization or public purposes; and

6 (3) no part of the proceeds of any lottery
7 shall go to any individual member or employee of any
8 organization except as payment for the purchase of prizes at no
9 more than the reasonable retail price.

10 E. Nothing in Chapter 30, Article 19 NMSA 1978
11 prohibits or applies to gaming activities permitted and licensed
12 pursuant to the New Mexico Lottery Act or the Video Gaming Act.

13 F. As used in Subsections A and D of this section,
14 "lottery" means a paper lottery, a raffle, paper pull tabs or
15 other games of chance, not including any electronic facsimile of
16 a game of chance played on a video gaming machine. "

17 Section 54. SEVERABILITY. -- If any part or application of
18 the Video Gaming Act is held invalid, the remainder or its
19 application to other situations or persons shall not be
20 affected.

21 Section 55. EFFECTIVE DATE. -- The effective date of the
22 provisions of this act shall be the date on which tribal-state
23 gaming compacts negotiated pursuant to the provisions of the
24 federal Indian Gaming Regulatory Act are approved by the
25 legislature, the governor and the pueblos of Taos, San Juan,

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1 Santa Clara, San Ildefonso, Nambe, Pojoaque, Tesuque, Santo
2 Domingo, San Felipe, Santa Ana, Sandia, Isleta, Laguna and Acoma
3 and the Mescalero Apache and Jicarilla Apache tribes.

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1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996
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5 JANUARY 27, 1996
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7 Mr. Presi dent:
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9 Your COMMI TTEES' COMMI TTEE, to whom has been referred
10

11 SENATE BILL 380
12

13 has had it under consideration and finds same to be GERMANE, PURSUANT
14 TO CONSTITUTIONAL PROVISIONS, and thence referred to the COMMI TTEE OF
15 THE WHOLE.
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17 Respectfully submi tted,
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23 SENATOR MANNY M. ARAGON, Chai rman
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Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Date _____

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1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996
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5 February 2, 1996
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7 Mr. President:
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9 Your COMMITTEE OF THE WHOLE, to whom has been referred
10

11 SENATE BILL 380
12

13 has had it under consideration and reports same WITHOUT
14 RECOMMENDATION, and thence placed on the President's
15 Table.
16

17 Respectfully submitted,
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22 Manny M. Aragon, Chairman
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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

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Date _____

The roll call vote was 28 For 5 Against

Yes: 28

No: Donisthorpe, Kidd, Kysar, Rawson, Scott

Excused: Benavides, Carraro, E. Jennings, T. Jennings, McKibben,
Naranjo, Stefani cs, Vernon, Wi ener

Absent: None

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Underscored material = new
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