CHAPTER 11
Intergovernmental Agreements and Authorities

ARTICLE 1
Joint Powers Agreements

11-1-1. Short title.

This act [11-1-1 to 11-1-7 NMSA 1978] may be cited as the "Joint Powers Agreements Act."

History: 1953 Comp., § 4-22-1, enacted by Laws 1961, ch. 135, § 1.

ANNOTATIONS

Cross references. — For the Planning District Act, *see* 4-58-1 NMSA 1978 et seq.

Legislative intent. — The intent of the legislature in the Joint Powers Agreements Act was to allow a joint and coordinated effort to be undertaken by separate governmental units. 1969 Op. Att'y Gen. No. 69-127.

Law reviews. — For comment, "Tribal-State Relations: Time For Constitutional Stature?", see 26 N.M.L.Rev. 293 (1996).

11-1-2. Definitions.

As used in the Joint Powers Agreements Act:

A. "public agency" means the federal government or a federal department, agency or instrumentality; this state, another state or a state department, agency or instrumentality; an Indian nation, tribe or pueblo; a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation, tribe or pueblo to enter into joint powers agreements directly with the state; a county, municipality, public corporation or public district of this state or another state; a New Mexico educational institution specified in Article 12, Section 11 of the constitution of New Mexico; and a New Mexico school district;

B. "agreement" means a written contractual agreement entered into between two or more public agencies subject to a constitutional or legislative restriction imposed upon any of the contracting public agencies, but the Joint Powers Agreements Act does not authorize an interstate water supply agreement or limit the powers of an interstate water compact commission, the interstate stream commission or the state engineer, and it does not limit the powers of a state agency or political subdivision to enter into agreements with the interstate stream commission or the state engineer;

C. "bonds" means revenue bonds;

D. "bondholder" means a person who is the bearer of an outstanding bond or the owner of bonds that are at the time registered to other than the bearer;

E. "indenture" means the instrument providing the terms and conditions for the issuance of the bonds and may be a resolution, order, agreement or other instrument; and

F. "instrumentality" means a public corporate entity created by state law but that is not subject to the general laws of the state and is not a state agency or department.

History: 1953 Comp., § 4-22-2, enacted by Laws 1961, ch. 135, § 2; 1963, ch. 253, § 1; 1977, ch. 128, § 1; 1984, ch. 88, § 1; 1998, ch. 63, § 3; 1999, ch. 100, § 1; 2009, ch. 153, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, after "instrumentality; this state", changed "an adjoining" to "another" and after "district of this state or", changed "an adjoining" to the word "another".

The 1999 amendment, effective June 18, 1999, in Subsection A inserted "nation" and inserted the language beginning "a subdivision" and ending "the state".

The 1998 amendment, effective July 1, 1998, in Subsection A, inserted "or instrumentality" following "agency", twice, substituted "a New Mexico" for "it also specifically includes any state" and "a New Mexico" for "any", and deleted "in this state" at the end; in Subsection B, deleted "provided that nothing in" following "contracting public agencies", substituted "does not" for "shall be construed to" following "Act", deleted "to" following "agreement or", deleted "or to" following "state engineer", and inserted "and it does not" preceding "limit the powers"; in Subsection D, deleted "revenue" following "outstanding"; deleted former Subsection E defining governing body and redesignated former Subsection F as Subsection E; deleted former Subsection G defining project; added present Subsection F; and made minor stylistic changes throughout the section.

The 1984 amendment inserted "an Indian tribe or pueblo" and substituted "of this state" for "or this state" in Subsection A and deleted "revenue" preceding "bonds" in Subsections F and G.

11-1-3. Authority to enter into agreements; approval of the secretary of finance and administration required.

If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting

parties, even though one or more of the contracting parties may be located outside this state; provided, however, nothing contained in this Joint Powers Agreements Act shall authorize any state officer, board, commission, department or any other state agency, institution or authority, or any county, municipality, public corporation or public district to make any agreement without the approval of the secretary of finance and administration as to the terms and conditions thereof. Joint powers agreements approved by the secretary of finance and administration shall be reported to the state board of finance at its next regularly scheduled public meeting. A list of the approved agreements shall be filed with the office of the state board of finance and made a part of the minutes.

History: 1953 Comp., § 4-22-3, enacted by Laws 1961, ch. 135, § 3; 1977, ch. 128, § 2; 1983, ch. 301, § 24.

ANNOTATIONS

The 1983 amendment, effective July 1, 1983, substituted "secretary of finance and administration" for "director of the department of finance and administration" in the catchline and in two places in the section.

Memorandum of understanding is not a joint powers agreement where it was not executed by the livestock board in an open meeting, it did not violate the Joint Powers Agreement Act, and it did not have to be approved by the secretary of the department of finance and administration. *Paragon Found., Inc. v. N.M. Livestock Bd.*, 2006-NMCA-004, 138 N.M. 761, 126 P.3d 577, cert. denied, 2006-NMCERT-001, 139 N.M. 272, 131 P.3d 659.

Agreements with federal government. — Members of water commission had authority under the Joint Powers Agreement Act to form the commission and contract with the United States bureau of reclamation for the acquisition of a water supply; the members' "common authority" existed under 72-14-28 NMSA 1978. *San Juan Water Comm'n v. Taxpayers & Water Users of San Juan County*, 1993-NMSC-050, 116 N.M. 106, 860 P.2d 748.

Not applicable to gaming compacts with Indian tribes. — The governor is not a "public agency" within the meaning of the Joint Powers Agreement Act and did not have authority thereunder to enter into compacts and revenue-sharing agreements with Indian tribes which would permit gaming on Indian lands pursuant to the federal Indian Gaming Regulatory Act. *State ex rel. Clark v. Johnson*, 1995-NMSC-048, 120 N.M. 562, 904 P.2d 11.

Generally. — Formerly, this was the only statutory section which gave the state board of finance specific control (now held by the secretary of finance and administration) over a corporation which was authorized to operate a gas public utility system, and which was jointly owned and jointly controlled by three cities. Other than those financial matters which might possibly come before the board of finance, the major item concerning the corporation which was subject to the control of the state board of finance

was the joint powers agreement creating such corporation. 1966 Op. Att'y Gen. No. 66-07.

Constitutionality. — The appointment, under authority of the Joint Powers Agreements Act, of a district judge to be chairman of a joint commission for consolidation of two municipalities does not contravene the constitution. There is no incompatibility, inconsistency or subordination, and no interference. The fact that some day an action of the commission might be before a court was not enough to make the positions incompatible. 1968 Op. Att'y Gen. No. 68-67.

Agreements with federal government. — The Joint Powers Agreements Act authorizes agreements with the federal government of the type contemplated under 40 U.S.C. § 484 (now 40 U.S.C. §549). 1964 Op. Att'y Gen. No. 64-138.

Agreements relating to surplus property. — The state department of finance and administration by broad general statutory provision has the authority to enter into contractual agreements with the federal government, subject to approval of such agreements by the state board of finance (now by the secretary of finance and administration), for acquisition, administration and disposition of surplus property. 1964 Op. Att'y Gen. No. 64-138. (*See now* surplus property powers of the general services department, 15-4-2 NMSA 1978.)

11-1-4. Terms and conditions of joint agreements.

A. Every agreement executed by one or more public agencies shall clearly specify the purpose of the agreement or for any power which is to be exercised. The agreement shall provide for the method by which the purpose will be accomplished and the manner in which any power will be exercised under such agreement.

B. The parties to the agreement may provide therein that:

(1) contributions from the funds of the public agencies may be made for the purpose set forth in the agreement; or

(2) payments of public funds may be made to defray cost of such agreement; or

(3) advances of public funds of the public agencies be made for the purpose set forth in the agreement and that such advances be repaid as provided in such agreement.

C. The agreement may provide that funds be paid to and disbursed by the agency agreed upon by the public agencies under the terms of the agreement.

D. The agreement shall provide for strict accountability of all receipts and disbursements.

E. The agreement may be continued for a definite term or until rescinded or terminated, and may provide for the method by which it may be rescinded or terminated by any party.

F. The agreement shall provide for the disposition, division or distribution of any property acquired as the result of the joint exercise of powers, and shall further provide that after the completion of the agreement's purpose any surplus money on hand shall be returned in proportion to the contributions made.

G. If the purpose set forth in [the] agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide:

(1) for the repayment or return to the parties of all or any part of any contributions, payments or advancements made by the parties pursuant to such agreement; and

(2) for payment to the parties of any sum derived from the revenues of such facilities.

H. Payments, repayments or returns to a public agency shall be made at the time and in the manner specified in the agreement.

History: 1953 Comp., § 4-22-4, enacted by Laws 1961, ch. 135, § 4.

ANNOTATIONS

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

11-1-5. Powers of administering agency under agreement.

A. The agency provided by the agreement to administer or execute the agreement may be one of the parties to the agreement or a commission or board constituted pursuant to the agreement.

B. The administering agency under any such agreement shall be considered under the provisions of this Joint Powers Agreements Act as an entity separate from the parties to such agreement.

C. The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement, subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.

History: 1953 Comp., § 4-22-5, enacted by Laws 1961, ch. 135, § 5.

ANNOTATIONS

Scope of powers. — A development district created pursuant to the Joint Powers Agreements Act may only exercise powers common to the contracting parties. 1969 Op. Att'y Gen. No. 69-127.

Cooperative Educational Services does not have the authority to establish a scholarship program. — The Cooperative Educational Services (CES) was created under a cooperative procurement agreement authorized by the Procurement Code, NMSA 1978, § 13-1-135, and entered into under the Joint Powers Agreements Act, NMSA 1978, §§ 11-1-1 to 11-1-7, and under this cooperative procurement agreement, the CES was designated as the agency to administer or execute the cooperative procurement agreement for the limited purpose of procuring items of tangible personal property, services or construction, and therefore a proposal for CES to establish a scholarship program for students attending state educational institutions that are parties to its cooperative procurement agreement would exceed the scope of its authority, because the scholarship program would include a disbursement of funds, not a procurement of tangible personal property, services or construction, and, moreover, the scholarship program would not be considered a service provided by CES to the educational institutions, because, as proposed, the program's purpose is to defray certain costs charged by these educational institutions. 2024 Att'y Gen. Adv. Ltr. No. 2024-01.

11-1-6. Privileges and immunities, exemptions, benefits.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreements Act.

History: 1953 Comp., § 4-22-6, enacted by Laws 1961, ch. 135, § 6.

ANNOTATIONS

Scope of section. — This section goes no further than to provide that an official of a participating member of the joint project does not lose his privileges, immunities or benefits during the time that he is serving under the joint project. Thus, participation by an official previously covered by the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] does not remove him from continued participation in the retirement system, but it does nothing whatever to confer or transfer participation to other officials who are not so covered by the system. 1970 Op. Att'y Gen. No. 70-58.

11-1-7. Power to issue revenue bonds.

In addition to other powers, any agency, commission or board provided for by a joint powers agreement pursuant to this Joint Powers Agreements Act may issue revenue bonds to pay the cost and expenses of acquiring or constructing any structures, facilities or equipment necessary to effectuate the purposes of the agreement; provided, however, such authority shall be subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of this state.

History: 1953 Comp., § 4-22-7, enacted by Laws 1961, ch. 135, § 7.

ARTICLE 2
Commission on Intergovernmental Cooperation

11-2-1. Commission on intergovernmental cooperation.

There is created the "commission on intergovernmental cooperation." The members and officers of the legislative council are ex-officio members and officers of the commission, and the director of the legislative council service is ex-officio executive secretary of the commission.

History: 1953 Comp., § 4-6-4, enacted by Laws 1963, ch. 90, § 1.

ANNOTATIONS

Repeals and reenactments. — Laws 1963, ch. 90, § 1, repealed 4-6-4, 1953 Comp., and enacted a new section.

Cross references. — For legislative council service, *see* 2-3-2 NMSA 1978.

11-2-2. [Duties of commission.]

It shall be the function of this commission:

A. to carry forward the participation of this state as a member of the council of state governments;

B. to encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other states, of the federal government and of local units of government;

C. to endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(1) the adoption of compacts;

(2) the enactment of uniform or reciprocal statutes;

(3) the adoption of uniform or reciprocal administrative rules and regulations;

(4) the informal cooperation of governmental offices with one another;

(5) the personal cooperation of governmental officials and employees with one another, individually;

(6) the interchange and clearance of research and information; and

(7) any other suitable process;

D. in short, to do all such acts as will, in the opinion of this commission, enable this state to do its part - or more than its part in forming a more perfect union among the various governments in the United States and in developing the council of state governments for that purpose.

History: Laws 1937, ch. 64, § 6; 1941 Comp., § 3-506; 1953 Comp., § 4-6-6.

ANNOTATIONS

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

11-2-3. [Appointment of delegations and committees.]

The commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the commission in obedience to its decisions. Subject to the approval of the commission, the member or members of each such delegation or committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on intergovernmental cooperation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this state shall not be eligible. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards.

History: Laws 1937, ch. 64, § 7; 1941 Comp., § 3-507; 1953 Comp., § 4-6-7.

ANNOTATIONS

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

11-2-4. [Council of state governments; joint governmental agency.]

The council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

History: Laws 1937, ch. 64, § 10; 1941 Comp., § 3-510; 1953 Comp., § 4-6-10.

ANNOTATIONS

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

ARTICLE 3
Regional Housing Authorities (Repealed.)

11-3-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 132, § 31 repealed 11-3-1 NMSA 1978, as enacted by Laws 1967, ch. 196, § 1, relating to regional housing authorities created, effective May 18, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* Chapter 11, Article 3A NMSA 1978.

11-3-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 132, § 31 repealed 11-3-2 NMSA 1978, as enacted by Laws 1967, ch. 196, § 2, relating to powers of authority in board of commissioners, appointment of board of authorities and terms, effective May 18, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* Chapter 11, Article 3A NMSA 1978.

11-3-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 132, § 31 repealed 11-3-3 NMSA 1978, as enacted by Laws 1967, ch. 196, § 3, relating to organization of boards and compensation of

commissioners and employees, effective May 18, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* Chapter 11, Article 3A NMSA 1978.

11-3-4. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 132, § 31 repealed 11-3-4 NMSA 1978, as enacted by Laws 1967, ch. 196, § 4, relating to jurisdiction, effective May 18, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* Chapter 11, Article 3A NMSA 1978.

11-3-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 132, § 31 repealed 11-3-5 NMSA 1978, as enacted by Laws 1967, ch. 196, § 5, relating to conflict of interest, effective May 18, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* Chapter 11, Article 3A NMSA 1978.

11-3-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 132, § 31 repealed 11-3-6 NMSA 1978, as enacted by Laws 1967, ch. 196, § 6, relating to powers, duties and limitation, effective May 18, 1994. For provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* Chapter 11, Article 3A NMSA 1978.

ARTICLE 3A
Regional Housing Law

11-3A-1. Short title.

Chapter 11, Article 3A NMSA 1978 may be cited as the "Regional Housing Law".

History: Laws 1994, ch. 132, § 1; 1995, ch. 191, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

Cross references. — For the Municipal Housing Law, *see* Chapter 3, Article 45 NMSA 1978.

For the Mortgage Finance Authority Act, *see* Chapter 58, Article 18 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "Chapter 11, Article 3A NMSA 1978" for "This act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81A C.J.S. States §§ 82, 133, 134, 136 to 140.

11-3A-2. Finding and declaration of necessity.

It is declared that:

A. unsanitary and unsafe dwelling accommodations exist in the state;

B. low- and moderate-income persons are forced to reside in unsanitary and unsafe accommodations;

C. within the state:

(1) there is a shortage of safe and sanitary dwelling accommodations available at rents that low- and moderate-income persons can afford;

(2) low- and moderate-income persons are forced to occupy overcrowded, congested dwelling accommodations; and

(3) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values;

D. excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities are necessitated;

E. private enterprise alone cannot meet the need or resolve the problems inherent in providing appropriate, safe, sanitary and sufficient housing for low- and moderate-income persons, and public participation in construction of low- and moderate-income housing does not compete with private enterprise;

F. demolition, replanning, reconstruction or renovation of unsanitary and unsafe housing and acquisition of land to provide safe and sanitary dwellings for low- and

moderate-income persons are in the public interest and are essential state and local governmental functions requiring expenditures of public money; and

G. it is in the public interest that work on projects for demolition, planning, reconstruction, renovation and land acquisition for provision of safe and sanitary dwellings for low- and moderate-income persons be started immediately in order to relieve the housing shortage that has reached emergency status, and it is a necessity that the Regional Housing Law be continued to relieve that emergency.

History: Laws 1994, ch. 132, § 2; 1995, ch. 191, § 2; 2009, ch. 48, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, in Subsections B, C, E, F and G added "moderate-income persons".

The 1995 amendment, effective June 16, 1995, divided Subsection C to form paragraphs, added "low-income" at the beginning of Paragraph (2) and "these" at the beginning of Paragraph (3), deleted "these conditions necessitate" from the beginning and added "are necessitated" at the end of Subsection D, rewrote Subsections E, F and G, and made minor stylistic changes throughout the section.

11-3A-3. Definitions.

As used in the Regional Housing Law:

A. "affordable housing" means housing that serves the needs of low- and moderate-income persons;

B. "affordable housing programs" means an ongoing delivery system of affordable housing services that assists persons of low- and moderate-income;

C. "federal government" includes the United States of America, programs of the United States department of housing and urban development, the farmers home administration and rural development administration of the United States department of agriculture or housing programs or any other agency or instrumentality, corporate or otherwise, of the United States of America;

D. "housing project" means an undertaking of an authority to:

(1) demolish, clear or remove buildings from any slum area. The undertaking may embrace the adaptation of the area to public purposes, including parks or other recreational or community purposes; or

(2) provide decent, safe and sanitary dwellings, apartments, single-family dwellings or other affordable living accommodations for low- and moderate-income persons. The undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation or gardening or administrative, community, health, recreational, welfare or other purposes. "Housing project" also may be applied to the planning of buildings and improvements, acquisition of property or existing structures, demolition of existing structures, construction, reconstruction, alteration and repair of improvements or buildings or any other work performed to complete housing projects;

E. "indebtedness" means any note, interim certificate, debenture or other obligation to be issued pursuant to the Regional Housing Law;

F. "local housing authority" means any municipal or county housing authority established by a municipality or county;

G. "local public body" means any county, municipality, commission, district or other political subdivision of the state;

H. "low-income person" means any individual, couple or family whose gross income does not exceed eighty percent of the person's particular area median income and who cannot afford to pay more than thirty-five percent of gross annual income for housing rent or mortgage payments; or a low-income person as defined by the federal government;

I. "moderate-income person" means any individual, couple or family whose gross annual income is not less than eighty percent of the person's particular area median income and does not exceed one hundred twenty percent of the area income;

J. "obligee" means:

(1) a holder of indebtedness issued pursuant to the Regional Housing Law or a trustee for the holder of debt;

(2) a lessor leasing to a regional housing authority or a local housing authority property used in connection with a housing project or any assignee of a lessor's interest or partial interest; or

(3) the federal government when it is a party to a contract with a regional housing authority or a local housing authority in regard to a housing project;

K. "real property" includes all lands, including improvements and fixtures on the land, property of any nature appurtenant to or used in connection with the land and every estate, interest and right, legal or equitable, in the land, including terms for years

and liens by way of judgment, mortgage or other instrument and the indebtedness secured by the lien;

L. "regional housing authority" means any regional housing authority or a nonprofit housing corporation approved pursuant to Section 11-3A-9 NMSA 1978; and

M. "slum" means any area where dwellings predominate, which by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors is detrimental to safety, health or morals.

History: Laws 1994, ch. 132, § 3; 1995, ch. 191, § 3; 2007, ch. 50, § 1; 2009, ch. 48, § 2.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, deleted former Subsection A, which defined "authority"; deleted former Subsection B, which defined "bond"; added Subsections A, B, E, F, I and L; in Paragraph (2) of Subsection D, added "moderate-income persons"; in Subsection H, changed "thirty percent of gross income" to "thirty-five percent of gross annual income"; and in Subsection J, added "regional housing authority" and "local housing authority".

The 2007 amendment, effective March 28, 2007, changed the definition of "bond" to mean bonds issued by the New Mexico mortgage finance authority.

The 1995 amendment, effective June 16, 1995, deleted "or 'housing authority'" preceding "means" in Subsection A, rewrote Subsection B, substituted the language beginning "programs of" and ending "housing programs" for "the public housing administration" in Subsection C, deleted Subsection D, which defined "slum", redesignated former Subsection E as Subsection D, substituted "or buildings or any other work performed to complete housing projects" for "and all other work in connection therewith" at the end of Subsection D, added Subsection E, rewrote Subsections F and G, substituted "other instrument" for "otherwise" in Subsection H, rewrote Subsection I, and made minor stylistic changes throughout the section.

11-3A-4. Regional housing authorities created.

Three regional housing authorities are created for the state of New Mexico as follows:

A. the northern regional housing authority that shall include Cibola, Taos, McKinley, Rio Arriba, San Juan, San Miguel, Mora, Los Alamos, Colfax and Sandoval counties;

B. the eastern regional housing authority that shall include Chaves, De Baca, Eddy, Guadalupe, Harding, Lea, Lincoln, Otero, Quay, Roosevelt, Union and Curry counties; and

C. the western regional housing authority that shall include Grant, Hidalgo, Luna, Sierra, Socorro, Catron, Torrance and Valencia counties.

History: Laws 1994, ch. 132, § 4; 2009, ch. 48, § 3.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, at the beginning of the first sentence, changed "Seven" to "Three"; deleted the former second sentence, which provided that the areas of the seven regional housing authorities are coextensive with the boundaries of the seven housing regions; deleted former Subsections A through G, which listed the counties in each housing region; and added Subsections A through C.

11-3A-5. Jurisdiction.

A. The regional housing authorities created pursuant to Section 11-3A-4 NMSA 1978 shall operate within the specified area of their region except for any portion within the territorial boundary of a municipality or county that has established a local housing authority. If the governing body of a municipality or county that has established a local housing authority consents by resolution to have the regional housing authority take action within the territory that would be excluded pursuant to this section, the regional housing authority may enlarge its jurisdiction to include that territory.

B. A subsequent withdrawal of consent by resolution of a governing body of a municipality or county that has established a local housing authority shall not prohibit the development and operation of any housing projects initiated within the territorial boundary of that municipality or county by the regional housing authority prior to the date of the resolution withdrawing consent, except upon terms that are mutually agreed upon between the regional housing authority and the governing body of the municipality or county.

History: Laws 1994, ch. 132, § 5; 1995, ch. 191, § 4; 2005, ch. 343, § 1; 2007, ch. 50, § 2; 2009, ch. 48, § 4.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, completely rewrote the section.

The 2007 amendment, effective March 28, 2007, limited the operation of a regional housing authority to the area of its housing region.

The 2005 amendment, effective June 17, 2005, provided that a regional housing authority and a municipal or county housing authority or agency may each exercise jurisdiction over common areas pursuant to a resolution enacted by a municipality or a county; and deleted the former provision which provided that a regional authority could take action in a territory that lies within the territorial authority of a municipality or county if the municipality or county consented and that a subsequent withdrawal of authority by a municipality or county shall not prohibit the development and operation of housing projects initiated in the city or county by the regional authority prior to the withdrawal of consent when there is a financial assistance contract for the project with the state or federal government except upon terms approved by the regional authority, the city or county and the state or federal government.

The 1995 amendment, effective June 16, 1995, in the first sentence, substituted "A regional authority" for "The housing authority" and "an authority or housing agency" for "a housing authority"; in the second sentence, substituted "If by resolution" for "If however", substituted "authorities or housing agencies" for "housing authorities by resolution", and substituted "jurisdiction to include the previously excluded" for "area of authority to include such territory"; in the third sentence, substituted "resolution of a local public body or a municipal or county authority" for "an authority or county", inserted "state or" preceding "federal" twice, and made minor stylistic changes throughout the section.

11-3A-6. Powers of regional housing authority in board of commissioners; appointment of board of regional housing authorities; terms.

A. The powers of each regional housing authority shall be vested in its board of commissioners as the board may be constituted, from time to time. The board of commissioners of the regional housing authority for each of the three regions shall be appointed by the governor and consist of at least seven members who shall be residents of the designated area of the regional housing authority; provided that no more than two members shall be residents of the same county. Appointments shall be for terms of four years and shall be made so that the terms of not more than four commissioners on each board of commissioners expire on July 1 of each year. Vacancies shall be filled for the unexpired term. Commissioners shall serve until their successors have been appointed.

B. Members of the board of commissioners of a regional housing authority shall elect an executive committee consisting of a chair, vice chair, treasurer, secretary and one other member of the board to function and meet on a monthly basis as an executive committee. The executive committee shall have the authority to act on behalf of the

board of commissioners of the regional housing authority as needed. The executive committee shall submit a report of actions to the full board of commissioners, which shall meet on a quarterly basis.

C. Members of the board of commissioners of a regional housing authority may receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance. A majority of the appointed commissioners of a board of commissioners shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by a regional housing authority upon a vote of a majority of the commissioners present. Each board of commissioners shall organize itself at its annual meeting each year. A board of commissioners may employ an executive director, subject to approval by the New Mexico mortgage finance authority. With delegated authority from the board of commissioners, the executive director may hire or terminate, according to the procurement and personnel policies and procedures of the regional housing authority, any technical experts, officers, attorneys, agents or employees, permanent or temporary, as the regional housing authority may require.

D. The threshold requirements for commissioners of boards of regional housing authorities are that commissioners have expertise and experience in housing construction, real estate, architecture, law, banking, housing finance, business, property management, accounting, residential development, public housing programs, community development, social services or health care. The requirements set forth in this section shall not apply to commissioners serving pursuant to requirements of the federal department of housing and urban development.

E. Commissioners are expected to attend all meetings of the board of commissioners of the regional housing authority, and more than three unexcused absences may be grounds for dismissal from the board. All recommendations for appointments of commissioners shall be forwarded to and reviewed by the New Mexico mortgage finance authority prior to recommendation to the governor.

History: Laws 1994, ch. 132, § 6; 1995, ch. 191, § 5; 1998, ch. 63, § 4; 2007, ch. 50, § 3; 2009, ch. 48, § 5; 2019, ch. 85, § 1.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, revised the qualifications for membership on the board of commissioners of a regional housing authority; and in Subsection A, after "consist of", deleted "one person from each county within" and added "at least seven members who shall be residents of", after "designated area of the regional housing authority", deleted "which person shall be a resident" and added "provided that no more than two members shall be residents", and after the next occurrence of "of", deleted "that" and added "the same".

The 2009 amendment, effective March 31, 2009, in Subsection A, added "regional housing authority"; in the second sentence of Subsection A, changed "seven" to "three"; provided that one resident from each county in the designated area of the regional housing authority shall be appointed as a member of the board of commissioners; deleted the former provision, which provided that not more than three commissioners shall be appointed from any one county; and provided that appointments shall be for four years so that the term of not more than four commissioners shall expire on July 1 of each year; added Subsection B; in Subsection C, deleted the former provision that authorized the commissioners to select a chair and a vice chair of the board, employ and set salaries of agents and employees, and delegate duties to agents and employees, and which provided for the use of the technical staff of a regional planning and development district, provided that a majority of commissioners shall constitute a quorum; deleted former provisions that authorized the commissioners to employ technical experts and other persons and to determine qualifications, duties and compensation of employees and contractors, and to delegate powers or duties of the board, and added the last sentence; deleted former Subsection C that provided for annual audits by the state auditor; deleted former Subsection D that provided for review of annual audits by the department of finance and administration; deleted former Subsection E that provided for the submittal of quarterly reports to the department of finance and administration; and added Subsections D and E.

The 2007 amendment, effective March 28, 2007, provided that not more than three commissioners shall be appointed for any one county; authorized a board to employ an executive director, subject to approval of the New Mexico mortgage finance authority; provided for the suspension of a regional housing authority’s powers; and required regional housing authorities to file quarterly reports.

The 1998 amendment, effective July 1, 1998, in Subsection B, substituted "an" for "a regional housing" at the end of the fifth sentence, and in Subsection C, deleted "of the economic development department" following "housing authority" in the last sentence.

The 1995 amendment, effective June 16, 1995, rewrote this section to such an extent that a detailed comparison is impracticable.

11-3A-7. Powers.

A. Every regional housing authority may:

(1) within its region, prepare, carry out, acquire, purchase, lease, construct, reconstruct, improve, alter, extend or repair any housing project and operate and maintain the housing project or affordable housing program. For any of such purposes, the board of commissioners of the regional housing authority may expend money and authorize the use of any property of the regional housing authority;

(2) lease or rent dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project or affordable housing program

and establish and revise the rents or lease charges; own, hold and improve real or personal property; purchase, lease, obtain options upon or acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; sell, lease, mortgage, exchange, transfer, assign, pledge or dispose of real or personal property or any interest in real or personal property; or procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof, including the power to pay premiums on the insurance;

(3) enter on lands, buildings or property for the purpose of making surveys, soundings and examinations in connection with the planning or construction, or both, of a housing project;

(4) insure or provide for the insurance of a housing project of the regional housing authority against the risks that the regional housing authority may deem advisable;

(5) arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for or in connection with a housing project or the occupants thereof and include in any construction contract let in connection with a housing project stipulations requiring that the contractor and subcontractors comply with employment requirements, including those in the constitution and laws of this state, as to minimum wages and maximum hours of labor and comply with any conditions that the state or federal government may have attached to its financial aid of the project;

(6) within its area of operation, investigate the living, dwelling and housing conditions and the means and methods of improving those conditions; determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for low- and moderate-income persons; make studies and recommendations relating to the problem of clearing, replanning and reconstructing slum areas and the problem of providing dwelling accommodations for low- and moderate-income persons and cooperate with the state or any political subdivision of the state in action taken in connection with the problems identified; and engage in research, studies and experimentation on the subject of housing; and

(7) exercise all or any part or combination of powers granted in this subsection.

B. To standardize the delivery of affordable housing programs and affordable housing services in New Mexico, regional housing authorities within their jurisdictions may:

(1) create partnerships between state, federal, city and county governments, nonprofit entities and the private sector that will provide the necessary resources to carry out the planning, financing, development and delivery of affordable housing and affordable housing programs;

(2) assist local housing authorities or housing nonprofit agencies in developing the knowledge, expertise and technical capacity to provide a comprehensive approach to the development and delivery of affordable housing and affordable housing programs; or

(3) provide or secure planning, technical assistance and training that city or county governments and nonprofit entities may need in an effort to enhance the local affordable housing delivery system.

C. In the event a local housing authority is declared by the federal department of housing and urban development to be in default on its annual contributions contract with that department, the local housing authority may by resolution of its governing body transfer its assets and operations to the regional housing authority or local housing authority within which jurisdiction it lies.

D. In the event of a resolution pursuant to Subsection C of this section, the appropriate regional housing authority or local housing authority shall accept by resolution of its board of commissioners a transfer of the assets and operations of a local housing authority that has been declared by the federal department of housing and urban development to be in default on its annual contributions contract with that department.

History: Laws 1994, ch. 132, § 7; 1995, ch. 191, § 6; 2007, ch. 50, § 4; 2009, ch. 48, § 6.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, in Subsections A and B, added "regional housing authority" and "affordable housing program"; in Paragraph (2) of Subsection B, added "local housing authorities"; and added Subsections C and D.

The 2007 amendment, effective March 28, 2007, eliminated the powers of a regional housing authority to purchase its bonds, acquire property by eminent domain, and jointly exercise its powers with cities and other authorities.

The 1995 amendment, effective June 16, 1995, rewrote this section to such an extent that a detailed comparison is impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Tenant selection criteria under § 8 of Housing Act of 1937 (42 USCS § 1437f), 80 A.L.R. Fed. 470.

11-3A-8. Requirements respecting lease.

A. Prior to the leasing of any housing project, the regional housing authority shall determine and find the following:

(1) the amount necessary in each year to pay indebtedness proposed to fund the housing project; and

(2) the amount necessary to be paid each year into any reserve funds that the regional housing authority may deem advisable to establish in connection with the retirement of any indebtedness and the maintenance of the housing project and, unless the terms under which the housing project is to be leased provide that the lessee shall maintain the housing project and carry all proper insurance with respect to it, the estimated cost of maintaining the housing project in good repair and keeping it properly insured.

B. The determinations and findings of the regional housing authority required to be made in this section shall be set forth in the proceedings under which the proposed indebtedness is to be incurred.

C. Prior to the incurrence of any indebtedness, the regional housing authority shall lease or sell the housing project to a lessee or purchaser under an agreement that is conditioned upon completion of the housing project and that provides for payment to the regional housing authority of rentals or payments in an amount that is found, based on the determinations and findings, to:

(1) pay the indebtedness incurred to fund the housing project;

(2) build up and maintain any reserve deemed by the regional housing authority to be advisable in connection with the housing project; and

(3) pay the costs of maintaining the housing project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the housing project.

History: Laws 1994, ch. 132, § 8; 1995, ch. 191, § 7; 2009, ch. 48, § 7.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, in Subsections A, B and C, added "regional housing authority" and changed "bond" to "indebtedness".

The 1995 amendment, effective June 16, 1995, redesignated the subsections, substituted "section" for "subsection" in Subsection B, and made minor stylistic changes throughout the section.

11-3A-9. Nonprofit corporations.

Every regional housing authority, in addition to other powers conferred by the Regional Housing Law, shall have, if authorized by resolution of its board of commissioners, the power to create nonprofit corporations to carry out the powers and duties set forth in Section 11-3A-7 NMSA 1978. The articles of incorporation and bylaws, and any subsequent changes, shall be recommended for approval by the New Mexico mortgage finance authority. Such nonprofit corporations shall be subject to all of the duties and limitations imposed on the regional housing authority and its board of commissioners.

History: Laws 1994, ch. 132, § 9; 1995, ch. 191, § 8; 2007, ch. 50, § 5; 2009, ch. 48, § 8; 2019, ch. 85, § 2.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, removed the requirements that the state board of finance approve the creation of non-profit corporations to carry out the powers and duties of a regional housing authority and that the state board of finance approve the articles of incorporation and bylaws of the non-profit corporations; and after "by resolution of its board of commissioners", deleted "and approved by the state board of finance", and after "recommended for approval by", deleted "the state board of finance and".

The 2009 amendment, effective March 31, 2009, added "regional housing authority".

The 2007 amendment, effective March 28, 2007, authorized a regional housing authority to create nonprofit corporations if approved by the state board of finance and requires the state board of finance and the New Mexico mortgage finance authority to review articles of incorporation and bylaws.

The 1995 amendment, effective June 16, 1995, substituted "if authorized by resolution of its board, the power" for "and is hereby authorized, by proper resolution of its board" in the first sentence, and made a stylistic change in the statutory reference.

11-3A-10. Prohibited actions.

Neither the regional housing authority nor any of its contractors or their subcontractors may enter into any contract, subcontract or agreement in connection with a housing project under any contract in which any of the following persons has an interest, direct or indirect, during the person's tenure or for one year thereafter:

A. any present or former member of the board of commissioners of the regional housing authority or any member of the member's immediate family. The prohibition established by this subsection shall not apply to any member who has not served on the governing body of a resident management corporation, and who otherwise has not

occupied a policymaking position with the resident management corporation or the regional housing authority;

B. any employee of the regional housing authority who formulates policy or who influences decisions with respect to a housing project, any member of the employee's immediate family or any partner of the employee; or

C. any public official, member of a governing body or state legislator, or any member of such person's immediate family, who exercises functions or responsibilities with respect to the housing project or the regional housing authority.

History: Laws 1994, ch. 132, § 10; 1995, ch. 191, § 9; 2009, ch. 48, § 9.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, deleted the former provision that prohibited officers and employees from acquiring an interest in a housing project, property in a housing project, or a contract to furnish materials or services used in a project and completely rewrote the section.

The 1995 amendment, effective June 16, 1995, deleted "or of a nonprofit corporation created by an authority" preceding "shall", deleted "nor shall he have any interest direct or indirect" preceding "or in any contract", and substituted "of the authority" for the former last three sentences which read: "If any officer or employee of an authority or of a nonprofit corporation created by an authority owns or controls a direct or indirect interest in any property included or planned to be included in any housing project of an authority, he immediately shall disclose the same in writing to the governing body of such authority, and such disclosure shall be entered upon the minutes of the board of commissioners. The failure so to disclose such interest shall constitute misconduct in office. Upon such disclosure, such officer or employee shall not participate in any action by the authority affecting such property."

11-3A-11. Repealed.

History: Laws 1994, ch. 132, § 11; 1995, ch. 191, § 11; 2007, ch. 50, § 9.

ANNOTATIONS

Repeals. — Laws 2007, ch. 50, § 9 repealed 11-3A-11 NMSA 1978, as enacted by Laws 1994, ch. 132, § 11, relating to eminent domain, effective March 28, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

11-3A-12. State policy; operation not for profit.

A. It is declared to be the policy of this state that each regional housing authority shall manage and operate its housing projects and affordable housing programs in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations.

B. No regional housing authority shall construct or operate a housing project for profit.

C. A regional housing authority shall set the rental rates for dwellings in the housing projects it manages and operates at no higher rates than it finds to be necessary in order to produce revenues that, together with any grants or subsidies from the state or federal government or other sources for housing projects, will be sufficient to:

(1) pay, as they become due, indebtedness or other obligations of the regional housing authority incurred pursuant to the Regional Housing Law;

(2) meet the cost of and provide for maintaining and operating the housing projects, including the cost of any insurance, the administrative expenses of the regional housing authority incurred in connection with the housing projects and the funding of operational reserves the regional housing authority deems appropriate;

(3) fund operational reserves to secure the payment of indebtedness as the regional housing authority deems appropriate; and

(4) allow private, profit-making entities to enter into agreements with the regional housing authority, without the agreements affecting the nonprofit status of the regional housing authority or conflicting with the intent of the creation of the regional housing authority.

History: Laws 1994, ch. 132, § 12; 1995, ch. 191, § 10; 2009, ch. 48, § 10.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, added "regional housing authority" and "affordable housing program" and in Paragraph (3) of Subsection C, changed "bond" to "indebtedness".

The 1995 amendment, effective June 16, 1995, inserted the subsection designations for Subsections A, B and C, inserted "state or" preceding "federal" in Subsection C, redesignated former Subsections A to D as Paragraphs (1) to (4) of Subsection C, in Paragraph (3) of Subsection C, substituted "operational" for "such" and deleted "or

convenient" following "appropriate", and made minor stylistic changes throughout the section.

11-3A-13. Sales, rentals and tenant selection.

A. In the operation or management of housing projects or the sale of any property pursuant to the Regional Housing Law, a regional housing authority shall:

(1) rent, lease or sell the dwelling accommodations in the housing project only to persons falling within the standards adopted by the regional housing authority, which standards shall comply with state and federal law;

(2) rent, lease or sell to a person dwelling accommodations consisting of the number of rooms, but no greater number, that it deems necessary to provide safe and sanitary accommodations to the proposed occupants without overcrowding; and

(3) reject any person as a tenant in any federally subsidized housing project if the person has an annual gross income in excess of federally established standards.

B. Nothing contained in this section or Section 11-3A-12 NMSA 1978 shall be construed as limiting the power of a regional housing authority to vest in an obligee the right, in the event of a default by the regional housing authority, to take possession and operate a housing project or cause the appointment of a receiver for the housing project, free from all the restrictions imposed by this section or Section 11-3A-12 NMSA 1978.

History: Laws 1994, ch. 132, § 13; 1995, ch. 191, § 12; 2009, ch. 48, § 11.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, added "regional housing authority"; in Paragraph (1) of Subsection A, added the requirement that standards adopted by an authority comply with state and federal standards; in Paragraph (3) of Subsection A, added "federally subsidized" before "housing project" and changed "net income" to "gross income".

The 1995 amendment, effective June 16, 1995, deleted "at all times observe the following duties with respect to rentals, property and tenant selection" at the end of the introductory paragraph in Subsection A, deleted "it may" from the beginning of Paragraphs (1) and (2) of Subsection A, substituted "project" for "program" in Paragraph (3) of Subsection A, substituted "for the housing project" for "thereof" in Subsection B, and made minor stylistic changes throughout the section.

11-3A-14. Repealed.

History: Laws 1994, ch. 132, § 14; 1995, ch. 191, § 13; 2007, ch. 50, § 9.

ANNOTATIONS

Repeals. — Laws 2007, ch. 50, § 9 repealed 11-3A-14 NMSA 1978, as enacted by Laws 1994, ch. 132, § 14, relating to bonds, effective March 28, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

11-3A-15. Repealed.

History: Laws 1994, ch. 132, § 15; 1995, ch. 191, § 14; 2007, ch. 50, § 9.

ANNOTATIONS

Repeals. — Laws 2007, ch. 50, § 9 repealed 11-3A-15 NMSA 1978, as enacted by Laws 1994, ch. 132, § 15, relating to sale of bonds and interest on certain obligations, effective March 28, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

11-3A-16. Repealed.

History: Laws 1994, ch. 132, § 16; 1995, ch. 191, § 15; 2007, ch. 50, § 9.

ANNOTATIONS

Repeals. — Laws 2007, ch. 50, § 9 repealed 11-3A-16 NMSA 1978, as enacted by Laws 1994, ch. 132, § 16, relating to provisions of bonds and trust indentures, effective March 28, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

11-3A-17. Repealed.

History: Laws 1994, ch. 132, § 17; 1995, ch. 191, § 16; 2007, ch. 50, § 9.

ANNOTATIONS

Repeals. — Laws 2007, ch. 50, § 9 repealed 11-3A-17 NMSA 1978, as enacted by Laws 1994, ch. 132, § 17, relating to construction of bond provisions, effective March 28, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

11-3A-18. Repealed.

History: Laws 1994, ch. 132, § 18; 1995, ch. 191, § 17; 2007, ch. 50, § 9.

ANNOTATIONS

Repeals. — Laws 2007, ch. 50, § 9 repealed 11-3A-18 NMSA 1978, as enacted by Laws 1994, ch. 132, § 18, relating to bond certification of the attorney general, effective March 28, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

11-3A-19. Remedies of an obligee.

An obligee of a regional housing authority shall have the right, in addition to all other rights that may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee, to:

A. compel by mandamus, suit, action or proceeding at law or in equity, the regional housing authority and its officers, agents or employees to perform every term, provision and covenant contained in any contract of the regional housing authority with or for the benefit of the obligee and to require the carrying out of all covenants and agreements of the regional housing authority and the fulfillment of all duties imposed upon the regional housing authority by the Regional Housing Law; and

B. enjoin by suit, action or proceeding in equity, any acts or things that may be unlawful or in violation of the rights of the obligee of the regional housing authority.

History: Laws 1994, ch. 132, § 19; 1995, ch. 191, § 18; 2009, ch. 48, § 12.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, added "regional housing authority".

The 1995 amendment, effective June 16, 1995, made minor stylistic changes throughout the section.

11-3A-20. Additional remedies conferrable to an obligee.

A regional housing authority shall have the power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in indebtedness, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon default as defined in the resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

A. to cause possession of any housing project or any part of a housing project to be surrendered to the obligee and retained by the holder of debt or trustee so long as the regional housing authority continues in default;

B. to obtain the appointment of a receiver of any housing project of the regional housing authority and of the rents and profits from the housing project. If a receiver is appointed, the receiver may enter and take possession of all or a part of the housing project and, so long as the regional housing authority continues in default, operate and maintain the housing project and collect and receive all fees, rents, revenues or other charges arising from the housing project and shall keep the money in a separate account and apply it in accordance with the obligations of the regional housing authority as the court directs; and

C. to require the regional housing authority and its officers and agents to account for the money actually received as if it and they were the trustees of an express trust.

History: Laws 1994, ch. 132, § 20; 1995, ch. 191, § 19; 2009, ch. 48, § 13.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, added "regional housing authority" and in Subsection A, changed "bondholder" to "holder of debt".

The 1995 amendment, effective June 16, 1995, made minor stylistic changes throughout the section.

11-3A-21. Exemption of property from execution sale.

All real property owned or held by a regional housing authority for the purposes of the Regional Housing Law shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall be issued against property of the regional housing authority or shall any judgment against a regional housing authority be a charge or lien on the regional housing authority's real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given to them on rents, fees or revenues

History: Laws 1994, ch. 132, § 21; 1995, ch. 191, § 20; 2009, ch. 48, § 14.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, added "regional housing authority".

The 1995 amendment, effective June 16, 1995, made minor stylistic changes throughout the section.

11-3A-22. Exemption of property from taxation.

The real property of a housing project, as defined in the Regional Housing Law, is declared to be public property used for essential public and governmental purposes and is property of a regional housing authority of this state and is exempt from taxation until a deed conveying that property to a nonexempt entity is executed and delivered by the regional housing authority.

History: Laws 1994, ch. 132, § 22; 2009, ch. 48, § 15.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, added "regional housing authority".

11-3A-23. Aid from state or federal government.

In addition to the powers conferred upon a regional housing authority by other provisions of the Regional Housing Law, a regional housing authority is empowered to borrow money or accept contributions, grants or other financial assistance from the state or federal government for or in aid of any housing project or affordable housing program within its area of operation and, to these ends, to comply with conditions, trust indentures, leases or agreements as necessary, convenient or desirable. It is the purpose and intent of the Regional Housing Law to authorize every regional housing authority to do all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any housing project of a regional housing authority.

History: Laws 1994, ch. 132, § 23; 1995, ch. 191, § 21; 2009, ch. 48, § 16.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, added "regional housing authority" and "affordable housing program".

The 1995 amendment, effective June 16, 1995, added "state or" in the section heading and in the first sentence, and made minor stylistic changes throughout the section.

11-3A-24. Cooperation in undertaking housing projects and affordable housing programs.

For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects and affordable housing programs located within the area in which it is authorized to act, a local public body may, upon such terms as it may determine, with or without consideration:

A. dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or any other rights or privileges to a regional housing authority;

B. cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works that it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects and affordable housing programs;

C. furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places that it is otherwise empowered to undertake;

D. cause services to be furnished for housing projects and affordable housing programs of the character that the local public body is otherwise empowered to furnish;

E. enter into agreements with respect to the exercise by the local public body of its powers relating to the repair, elimination or closing of unsafe, unsanitary or unfit dwellings;

F. do any things necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of housing projects or affordable housing programs;

G. incur the entire expense of any public improvements made by the local public body in exercising the powers granted in the Regional Housing Law; and

H. enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a regional authority respecting action to be taken by the local public body pursuant to any of the powers granted by the Regional Housing Law. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a local public body without appraisal, public notice, advertisement or public bidding.

History: Laws 1994, ch. 132, § 24; 1995, ch. 191, § 22; 2009, ch. 48, § 17.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, added "regional housing authority" and "affordable housing programs".

The 1995 amendment, effective June 16, 1995, made minor stylistic changes throughout the section.

11-3A-25. Procedure for exercising powers.

The exercise by a regional housing authority or other local public body of the powers granted in the Regional Housing Law may be authorized by resolution of the governing body of the regional housing authority or local public body adopted by a majority of the members of its governing body present at a meeting of the governing body. The resolution may be adopted at the meeting at which the resolution is introduced. The resolution shall take effect immediately and need not be laid over or published or posted.

History: Laws 1994, ch. 132, § 25; 1995, ch. 191, § 23; 2009, ch. 48, § 18.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

The 2009 amendment, effective March 31, 2009, added "regional housing authority".

The 1995 amendment, effective June 16, 1995, made minor stylistic changes throughout the section.

11-3A-26. Supplemental nature of the regional housing law.

The powers conferred by the Regional Housing Law shall be in addition and supplemental to the powers conferred by any other law.

History: Laws 1994, ch. 132, § 26.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

11-3A-27. Repealed.

History: Laws 1994, ch. 132, § 27; 1995, ch. 191, § 24; 2007, ch. 50, § 9.

ANNOTATIONS

Repeals. — Laws 2007, ch. 50, § 9 repealed 11-3A-27 NMSA 1978, as enacted by Laws 1994, ch. 132, § 27, relating to housing bonds, effective March 28, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

11-3A-28. Law controlling.

Insofar as the provisions of the Regional Housing Law are inconsistent with the provisions of any other law, the provisions of the Regional Housing Law shall be controlling.

History: Laws 1994, ch. 132, § 28.

ANNOTATIONS

Compiler's notes. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

11-3A-29. Temporary provision; continuation of regional housing authorities and boards of commissioners.

Regional Housing Authorities and boards of commissioners created and organized under the provisions of Sections 11-3-1 through 11-3-6 NMSA 1978 [repealed] are perpetuated and shall continue to exist as Regional Housing Authorities under the Regional Housing Law. Members of the boards of commissioners of Regional Housing Authorities appointed prior to the effective date of the Regional Housing Law shall continue to serve as members of boards of commissioners, until their terms expire and their successors are appointed and qualified pursuant to the provisions of the Regional Housing Law. All existing contracts and agreements of Regional Housing Authorities in effect on the effective date of the Regional Housing Law shall continue in effect under the provisions of the Regional Housing Law.

History: Laws 1994, ch. 132, § 29.

ANNOTATIONS

Repeals. — Laws 1995, ch. 191, § 25, effective June 16, 1995, repealed Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

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

Sections 11-3-1 through 11-3-6 NMSA 1978, referred to in the first sentence, were repealed by Laws 1994, ch. 132, § 31, effective May 18, 1994.

Effective dates. — The effective date of the Regional Housing Law is May 18, 1994.

11-3A-30. Financial and operational oversight.

A. Without the prior approval of the New Mexico mortgage finance authority, no regional housing authority shall:

(1) enter into any contract, memorandum of understanding or other agreement with a value greater than one hundred thousand dollars ($100,000); or

(2) transfer, sell or liquidate any real or personal property with a value greater than one hundred thousand dollars ($100,000).

B. Not less than thirty days prior to the beginning of its fiscal year, each regional housing authority and each nonprofit corporation established pursuant to Section 11-3A-9 NMSA 1978 shall submit a final operating budget for the subsequent fiscal year to the New Mexico mortgage finance authority for review.

C. The financial affairs of every regional housing authority and any nonprofit corporation created by a regional housing authority shall be thoroughly examined and audited annually by the state auditor, by personnel of the state auditor's office designated by the state auditor or by auditors approved by the state auditor. The audits shall be conducted in accordance with generally accepted auditing standards. Each regional housing authority shall submit to the state auditor, the department of finance and administration, the New Mexico mortgage finance authority, the Mortgage Finance Authority Act oversight committee and the legislative finance committee, within thirty days following the receipt of the annual audit of the regional housing authority, a copy of that audit.

D. Every regional housing authority shall submit an annual report of its financial and operational activities to the New Mexico mortgage finance authority for review and analysis and for dissemination to the department of finance and administration, the Mortgage Finance Authority Act oversight committee and the legislative finance committee. Each report shall set forth a complete operating and financial statement covering its operations since the previous report was presented.

E. Failure on the part of a regional housing authority to correct any qualified audit within one year of the release of the audit shall result in the abatement of any state funds until such corrective actions are taken. If a regional housing authority should receive a qualified audit opinion for more than two consecutive years, the oversight agency shall recommend corrective action to be taken.

History: Laws 2007, ch. 50, § 6; 2009, ch. 48, § 19.

ANNOTATIONS

The 2009 amendment, effective March 31, 2009, added "regional housing authority"; in Subsection A, deleted "department of finance and administration" and added "New Mexico mortgage finance authority"; in Paragraph (1) of Subsection A, changed "$50,000" to "$100,000"; in Paragraph (2) of Subsection A, changed "$20,000" to "$100,000"; in Subsection B, required review of the annual operating budget by the New Mexico mortgage finance authority; deleted former provisions requiring approval of an operating budged by the department of finance and administration and for budget adjustments; deleted former Subsection C that provided for annual needs assessments of programs by the New Mexico mortgage finance authority; and added Subsections C, D and E.

11-3A-31. Transitional provisions; commissioners; contracts and agreements.

A. Members of boards of commissioners of regional housing authorities appointed prior to March 31, 2009 shall continue to serve as members of boards of commissioners until their terms expire or their successors are appointed and qualified pursuant to the provisions of Laws 2009, Chapter 48.

B. All contracts and agreements of regional housing authorities in effect on March 31, 2009 shall continue in effect.

C. Property or an interest in property owned by a regional housing authority prior to the consolidation of regional housing authorities pursuant to Laws 2009, Chapter 48 shall be deemed to be owned by the regional housing authority whose region pursuant to Section 11-3A-4 NMSA 1978 includes the county where the property is located.

History: Laws 2009, ch. 48, § 20; 2019, ch. 85, § 3.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, clarified the ownership of property when regional housing authorities consolidate; changed two occurrences of "the effective date of this 2009 act" to "March 31, 2009"; in Subsection A, changed "this 2009 act" to "Laws 2009, Chapter 48"; and added Subsection C.

ARTICLE 4
Housing Authority (Repealed.)

11-4-1. Repealed.

History: 1953 Comp., § 4-30A-1, enacted by Laws 1975, ch. 102, § 1; repealed by Laws 1998, ch. 63, § 7.

ANNOTATIONS

Repeals. — Laws 1998, ch. 63, § 7, repealed 11-4-1 NMSA 1978, as enacted by Laws 1975, ch. 102, § 1, relating to the short title of the Housing Authority Act, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*. For transfer of the functions of the housing authority to the New Mexico mortgage finance authority, *see* 58-18-5.5 NMSA 1978.

11-4-2. Repealed.

History: 1953 Comp., § 4-30A-2, enacted by Laws 1975, ch. 102, § 2; repealed by Laws 1998, ch. 63, § 7.

ANNOTATIONS

Repeals. — Laws 1998, ch. 63, § 7, repealed 11-4-2 NMSA 1978, as enacted by Laws 1975, ch. 102, § 2, relating to legislative intent, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

11-4-3. Repealed.

History: 1953 Comp., § 4-30A-3, enacted by Laws 1975, ch. 102, § 3; repealed by Laws 1998, ch. 63, § 7.

ANNOTATIONS

Repeals. — Laws 1998, ch. 63, § 7, repealed 11-4-3 NMSA 1978, as enacted by Laws 1975, ch. 102, § 3, relating to definitions, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

11-4-4. Repealed.

History: 1953 Comp., § 4-30A-4, enacted by Laws 1975, ch. 102, § 4; 1977, ch. 247, § 31; 1983, ch. 296, § 23; 1991, ch. 21, § 30; repealed by Laws 1998, ch. 63, § 7.

ANNOTATIONS

Repeals. — Laws 1998, ch. 63, § 7, repealed 11-4-4 NMSA 1978, as enacted by Laws 1975, ch. 102, § 4, relating to housing authority created, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

11-4-5. Repealed.

History: 1953 Comp., § 4-30A-5, enacted by Laws 1975, ch. 102, § 5; 1979, ch. 20, § 1; repealed by Laws 1998, ch. 63, § 7.

ANNOTATIONS

Repeals. — Laws 1998, ch. 63, § 7, repealed 11-4-5 NMSA 1978, as enacted by Laws 1975, ch. 102, § 5, relating to powers and duties defined, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

11-4-6. Repealed.

History: 1953 Comp., § 4-30A-6, enacted by Laws 1975, ch. 102, § 6; 1977, ch. 247, § 32; 1983, ch. 296, § 24; 1991, ch. 226, § 1; repealed by Laws 1998, ch. 63, § 7.

ANNOTATIONS

Repeals. — Laws 1998, ch. 63, § 7, repealed 11-4-6 NMSA 1978, as enacted by Laws 1975, ch. 102, § 6, relating to committee creation and membership, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

11-4-7. Repealed.

History: 1953 Comp., § 4-30A-7, enacted by Laws 1975, ch. 102, § 7; repealed by Laws 1998, ch. 63, § 7.

ANNOTATIONS

Repeals. — Laws 1998, ch. 63, § 7, repealed 11-4-7 NMSA 1978, as enacted by Laws 1975, ch. 102, § 7, relating to committee functions defined, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

11-4-8. Repealed.

History: 1953 Comp., § 4-30A-8, enacted by Laws 1975, ch. 102, § 8; repealed by Laws 1998, ch. 63, § 7.

ANNOTATIONS

Repeals. — Laws 1998, ch. 63, § 7, repealed 11-4-8 NMSA 1978, as enacted by Laws 1975, ch. 102, § 8, relating to conflict of interest, committee members, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

ARTICLE 5
Bicentennial Grant-in-Aid

11-5-1. Short title.

This act [11-5-1 to 11-5-3 NMSA 1978] may be cited as the "Bicentennial Grant-in-Aid Act."

History: 1953 Comp., § 4-35-10, enacted by Laws 1975, ch. 195, § 1.

11-5-2. State bicentennial grant-in-aid fund.

There is created the state bicentennial grant-in-aid fund in the office of the state treasurer.

History: 1953 Comp., § 4-35-11, enacted by Laws 1975, ch. 195, § 2.

11-5-3. Administration; cost-sharing formula; limitations.

The New Mexico American revolution bicentennial commission [repealed], a division within the state park and recreation commission [state parks division of the energy, minerals and natural resources department], shall administer the state bicentennial grant-in-aid fund and shall process all applications for grants from the state bicentennial grant-in-aid fund. Funds from the state bicentennial grant-in-aid fund shall be made available only upon the condition that the proceeds are matched by local or other state funds on the following basis: at least fifty percent shall be local or other state funds, which may be composed of not more than twenty-five percent in-kind services, and the remainder shall be from the state bicentennial grant-in-aid fund.

State agencies or institutions and incorporated municipalities or counties sponsoring projects of unincorporated communities, including, but not limited to Indian communities, shall be entitled to receive funds from the state bicentennial grant-in-aid fund as prescribed and approved by the New Mexico American revolution bicentennial commission. Projects proposed must be in accordance with provisions of the American revolution bicentennial administration project matching grant guidelines pursuant to Section 9 (b) of P.L. 93-179 and the New Mexico American revolution bicentennial commission's "criteria statement" and the standard contract agreement between the New Mexico state park and recreation commission bicentennial division and the participant. All terminology contained within these respective documents relating to nonprofit organizations shall be disregarded, as such entities are not eligible for state financial assistance. State funds shall be made available for expenditure by the applicant state agency or institution or political subdivision once the project is approved by the New Mexico American revolution bicentennial commission and the applicant demonstrates the availability and source of funds required for its share in the total project cost.

History: 1953 Comp., § 4-35-12, enacted by Laws 1975, ch. 195, § 3; 1976 (S.S.), ch. 55, § 1.

ANNOTATIONS

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

The New Mexico American revolution bicentennial commission, referred to in this section, was created by Laws 1973, ch. 249, § 2, which was compiled as § 4-35-6, 1953 Comp. Section 4-35-6, 1953 Comp., was repealed by Laws 1977, ch. 246, § 70, effective March 31, 1978.

Laws 1977, ch. 254, § 4, abolished the parks and recreation commission. Section 3 of that act established the natural resources department, consisting of several divisions, including the state park and recreation division, which was created by § 11 of the act.

Laws 1987, ch. 234 repealed the provisions relating to the natural resources department and created the energy, minerals, and natural resources department, including the state parks division. *See* 9-5A-3 and 9-5A-6.1 NMSA 1978.

ARTICLE 6
New Mexico Community Assistance

11-6-1. Short title.

This act may be cited as the "New Mexico Community Assistance Act."

History: 1953 Comp., § 14-64-1, enacted by Laws 1977, ch. 299, § 1.

ANNOTATIONS

Compiler's notes. — The term "this act" refers to Laws 1977, ch. 299, which is compiled as 11-6-1 to 11-6-3, 11-6-4, 11-6-5, 11-6-6, 11-6-7 to 11-6-9 NMSA 1978.

11-6-2. Legislative findings and statement of purpose.

A. The development of infrastructure needs of local communities, including but not limited to water, sewage treatment, power, transportation and communication, is a prerequisite to economic development in all areas of the state. Local communities cannot finance these infrastructure needs alone because of inadequate bonding capacity, lag time between development and the generation of revenue and the dependency of economic development on an adequate infrastructure.

B. The legislature finds and declares that, to aid local communities in providing adequate, safe and sanitary services, a community assistance program is needed, particularly for those communities faced with rapid growth or loss of their tax base. A council should be created to review proposals submitted by political subdivisions and to

allocate funding from several sources, including severance tax bonds as approved and issued by the state board of finance, community development block grants from the federal government and such other sources of funding as the legislature may specify from time to time for financing needed projects for local community infrastructure development.

C. In order to maximize the utilization of various sources of funding, the legislature designates the local government division of the department of finance and administration as the central clearinghouse and administering and coordinating agency for state and federally funded programs for local community infrastructure development to provide for a common application and funding cycle, promote efficiency, prevent confusion and duplication and limit paperwork for communities seeking assistance.

History: 1978 Comp., § 11-6-2, enacted by Laws 1984, ch. 5, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1984, ch. 5, § 2, repealed former 11-6-2 NMSA 1978, as amended by Laws 1983, ch. 298, § 1, and enacted a new section.

Cross references. — For local government division of the department of finance and administration, *see* 6-6-2 NMSA 1978.

11-6-3. Definitions.

As used in the New Mexico Community Assistance Act:

A. "council" means the New Mexico community development council;

B. "project" means, except as limited by the state constitution, the purchase, construction, lease, gift, grant, reconstruction, improvement, option to purchase or other acquisition of educational, cultural, recreational, community, municipal, social service or other facilities by a political subdivision, including but not limited to publicly owned water systems, sewer systems, municipal utilities, roads, streets, highways, curbs, gutters, sidewalks, storm sewers, street lighting, traffic control devices, parking facilities, vocational training and rehabilitation facilities, airports, hospitals, nursing homes, publicly owned mental health, alcohol and drug abuse, child abuse and family counseling facilities, juvenile detention homes, swimming pools, parks, auditoriums, public buildings, libraries, fire and police stations, jails, waste disposal systems and sites, special assessment district improvements and all necessary real and personal property therefor, but does not include facilities for the public schools;

C. "community assistance program" means a program to assist political subdivisions with infrastructure development, which may include but is not limited to:

(1) a grant or loan of funds to the political subdivisions;

(2) gathering data about the political subdivisions;

(3) providing technical assistance to analyze the needs and seek solutions to problems related to infrastructure development in political subdivisions; and

(4) providing technical assistance in seeking funds from sources other than the council;

D. "division" means the local government division of the department of finance and administration; and

E. "political subdivision" means any county; incorporated city, town or village; drainage, conservancy, irrigation, water and sanitation or other district; mutual domestic association; public water cooperative association; or community ditch association.

History: 1953 Comp., § 14-64-3, enacted by Laws 1977, ch. 299, § 3; 1981 (1st S.S.), ch. 11, § 1; 1984, ch. 5, § 3.

ANNOTATIONS

The 1984 amendment, effective July 1, 1984, substituted "development" for "assistance" in Subsection A, deleted "within a region affected by mineral and energy development to effectuate the purposes of the New Mexico Community Assistance Act" following "political subdivision" in Subsection B, substituted "with infrastructure development" for "impacted by mineral and energy development in New Mexico" in the introductory paragraph in Subsection C, inserted "or loan" and deleted "impacted" preceding "political" in Subsection C(1), substituted "infrastructure" for "mineral or energy" in Subsection C(3) and added Subsections D and E.

11-6-3.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 298, § 5, repealed 11-6-3.1 NMSA 1978, as enacted by Laws 1981, ch. 89, § 1, including carbon dioxide in the definition of mineral for the New Mexico Community Assistance Act, effective April 7, 1983.

11-6-4. New Mexico community development council; established; appointment; terms; officers.

A. The "New Mexico community development council" is created.

B. The council shall consist of

(1) the secretary of finance and administration or a member of his staff designated by him;

(2) the governor or a member of his staff designated by him;

(3) the secretary of health and environment or a member of his staff designated by him;

(4) the lieutenant governor or a member of his staff designated by him; and

(5) seven members appointed by the governor. Appointments shall be made for three-year terms expiring on January 1 of the appropriate year. Each of the following districts shall be represented by one member who shall reside in that district:

(a) district one - San Juan, McKinley and Cibola counties;

(b) district two - Rio Arriba, Santa Fe, Taos, Los Alamos, Colfax, Mora and San Miguel counties;

(c) district three - Bernalillo, Sandoval, Torrance and Valencia counties;

(d) district four - Union, Harding, Quay, Guadalupe, DeBaca, Roosevelt and Curry counties;

(e) district five - Catron, Hidalgo, Luna and Grant counties;

(f) district six - Lincoln, Otero, Chaves, Eddy and Lea counties; and

(g) district seven - Sierra, Dona Ana and Socorro counties.

Appointment of the two additional members provided for in the 1984 amendment to this subsection shall be for terms expiring on January 1, 1986 and January 1, 1987, and thereafter for three years.

C. An appointed member's term may be terminated by the governor for good cause shown.

D. Appointed members shall serve in office until their successors are appointed unless sooner removed according to law. If a vacancy occurs in the office of an approved member by death, resignation or otherwise, the governor shall appoint a successor to serve for the balance of the unexpired term.

E. The governor shall select one member to be chairman of the council. The council shall select such other officers as it deems necessary.

History: 1953 Comp., § 14-64-4, enacted by Laws 1977, ch. 299, § 4; 1978, ch. 63, § 1; 1981 (1st S.S.), ch. 11, § 2; 1983, ch. 296, § 15; 1983, ch. 298, § 2; 1984, ch. 5, § 4.

ANNOTATIONS

Compiler's notes. — Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the department of health and environment, and enacted new 9-7-4 NMSA 1978, relating to the department of health. Laws 1991, ch. 25 also enacted 9-7A-1 to 9-7A-14 NMSA 1978, relating to the department of the environment. The reference to the secretary of health and environment in Paragraph B(3) should now be a reference to either the secretary of health or the secretary of environment. *See* 9-7-5 NMSA 1978 and 9-7A-5 NMSA 1978.

Cross references. — For governor's office of policy and planning, *see* 9-14-3 NMSA 1978.

The 1984 amendment, effective July 1, 1984, substituted "development" for "assistance" in the section heading and in Subsection A and rewrote the rest of the section to the extent that a detailed comparison is impracticable.

11-6-4.1. Regulations.

A. The council, after public hearing, shall adopt regulations to provide for:

(1) procedures and forms for making grants under the New Mexico Community Assistance Act;

(2) documentation to be provided by the proposed grantee to justify the need for the community assistance program;

(3) procedures for review, evaluation and approval of grants;

(4) procedures for reporting by the grantee of programmatic, organizational and financial information necessary to the review, evaluation and approval of a proposed or existing grant to be funded or which is funded by the council;

(5) a guide for the evaluation of the ability and competence of a proposed or existing grantee to efficiently and adequately provide for the completion of the project;

(6) development and phase-in of a common application form and funding cycle insofar as practical for all state and federal grant or loan programs for local community infrastructure development administered or coordinated by the division;

(7) procedures for the coordination and handling of applications for all state and federal grant or loan programs administered and coordinated by the division;

(8) procedures to control the number of applications from each political subdivision; and

(9) such other requirements deemed necessary by the council to ensure that the state receives the services for which the legislature appropriated money.

B. Regulations adopted by the council shall become effective when filed according to the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1978 Comp., § 11-6-4.1, enacted by Laws 1981 (1st S.S.), ch. 11, § 3; 1984, ch. 5, § 5.

ANNOTATIONS

The 1984 amendment, effective July 1, 1984, in Subsection A, deleted "Prior to January 1, 1982" at the beginning of the introductory paragraph, inserted "New Mexico" in Paragraph (1), inserted "assistance" in Paragraph (2), inserted present Paragraphs (6), (7), and (8) and redesignated former Paragraph (6) as present Paragraph (9).

11-6-5. Powers of the council.

The council shall have all the powers necessary to carry out the purposes and provisions of the New Mexico Community Assistance Act, including but not limited to the power to:

A. develop and oversee the administration of community assistance programs;

B. adopt, amend and repeal, in accordance with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978] and with technical assistance from the staff of the division, all regulations necessary to administer and enforce the provisions of the rules of the New Mexico Community Assistance Act;

C. apply to any appropriate agency of the United States for participation in and for receipt of aid from any program designed to assist local community infrastructure development;

D. oversee the administration of federal and other funds which are received, controlled or disbursed for the purposes of carrying out the provisions of the community assistance program;

E. coordinate and mobilize assistance and funding resources in regard to the construction, extension or repair of projects;

F. coordinate with, assist and seek input from political subdivisions, community organizations and civic groups;

G. make and enter into all contracts and agreements necessary or incidental to its duties and the execution of its powers under the New Mexico Community Assistance Act;

H. do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the New Mexico Community Assistance Act; and

I. disburse and oversee the administration of any other funds appropriated to the council or as directed by the legislature.

History: 1953 Comp., § 14-64-5, enacted by Laws 1977, ch. 299, § 5; 1978, ch. 63, § 2; 1984, ch. 5, § 6.

ANNOTATIONS

The 1984 amendment, effective July 1, 1984, substituted "oversee the administration of" for "administer" in Subsection A, "staff of the division" for "energy and minerals department staff" in Subsection B, "local community infrastructure development" for "areas of rapid growth occasioned by the impact of energy or mineral development" in Subsection C and "oversee the administration of" for "administer" in Subsection D and added Subsection I.

11-6-5.1. Powers and duties of the division.

The division, in accordance with regulations adopted pursuant to Section 11-6-4.1 NMSA 1978, shall have the power and duty to:

A. act as a clearinghouse, provide coordination and handle applications for all state and federal grant or loan programs for local community infrastructure development;

B. develop and adopt, insofar as possible, a common application form and funding cycle for all state and federal grant or loan programs for local community infrastructure development, including but not limited to programs under the New Mexico Community Assistance Act, the Water Supply Construction Act [Rural Infrastructure Act], the development fund, any state or federal solid waste management program, the federal wastewater treatment construction grants program, any state wastewater treatment construction grant or loan programs and federal community development block grant funds;

C. forward all applications for federal wastewater treatment construction grants to the water quality control commission or its designated constituent agency within five working days of receipt; provided that the water quality control commission and its designated constituent agency shall have authority for the administration of federal wastewater treatment construction grant funds, including determining eligibility of grant applicants, establishing priority systems and priority lists for grant applicants, technically reviewing grant applications and approving or denying grant applications;

D. administer federal community development block grant funds and all other federal and state grant or loan programs for local community infrastructure development

for which the council has oversight responsibility or where such administration is not otherwise provided for by law; and

E. make and enter into all contracts and agreements necessary or incident to its duties and the execution of its powers under the New Mexico Community Assistance Act.

History: 1978 Comp., § 11-6-5.1, enacted by Laws 1984, ch. 5, § 7.

ANNOTATIONS

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

Laws 1988, ch. 28, § 1 changed the name of the Water Supply Construction Act to the Rural Infrastructure Act.

Cross references. — For the water quality control commission, *see* 74-6-3 NMSA 1978.

11-6-6. Community assistance application requirements.

A. A political subdivision desiring a grant of funds from the council shall file an application for a grant of funds with the council, which shall contain at least the following:

(1) a general description of the proposed project and a general description of related existing facilities, if any;

(2) a general description of all real estate, if any, necessary for the proposed project;

(3) preliminary plans and other documents necessary to show the type, structure and general character of the proposed project;

(4) estimates of cost of the proposed project;

(5) a general description and statement of value of any property, real or personal, of the political subdivision applied or to be applied to the proposed project;

(6) a statement of cash funds previously applied, or currently held by or on behalf of the political subdivision, which are available for and are to be applied to the proposed project;

(7) evidence of the arrangement made by the political subdivision for the financing of all costs of the proposed project in excess of the requested assistance from the council;

(8) evidence that the political subdivision has the organizational and technical competence to utilize the requested funds efficiently; and

(9) evidence that the political subdivision can properly operate and maintain the facility to be constructed for its useful life.

B. After receipt of an application for a grant of funds, the division shall provide copies of the application to appropriate state agencies, who shall have fifteen working days to review the application and communicate their comments to the council. The division shall also review all applications and submit its recommendations to the council. In deciding whether or not to approve assistance funds, the council except as provided by applicable federal law shall consider, but is not limited to:

(1) the health and safety of the residents to be served by the proposed project;

(2) the needs of other political subdivisions for infrastructure development funding; and

(3) other sources of funds available to the political subdivision to fund the proposed project.

C. All action shall be taken by vote of a majority of the members of the council.

D. The division shall, upon a decision by the council to approve assistance funds to a political subdivision, notify all appropriate state agencies of the project and request that they monitor it to assure that all statutes, rules and regulations are complied with and that standards are maintained.

History: 1953 Comp., § 14-64-6, enacted by Laws 1977, ch. 299, § 6; 1984, ch. 5, § 8.

ANNOTATIONS

The 1984 amendment, effective July 1, 1984, substituted "council" for "authority" in Subsection A(7) and added Subsection A(9); in the introductory paragraph of Subsection B, substituted "division shall" for "council will" and "shall" for "will" following "who" and inserted "working" following "fifteen" in the first sentence, inserted the second sentence and substituted "approve" for "recommend approval of" and inserted "except as provided by applicable federal law" in the third sentence; substituted "for infrastructure development funding" for "impacted by mineral and energy development in New Mexico" in Subsection B(2); and rewrote former Subsections D and E as present Subsection D.

11-6-6.1. Requirements.

A. No project which will result in increased demand for water in the area of the project shall be recommended for approval by the council until the council is satisfied that the political subdivision either holds or can acquire water rights sufficient to meet the increase in demand. Nothing in this subsection shall be construed to require any political subdivision to submit information in an application under Section 11-6-6 NMSA 1978 which information would not be required under that section.

B. The council shall not approve a grant of funds for any political subdivision unless the council is satisfied that the political subdivision has taken all reasonable steps to use other sources of funding.

C. Of the grants made in any one fiscal year, at least fifteen percent of the dollar amount shall be made to counties with populations of less than fifteen thousand and other political subdivisions with populations of less than three thousand or on behalf of areas with populations of less than three thousand. For such grants, regardless of funding source, the council may, if it finds such to be in the public interest, waive any requirements to use other sources of funding.

D. No grant in excess of five hundred thousand dollars ($500,000) for any one project shall be made to a political subdivision in any one fiscal year, provided that this maximum does not apply to state funds for matching federal wastewater treatment facility construction grants.

E. In making grants from state funds that are not limited to a particular type of project, the council shall give priority to the needs of political subdivisions impacted either by rapid growth or loss of tax base.

History: 1978 Comp., § 11-6-6.1, enacted by Laws 1979, ch. 166, § 4; 1981 (1st S.S.), ch. 11, § 4; 1983, ch. 298, § 3; 1984, ch. 5, § 9.

ANNOTATIONS

The 1984 amendment, effective July 1, 1984, rewrote Subsection B, deleting paragraph designations (1), (2) and (3), being the criteria to be used by the council in recommending a grant of funds, deleted former Subsection C, which read "Special consideration by the council shall be given to highway, road and street improvements," and added Subsections C, D, and E.

The 1983 amendment, effective April 7, 1983, inserted "carbon dioxide" near the middle of the last sentence of Paragraph (1) of Subsection B, added the last sentence of Paragraph (3) of Subsection B, and substituted "shall" for "will" near the middle of Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53A Am. Jur. 2d Mines and Minerals §§ 4, 5, 7, 8, 9, 11, 26.

What are "minerals" within deed, lease, or license, 17 A.L.R. 156, 86 A.L.R. 983.

58 C.J.S. Mines and Minerals § 1 et seq.

11-6-6.2. Repealed.

ANNOTATIONS

Repeals. — Laws 1983, ch. 298, § 5, repealed 11-6-6.2 NMSA 1978, as enacted by Laws 1981 (S.S.), ch. 11, § 5, relating to grants of funds to political subdivisions for studies of the impact of mineral and energy development, effective April 7, 1983.

11-6-7. Ownership.

Upon completion of the project, ownership of the project will reside with the political subdivision which constructed the project.

History: 1953 Comp., § 14-64-7, enacted by Laws 1977, ch. 299, § 8.

11-6-8. Staff.

The staff of the division shall be the staff of the council and shall provide technical assistance, compile data, evaluate the effectiveness of the program and report its findings to the legislature.

History: 1953 Comp., § 14-64-8, enacted by Laws 1977, ch. 299, § 9; 1978, ch. 63, § 3; 1984, ch. 5, § 10.

ANNOTATIONS

The 1984 amendment, effective July 1, 1984, substituted "division" for "energy and mineral department" near the beginning of the section.

11-6-9. Assistance by state agencies.

A. Upon request of the council, any state agency is authorized and empowered to temporarily assign to the council such officers and employees as it may deem necessary from time to time to assist the council in carrying out its functions and duties under the New Mexico Community Assistance Act. The officers and employees so assigned shall not lose their status or rights as public employees.

B. Upon request of the council, any state agency, or officer or employee thereof, is authorized and empowered to lend such technical assistance, render advice and attend meetings with directors and employees of the council as the council may require in carrying out its functions and duties.

History: 1953 Comp., § 14-64-9, enacted by Laws 1977, ch. 299, § 10.

ARTICLE 6A
Local DWI Grant Program

11-6A-1. Short title.

Sections 1 through 5 [11-6A-1 to 11-6A-5 and 11-6A-6 NMSA 1978] of this act may be cited as the "Local DWI Grant Program Act".

History: Laws 1993, ch. 65, § 1.

ANNOTATIONS

Compiler's notes. — Section 11-6A-6 NMSA 1978 was added to the Local DWI Grant Program Act by Laws 1997, ch. 182, § 2.

11-6A-2. Definitions.

As used in the Local DWI Grant Program Act:

A. "council" means the DWI grant council; and

B. "division" means the local government division of the department of finance and administration.

History: Laws 1993, ch. 65, § 2.

11-6A-3. Local DWI grant program; fund.

A. The division shall establish a local DWI grant program to make grants to municipalities or counties for:

(1) new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism, alcohol abuse, drug addiction or drug abuse; and

(2) programs, services or activities to prevent or reduce the incidence of domestic abuse related to DWI, alcoholism, alcohol abuse, drug addiction or drug abuse.

B. Grants shall be awarded by the council pursuant to the advice and recommendations of the division.

C. The "local DWI grant fund" is created in the state treasury and shall be administered by the division. Three million dollars ($3,000,000) of liquor excise tax revenues distributed to the fund and all other money in the fund, other than money appropriated for distribution pursuant to Subsections D and E of this section and money appropriated for DWI program distributions, are appropriated to the division to make grants to municipalities and counties upon council approval in accordance with the program established under the Local DWI Grant Program Act and to evaluate DWI grantees and the local DWI grant program. Money in the fund may be used for drug courts. An amount equal to the liquor excise tax revenues distributed annually to the fund, less six million one hundred thousand dollars ($6,100,000), is appropriated to the division to make DWI program distributions to counties upon council approval of programs in accordance with the provisions of the Local DWI Grant Program Act. No more than one million one hundred thousand dollars ($1,100,000) of liquor excise tax revenues distributed to the fund in any fiscal year shall be expended for administration of the grant program. Balances in the fund at the end of any fiscal year shall not revert to the general fund.

D. Two million eight hundred thousand dollars ($2,800,000) of the liquor excise tax revenues distributed to the local DWI grant fund is appropriated to the division for distribution to the following counties in the following amounts for funding of alcohol detoxification and treatment facilities:

(1) one million seven hundred thousand dollars ($1,700,000) to class A counties with a population of over three hundred thousand persons according to the 1990 federal decennial census;

(2) three hundred thousand dollars ($300,000) each to counties reclassified in 2002 as class A counties with a population of more than ninety thousand but less than one hundred thousand persons according to the 1990 federal decennial census;

(3) two hundred thousand dollars ($200,000) to class B counties with a population of more than thirty thousand but less than forty thousand persons according to the 1990 federal decennial census;

(4) one hundred fifty thousand dollars ($150,000) to class B counties with a population of more than sixty-two thousand but less than sixty-five thousand persons according to the 1990 federal decennial census; and

(5) one hundred fifty thousand dollars ($150,000) to class B counties with a population of more than thirteen thousand but less than fifteen thousand persons according to the 1990 federal decennial census.

E. Three hundred thousand dollars ($300,000) of the liquor excise tax revenues distributed to the local DWI grant fund is appropriated to the division for the interlock device fund.

F. In awarding DWI grants to local communities, the council:

(1) may fund new or existing innovative or model programs, services or activities designed to prevent or reduce the incidence of DWI, alcoholism or alcohol abuse;

(2) may fund existing community-based programs, services or facilities for prevention, screening and treatment of alcoholism and alcohol abuse;

(3) may fund new or existing innovative or model programs, services or activities of any kind designed to prevent or reduce the incidence of domestic abuse related to DWI, alcoholism or alcohol abuse;

(4) may fund existing community-based programs, services or facilities for prevention and treatment of domestic abuse related to DWI, alcoholism or alcohol abuse;

(5) shall give consideration to a broad range of approaches to prevention, education, screening, treatment or alternative sentencing, including programs that combine incarceration, treatment and aftercare, to address the problem of DWI, alcoholism or alcohol abuse; and

(6) shall make grants only to counties or municipalities in counties that have established a DWI planning council and adopted a county DWI plan or are parties to a multicounty DWI plan that has been approved by the council and approved pursuant to Chapter 43, Article 3 NMSA 1978 and only for programs, services or activities consistent with that plan. A DWI plan shall also comply with local DWI grant program rules and guidelines.

G. The council shall use the criteria in Subsection F of this section to approve DWI programs, services or activities for funding through the county DWI program distribution. Sixty-five percent of the DWI grants awarded to local communities shall be used for alcohol-related treatment and detoxification programs.

History: Laws 1993, ch. 65, § 3; 1997, ch. 182, § 3; 1999, ch. 18, § 1; 2000, ch. 83, § 2; 2001, ch. 112, § 2; 2003, ch. 213, § 1; 2013, ch. 98, § 1; 2025, ch. 8, § 1.

ANNOTATIONS

Cross references. — For distribution from liquor excise tax revenues, *see* 7-1-6.40 NMSA 1978.

The 2025 amendment, effective July 1, 2025, increased the amount of the local DWI grant fund that may be used for administration of the local DWI grant program; in Subsection C, after "administered by the division" deleted "Two million five hundred thousand dollars ($2,500,000)" and added "Three million dollars ($3,000,000)", after "distributed annually to the fund, less" deleted "five million six hundred thousand dollars ($5,600,000)" and added "six million one hundred thousand dollars ($6,100,000)", and after "No more than" deleted "six hundred thousand dollars ($600,000)", and added "one million one hundred thousand dollars ($1,100,000)".

The 2013 amendment, effective June 14, 2013, provided for the distribution of revenues to the interlock device fund; and in Subsection E, after "interlock device fund", deleted "to cover the costs of installing and removing ignition interlock devices for indigent people who are required, pursuant to convictions under Section 66-8-102 NMSA 1978, to install those devices in their vehicles".

The 2003 amendment, effective July 1, 2003, rewrote former Subsection A to create present Subsections A and B and redesignated former Subsections B and C as present Subsections C and D; rewrote present Subsection C; substituted "reclassified in 2002 as class A counties" for "classified in 2000 as class B counties" following "each to counties" near the beginning of present Subsection D(2); added present Subsection E and redesignated the subsequent subsections accordingly; inserted present Subsections F(3) and F(4) and redesignated former Subsections F(3) and F(4) as present Subsections F(5) and F(6); and in Subsection G, substituted "F" for "D" following "Subsection" near the beginning and added "Sixty-five percent of the DWI grants awarded to local communities shall be used for alcohol-related treatment and detoxification programs." at the end.

The 2001 amendment, effective July 1, 2001, in Subsection B, deleted "in fiscal year 2002" following "other than money appropriated", substituted "four million eight hundred thousand dollars ($4,800,000)" for "four million dollars ($4,000,000) in fiscal year 2002 and two million dollars ($2,000,000) in each fiscal year thereafter"; in Subsection C, substituted "Two million eight hundred thousand dollars ($2,800,000)" for "In fiscal year 2002, two million dollars ($2,000,000)" in the preliminary language; in Paragraph (2), inserted "each to counties classified in 2000 as", substituted "one hundred thousand persons" for "ninety-six thousand persons", and added Paragraph (3).

The 2000 amendment, effective July 1, 2001, in Subsection B, inserted "appropriated in fiscal year 2002 for distribution pursuant to Subsection C of this section and money" in the second sentence, substituted "four million dollars ($4,000,000) in fiscal year 2001 and two million dollars ($2,000,000) in each fiscal year thereafter" for "two-million dollars ($2,000,000)" in the third sentence, and substituted "one hundred thousand dollars ($100,000)" for "five percent of the two million dollars ($2,000,000)" in the fourth sentence; added a new Subsection C, redesignating the remaining subsections accordingly; and updated the internal reference in present Subsection D.

The 1999 amendment, effective June 18, 1999, in Subsection C, inserted "or existing" in Paragraph (1) and redesignated former Paragraphs (4) and (5) as present Paragraphs (3) and (4).

The 1997 amendment, effective July 1, 1998, in Subsection A, substituted "Two million dollars ($2,000,000) of liquor excise tax revenues distributed to the fund and all other money in the fund, other than money appropriated for DWI program distributions, are" for "Money in the fund is" in the first sentence, added the second sentence, and substituted "the two million dollars ($2,000,000) of liquor excise tax revenues distributed" for "any appropriation" in the third sentence; rewrote Paragraph (3) of Subsection C; and added Subsection D.

11-6A-4. DWI grant council; membership; duties.

A. The "DWI grant council" is created and shall consist of the president of the New Mexico municipal league or his designee, the president of the New Mexico association of counties or his designee, the secretary of health or the secretary's designee, the secretary of finance and administration or the secretary's designee, the chief of the traffic safety bureau of the state highway and transportation department and two representatives of local governing bodies who shall be appointed by the governor so as to provide geographic diversity.

B. Appointed members shall be appointed to a two-year term. In the event of a vacancy, the governor shall appoint a member for the remainder of the term.

C. The council shall meet as necessary to receive applications, consider grant requests and award DWI grants pursuant to the Local DWI Grant Program Act. All actions of the council require the affirmative vote of a majority of the members of the council.

D. Members of the council shall be reimbursed for per diem and mileage in accordance with the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

History: Laws 1993, ch. 65, § 4; 2001, ch. 186, § 1.

ANNOTATIONS

Cross references. — For local government division, *see* 6-6-2 NMSA 1978.

For traffic safety bureau, *see* 66-7-504 NMSA 1978.

The 2001 amendment, effective June 15, 2001, in Subsection A, inserted "or his designee" following "municipal league" and "association of counties".

11-6A-5. Administration of local DWI grant program and county DWI program distribution; regulations.

A. The division shall administer and evaluate the local DWI grant program and the county DWI program distribution and shall serve as staff to the council.

B. The division, with the advice and approval of the council, shall adopt regulations necessary for operation of the local DWI grant program and the county DWI program distribution, including:

(1) forms and procedures for the application process for the local DWI grant program and the county DWI program distribution;

(2) documentation to be provided by the applicant to assure compliance with the grant and the county DWI program distribution guidelines and other provisions of the Local DWI Grant Program Act;

(3) procedures and guidelines for review, evaluation and approval of grant awards and for review and approval of programs to be funded by the county DWI program distribution;

(4) procedures and guidelines for oversight, evaluation and audit of DWI grantees to assure that grants are being administered in the manner and for the purposes that the grants were awarded; and

(5) design of an evaluation mechanism for DWI grant programs, distributions and services and submission by each DWI grantee of an annual report or other data on each local DWI grant program, distribution or service and its effectiveness and outcomes.

History: Laws 1993, ch. 65, § 5; 1997, ch. 182, § 4; 2003, ch. 213, § 2.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, inserted "local" preceding "DWI grant program" in the heading; in Subsection A, inserted "and evaluate" following "shall administer" near the beginning and inserted "local" preceding "DWI grant program" near the middle; inserted "local DWI" preceding "grant program" near the middle of Subsection B; inserted "local DWI" preceding "grant program" near the middle of Subsection B(1); in Subsection B(5) inserted "distributions" following "grant programs," near the beginning, inserted "DWI" preceding "grantee" near the middle, inserted "or other data" following "annual report" near the middle, inserted "local DWI" preceding "grant program" near the end and inserted "distribution" following "grant program," near the end.

The 1997 amendment, effective July 1, 1998, inserted "and county DWI program distribution" in the section heading; inserted "and the county DWI program distribution" in four places in Subsections A and B; and added the language beginning "and for review" at the end of Paragraph B(3).

11-6A-6. Distribution of certain local DWI grant program funds; approval of programs.

A. An amount equal to the liquor excise tax revenues distributed to the local DWI grant fund for the fiscal year less six million one hundred thousand dollars ($6,100,000) shall be available for distribution in accordance with the formula in Subsection B of this section to each county for council-approved DWI programs, services or activities; provided that each county shall receive a minimum distribution of at least one-half percent of the money available for distribution.

B. Each county shall be eligible for a DWI program distribution in an amount derived by multiplying the total amount of money available for distribution by a percentage that is the average of the following two percentages:

(1) a percentage equal to a fraction, the numerator of which is the retail trade gross receipts in the county and the denominator of which is the total retail trade gross receipts in the state; and

(2) a percentage equal to a fraction, the numerator of which is the number of alcohol-related injury crashes in the county and the denominator of which is the total alcohol-related injury crashes in the state.

C. A county shall be eligible to receive the distribution determined pursuant to Subsection B of this section if the board of county commissioners has submitted to the council a request to use the distribution for the operation of one or more DWI programs, services or activities in the county and the request has been approved by the council. The request shall also comply with local DWI grant program rules and guidelines.

D. No later than April 1 each year, each board of county commissioners seeking approval for the DWI program distribution pursuant to this section shall make application to the division for review and approval by the council for one or more local DWI programs, services or activities in the county. Application shall be made on a form and in a manner determined by the division. The council shall approve the programs eligible for a distribution no later than July 1 of each year. The division shall make the annual distribution to each county in quarterly installments on or before each September 10, December 10, March 10 and June 10, beginning in September 2004. The amount available for distribution quarterly to each county shall be the amount determined by applying the formula in Subsection B of this section to the amount of liquor excise tax revenues in the local DWI grant fund at the end of the month prior to the quarterly installment due date and after one million five hundred twenty-five thousand dollars ($1,525,000) has been set aside for the DWI grant program and after the appropriations and distributions pursuant to Subsections D and E of Section 11-6A-3 NMSA 1978.

E. If a county does not have a council-approved DWI program, service or activity or does not need the full amount of the available distribution, the unused money shall

revert to the local DWI grant fund and may be used by the council for the local DWI grant program.

F. As used in this section:

(1) "alcohol-related injury crashes" means the average annual number of alcohol-related injury crashes during the period from January 1, 2000 through December 31, 2002, as determined by the traffic safety bureau of the department of transportation; and

(2) "retail trade gross receipts" means the total reported gross receipts attributable to taxpayers reporting under the retail trade industry sector of the state for the most recent fiscal year as determined by the taxation and revenue department.

History: Laws 1997, ch. 182, § 2; 2000, ch. 83, § 3; 2001, ch. 112, § 3; 2003, ch. 213, § 3; 2025, ch. 8, § 2.

ANNOTATIONS

The 2025 amendment, effective July 1, 2025, revised the amount available for distribution to each county for council-approved DWI programs, services or activities, and made certain technical amendments; in Subsection A, after "for the fiscal year less" deleted "five million six hundred thousand dollars ($5,600,000)" and added "six million one hundred thousand dollars ($6,100,000)"; in Subsection D, after "due date and after" deleted "one million three hundred twenty-five thousand dollars ($1,325,000)" and added "one million five hundred twenty-five thousand dollars ($1,525,000)"; and in Subsection F, after "traffic safety bureau of the" deleted "state highway and transportation" and after "department," added "of transportation".

The 2003 amendment, effective July 1, 2003, substituted "five million six hundred thousand dollars ($5,600,000)" for "four million eight hundred thousand dollars ($4,800,000)" near the middle of Subsection A; added "The request shall also comply with local DWI grant program rules and guidelines." at the end of Subsection C; in Subsection D, substituted "April" for "August" in the first sentence, substituted "July" for "September" in the third sentence, substituted "September" for "October", "December" for "January", "March" for "April", "June" for "July" and "September 2004" for "October 1997" in the fourth sentence, and in the fifth sentence substituted "one million three hundred twenty-five thousand dollars ($1,325,000)" for "five hundred thousand dollars ($500,000)" near the end and substituted "D and E" for "C" following "Subsections" near the end; in Paragraph F(1) substituted "2000" for "1993" following "January 1" and substituted "2002" for "1995" following "December 31" near the middle.

The 2001 amendment, effective July 1, 2001, substituted "four million eight hundred thousand dollars ($4,800,000)" for "four million dollars ($4,000,000) in fiscal year 2002 and two million dollars ($2,000,000) in each fiscal year thereafter" in Subsection A, and deleted "in fiscal year 2002" following "DWI grant program and" in Subsection D.

The 2000 amendment, effective July 1, 2001, substituted "four million dollars ($4,000,000) in fiscal year 2002 and two million dollars ($2,000,000) in each fiscal year thereafter" for "two million dollars ($2,000,000)" in Subsection A; in Subsection D substituted "a distribution" for "funds" in the third sentence, inserted "local DWI grant" preceding "fund" in the fourth sentence, and inserted "and, in fiscal year 2002, after the appropriation and distribution pursuant to Subsection C of Section 11-6A-3 NMSA 1978" at the end.

ARTICLE 7
Interstate Compact on Mental Health

11-7-1. [Enactment of compact; text.]

The "Interstate Compact on Mental Health" is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

THE INTERSTATE COMPACT ON MENTAL HEALTH

ARTICLE I

Findings and Purpose

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

Definitions

As used in this compact:

A. "sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent;

B. "receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be transported;

C. "institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency;

D. "patient" means any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision under this compact;

E. "after-care" means care, treatment and services provided a patient, as defined in this compact, on convalescent status or conditional release;

F. "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community;

G. "mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness;

H. "state" means any state, territory or possession of the United States, the District of Columbia and the commonwealth of Puerto Rico.

ARTICLE III

Eligibility and Transfer

A. Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

B. The provisions of Subdivision A of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of the patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subdivision shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

C. No state shall be obliged to receive any patient sent under Subdivision B of this article unless the sending state has given advance notice of its intention to send the

patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if the authorities so wish; and unless the receiving state shall agree to accept the patient.

D. In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

E. Under this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

After-Care

A. Whenever, under the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, the care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient after-care in the receiving state, and an investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

B. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

C. In supervision, treating or caring for a patient on after-care under the terms of this article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

ARTICLE V

Escape Notice

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

Transporting

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, may transport any patient being moved under this compact through any and all states party to this compact, without interference.

ARTICLE VII

Effect and Cost of Transfer

A. No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

B. The sending state shall pay all costs of and incidental to the transportation of any patient under this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

C. No provision of this compact alters or affects any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

D. Nothing in this compact prevents any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to cost for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

E. Nothing in this compact invalidates any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

Guardian

A. Nothing in this compact abridges, diminishes, or in any way impairs the rights, duties and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make a supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of an accounting and other acts as the court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; however, in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

B. The term "guardian" as used in Subdivision A of this article shall include any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

Criminals

A. No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, the person would be subject to incarceration in a penal or correctional institution.

B. To every extent possible, it is the policy of the states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

Compact Administrator

A. Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence and other documents relating to

any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed under the compact.

B. The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

Supplementary Agreements

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

Entry into Force

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party to the compact with any and all states legally joining in it.

ARTICLE XIII

Withdrawal

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person or circumstance shall not be affected. If this compact shall be held contrary to the constitution of any state party to the compact, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1953 Comp., § 34-5-1, enacted by Laws 1969, ch. 118, § 1.

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — Change of state or national domicil of mental incompetent, 96 A.L.R.2d 1236.

11-7-2. Compact coordinator; powers and duties.

Pursuant to the Interstate Compact on Mental Health, the administrator of the New Mexico behavioral health institute is designated as the compact administrator and, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement entered into by this state under the compact.

History: 1953 Comp., § 34-5-2, enacted by Laws 1969, ch. 118, § 2; 1977, ch. 253, § 46; 2007, ch. 325, § 5; 2009, ch. 191, § 1.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, after "Compact on Mental Health, the" deleted "director of the behavioral health services division of the human services department" and added "administrator of the New Mexico behavioral health institute".

The 2007 amendment, effective June 15, 2007, changed "health and environment department" to "human services department".

11-7-3. Supplementary agreements.

The compact administrator may enter into supplementary agreements with appropriate officials of other states under Articles VII and XI of the compact [11-7-1 NMSA 1978]. In the event that the supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of the service.

History: 1953 Comp., § 34-5-3, enacted by Laws 1969, ch. 118, § 3.

11-7-4. Payments by administrator.

The compact administrator may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact [11-7-1 NMSA 1978] or by any supplementary agreement entered into under the compact.

History: 1953 Comp., § 34-5-4, enacted by Laws 1969, ch. 118, § 4.

11-7-5. Notice of transfer.

Whenever the compact administrator receives a request for the transfer of a patient from an institution in this state to an institution in another party state, and he determines that the transfer is in the best interest of the patient, he shall give notice of the proposed transfer to the patient, the spouse of the patient, the parents of the patient and the adult children of the patient. This notice shall also notify these people of the right, if requested, to a court hearing on the proposed transfer and shall contain a request for written consent from these people for the transfer. The notice shall be in writing, and the respondents shall be given fourteen days from the date of mailing of the notice to consent or object to the transfer, or to request a court hearing. No transfer shall be made if there is any written objection or request made to the compact administrator except upon order of the court after hearing. However, no transfer shall be made if the compact administrator receives written objections from all these people. No transfer shall be made of a patient ordered hospitalized by any court unless written notice of the proposed transfer has been given to that court.

History: 1953 Comp., § 34-5-5, enacted by Laws 1969, ch. 118, § 5.

ARTICLE 8
Compact for Education

11-8-1. Compact for education entered into.

The "Compact for Education" is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as set out in Sections 11-8-1 through 11-8-11 NMSA 1978.

History: 1953 Comp., § 77-20-1, enacted by Laws 1967, ch. 16, § 283.

ANNOTATIONS

Cross references. — For Western Regional Cooperation in Higher Education Compact, *see* 11-10-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 C.J.S. Schools and School Districts § 7.

11-8-2. Purpose and policy; Article I.

A. It is the purpose of this compact [11-8-1 to 11-8-11 NMSA 1978] to:

(1) establish and maintain close cooperation and understanding among executive, legislative, professional, educational and lay leadership on a nation-wide basis at the state and local levels;

(2) provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education;

(3) provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education;

(4) facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

B. It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare and economic advancement of each state are supplied in significant part by persons educated in other states.

History: 1953 Comp., § 77-20-2, enacted by Laws 1967, ch. 16, § 284.

11-8-3. State defined; Article II.

As used in this compact [11-8-1 to 11-8-11 NMSA 1978], "state" means a state, territory or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

History: 1953 Comp., § 77-20-3, enacted by Laws 1967, ch. 16, § 285.

11-8-4. The commission; Article III.

A. The "educational commission of the states," hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

B. The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV (Section 11-8-5 NMSA 1978) and adoption of the annual report pursuant to Paragraph J of this article.

C. The commission shall have a seal.

D. The commission shall elect annually from among its members a chairman, who shall be a governor, a vice chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the

performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

F. The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

G. The commission may accept for any of its purposes and functions under this compact [11-8-1 to 11-8-11 NMSA 1978] any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to Paragraph F of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

H. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

J. The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

History: 1953 Comp., § 77-20-4, enacted by Laws 1967, ch. 16, § 286.

11-8-5. Powers; Article IV.

In addition to authority conferred on the commission by other provisions of the compact [11-8-1 to 11-8-11 NMSA 1978], the commission shall have authority to:

A. collect, correlate, analyze and interpret information and data concerning educational needs and resources;

B. encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems;

C. develop proposals for adequate financing of education as a whole and at each of its many levels;

D. conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education and other agencies and institutions, both public and private;

E. formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials;

F. do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

History: 1953 Comp., § 77-20-5, enacted by Laws 1967, ch. 16, § 287.

11-8-6. Cooperation with federal government; Article V.

A. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representative shall have a vote on the commission.

B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

History: 1953 Comp., § 77-20-6, enacted by Laws 1967, ch. 16, § 288.

11-8-7. Committees; Article VI.

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact [11-8-1 to 11-8-11 NMSA 1978] and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee shall consist of governors, one-fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years,

except that members elected to the first steering committee of the commission shall be elected as follows: sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee: provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

B. The commission may establish advisory and technical committees composed of state, local, and federal officials and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

C. The commission may establish such additional committees as its bylaws may provide.

History: 1953 Comp., § 77-20-7, enacted by Laws 1967, ch. 16, § 289.

11-8-8. Finance; Article VII.

A. The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

B. The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

C. The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III G (Subsection G of Section 11-8-4 NMSA 1978) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III G (Subsection G of Section 11-8-4 NMSA 1978), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and

disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

E. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

F. Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

History: 1953 Comp., § 77-20-8, enacted by Laws 1967, ch. 16, § 290.

11-8-9. Eligible parties; entry into and withdrawal; Article VIII.

A. This compact [11-8-1 to 11-8-11 NMSA 1978] shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

B. Any state or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same: provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdiction [jurisdictions] shall be required.

C. Adoption of the compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

D. Except for a withdrawal effective on December 31, 1967 in accordance with Paragraph C of this article, any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

History: 1953 Comp., § 77-20-9, enacted by Laws 1967, ch. 16, § 291.

ANNOTATIONS

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

11-8-10. Construction and severability; Article IX.

This compact [11-8-1 to 11-8-11 NMSA 1978] shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

History: 1953 Comp., § 77-20-10, enacted by Laws 1967, ch. 16, § 292.

11-8-11. Filing of compact.

Pursuant to Article III, I (Subsection I of Section 11-8-4 NMSA 1978) the commission shall file a copy of its bylaws and any amendment thereto with the supreme court librarian of New Mexico. The governor shall make additional filings pursuant to Section 14-3-20 NMSA 1978.

History: 1953 Comp., § 77-20-11, enacted by Laws 1967, ch. 16, § 293.

ARTICLE 8B
Interstate Compact on Educational Opportunity for Military Children

11-8B-1. Interstate Compact on Educational Opportunity for Military Children; entered into.

The "Interstate Compact on Educational Opportunity for Military Children" is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

"INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

ARTICLE 1

PURPOSE

It is the purpose of the Interstate Compact on Educational Opportunity for Military Children to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance and age requirements;

B. facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment;

C. facilitating the qualification and eligibility for enrollment, educational programs and participation in extracurricular, academic, athletic and social activities;

D. facilitating the on-time graduation of children of military families;

E. providing for the promulgation and enforcement of administrative rules implementing the provisions of that compact;

F. providing for the uniform collection and sharing of information between and among member states, schools and military families under that compact;

G. promoting coordination between that compact and other compacts affecting military children; and

H. promoting flexibility and cooperation between the educational system, parents and the student in order to achieve educational success for the student.

ARTICLE 2

DEFINITIONS

As used in the Interstate Compact on Educational Opportunity for Military Children:

A. "active duty" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211;

B. "children of military families" means school-aged children enrolled in kindergarten through twelfth grade in the household of an active duty member;

C. "compact commissioner" means the voting representative of each compacting state appointed pursuant to Article 8 of the Interstate Compact on Educational Opportunity for Military Children;

D. "deployment" means the period one month prior to the service members' departures from their home stations on military orders through six months after return to their home stations;

E. "education records" means records, files and data that are directly related to a student and maintained by a school or local education agency, including records encompassing all the material kept in a student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs;

F. "extracurricular activity" means a voluntary activity sponsored by a school or local education agency or an organization sanctioned by a local education agency. "Extracurricular activity" includes preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays and club activities;

G. "interstate commission" means the interstate commission on educational opportunity for military children that is created under Article 9 of the Interstate Compact on Educational Opportunity for Military Children;

H. "local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions;

I. "member state" means a state that has enacted the Interstate Compact on Educational Opportunity for Military Children;

J. "military installation" means a base, camp, post, station, yard, center or homeport facility for any ship or other activity under the jurisdiction of the United States department of defense, including any leased facility, that is located within any of the several states, the District of Columbia, the commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other United States territory. The term does not include any facility used primarily for civil works, rivers and harbors projects or flood control projects;

K. "non-member state" means a state that has not enacted the Interstate Compact on Educational Opportunity for Military Children;

L. "receiving state" means the state to which a child of a military family is sent or brought or caused to be sent or brought;

M. "rule" means a written statement by the interstate commission promulgated pursuant to Article 12 of the Interstate Compact on Educational Opportunity for Military Children that is of general applicability, implements, interprets or prescribes a policy or provision of that compact or an organizational, procedural or practice requirement of the

interstate commission and includes the amendment, repeal or suspension of an existing rule;

N. "sending state" means the state from which a child of a military family is sent or brought or caused to be sent or brought;

O. "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other United States territory;

P. "student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade;

Q. "transition" means:

(1) the formal and physical process of transferring from school to school; or

(2) the period of time in which a student moves from one school in the sending state to another school in the receiving state;

R. "uniformed services" means the army, navy, air force, marine corps, coast guard and the commissioned corps of the national oceanic and atmospheric administration and United States public health service; and

S. "veteran" means a person who served in the uniformed services and who was discharged or released from the uniformed services under conditions other than dishonorable.

ARTICLE 3

APPLICABILITY

A. Except as otherwise provided in Subsection B of this article, the Interstate Compact on Educational Opportunity for Military Children shall apply to the children of:

(1) active duty members of the uniformed services, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211;

(2) members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

(3) members of the uniformed services who die on active duty or as a result of injuries sustained while on active duty and extending for a period of one year after death.

B. The provisions of the Interstate Compact on Educational Opportunity for Military Children shall only apply to local education agencies.

C. The provisions of the Interstate Compact on Educational Opportunity for Military Children shall not apply to the children of:

(1) inactive members of the national guard and military reserves;

(2) members of the uniformed services now retired, except as provided in Subsection A of this article;

(3) veterans of the uniformed services, except as provided in Subsection A of this article; and

(4) other United States department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE 4

EDUCATIONAL RECORDS AND ENROLLMENT

A. In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial education records containing uniform information as determined by the interstate commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records, pending validation by the official records, as quickly as possible.

B. Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official education records to the school in the receiving state within ten days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

C. Compacting states shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the interstate commission for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty days or

within such time as is reasonably determined under the rules promulgated by the interstate commission.

D. Students shall be allowed to continue their enrollment at a grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on the student's validated level from an accredited school in the sending state.

ARTICLE 5

PLACEMENT AND ATTENDANCE

A. When a student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes honors, international baccalaureate, advanced placement, vocational, technical and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career-challenging courses should be paramount when considering placement. This subsection does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

B. The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include gifted and talented programs and English as a second language. This subsection does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. In compliance with the federal requirements of the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current individualized education program. In compliance with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, and with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II plan, to provide the student with equal access to education. This subsection does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Local education agency administrative officials shall have flexibility in waiving course or program prerequisites or other preconditions for placement in courses or programs offered under the jurisdiction of the local education agency.

E. A student whose parent or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from or has immediately returned from deployment to a combat zone or combat support posting shall be granted additional excused absences, at the discretion of the local education agency superintendent, to visit with the student's parent or legal guardian.

ARTICLE 6

ELIGIBILITY

A. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

B. A local education agency shall be prohibited from charging local tuition to a military child who is in transition and is placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

C. A military child who is in transition and is placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent may continue to attend the school in which the child was enrolled while residing with the custodial parent.

D. State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE 7

GRADUATION

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

A. local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time;

B. receiving states shall accept exit or end-of-course exams required for graduation from the sending state, national norm-referenced achievement tests or alternative testing in lieu of testing requirements for graduation in the receiving state. In the event the alternatives in this subsection and Subsection A of this article cannot be accommodated by the receiving state for a student transferring in the student's senior year, then the provisions of Subsection C of this article shall apply; and

C. if a military student transferring at the beginning of or during the military student's senior year is ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of the Interstate Compact on Educational Opportunity for Military Children, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Subsections A and B of this article.

ARTICLE 8

STATE COORDINATION

A. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in and compliance with the Interstate Compact on Educational Opportunity for Military Children and interstate commission activities. While each member state may determine the membership of its own state council, its membership must include: the secretary of public education, the superintendent of a school district with a high concentration of military children, one representative from a military installation, one representative from the executive branch of government and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

B. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of the Interstate Compact on Educational Opportunity for Military Children.

C. The compact commissioner responsible for the administration and management of the state's participation in the Interstate Compact on Educational Opportunity for Military Children shall be appointed by the governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated in this article shall be ex-officio nonvoting members of the state council, unless either is already a full voting member of the state council.

ARTICLE 9

INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the "interstate commission on educational opportunity for military children". The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall:

A. be a body corporate and joint agency of the member states and shall have all the responsibilities, powers and duties set forth in the Interstate Compact on Educational Opportunity for Military Children and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of that compact;

B. consist of one voting representative from each member state who shall be that state's compact commissioner.

(1) Each member state represented at a meeting of the interstate commission is entitled to one vote.

(2) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

(3) A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the interstate commission, the governor or state council may delegate voting authority to another person from the person's state for a specified meeting.

(4) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication;

C. consist of ex-officio nonvoting representatives who are members of interested organizations. The ex-officio members, as defined in the bylaws, may include members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States department of defense, the education commission of the states, the interstate agreement on qualification of educational personnel and other interstate compacts affecting the education of children of military members;

D. meet at least once each calendar year. The chair may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;

E. establish an executive committee whose members shall include the officers of the interstate commission and such other members of the interstate commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules and other such duties as deemed necessary. The United States department of defense shall serve as an ex-officio nonvoting member of the executive committee;

F. establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests;

G. give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the Interstate Compact on Educational Opportunity for Military Children. The interstate commission and its committees may close a meeting, or a portion of a meeting, if it determines by a two-thirds' vote that an open meeting would be likely to:

(1) relate solely to the interstate commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from disclosure by federal and state statute;

(3) disclose trade secrets or commercial or financial information that is privileged or confidential;

(4) involve accusing a person of a crime or formally censuring a person;

(5) disclose information of a personal nature if the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigative records compiled for law enforcement purposes; or

(7) specifically relate to the interstate commission's participation in a civil action or other legal proceeding;

H. cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, that is closed pursuant to this subsection. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for the actions, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission;

I. collect standardized data concerning the educational transition of the children of military families under the Interstate Compact on Educational Opportunity for Military Children as directed through its rules, which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. The methods of data collection, exchange and reporting shall, insofar as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules; and

J. create a process that permits military officials, education officials and parents to inform the interstate commission if and when there are alleged violations of the Interstate Compact on Educational Opportunity for Military Children or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This subsection shall not be construed to create a private right of action against the interstate commission or any member state.

ARTICLE 10

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission may:

A. provide for dispute resolution among member states;

B. promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in the Interstate Compact on Educational Opportunity for Military Children. The rules shall be binding in the compact states to the extent and in the manner provided in that compact;

C. issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact and its bylaws, rules and actions;

D. enforce compliance with the compact provisions, the rules promulgated by the interstate commission and the bylaws, using all necessary and proper means, including the use of judicial process;

E. establish and maintain offices that shall be located within one or more of the member states;

F. purchase and maintain insurance and bonds;

G. borrow, accept, hire or contract for services of personnel;

H. establish and appoint committees, including an executive committee as required by Subsection E of Article 9 of the Interstate Compact on Educational Opportunity for Military Children, that shall have the power to act on behalf of the interstate commission in carrying out its powers and duties under that compact;

I. elect or appoint officers, attorneys, employees, agents or consultants and fix their compensation, define their duties and determine their qualifications;

J. establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel;

K. accept donations and grants of money, equipment, supplies, materials and services and receive, use and dispose of them;

L. lease, purchase, accept contributions or donations of, or otherwise own, hold, improve or use, any property, real, personal or mixed;

M. sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

N. establish a budget and make expenditures;

O. adopt a seal and bylaws governing the management and operation of the interstate commission;

P. report annually to the legislatures, governors, judiciaries and state councils of the member states concerning the activities of the interstate commission during the preceding year. The reports shall also include any recommendations that may have been adopted by the interstate commission;

Q. coordinate education, training and public awareness regarding the Interstate Compact on Educational Opportunity for Military Children, its implementation and operation for officials and parents involved in such activity;

R. establish uniform standards for the reporting, collecting and exchanging of data;

S. maintain corporate books and records in accordance with the bylaws;

T. perform such functions as may be necessary or appropriate to achieve the purposes of the Interstate Compact on Educational Opportunity for Military Children; and

U. provide for the uniform collection and sharing of information between and among member states, schools and military families under the Interstate Compact on Educational Opportunity for Military Children.

ARTICLE 11

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The interstate commission shall, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Interstate Compact on Educational Opportunity for Military Children, including:

(1) establishing the fiscal year of the interstate commission;

(2) establishing an executive committee and other committees as may be necessary;

(3) providing for the establishment of committees and for governing any general or specific delegation of authority or function of the interstate commission;

(4) providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each meeting;

(5) establishing the titles and responsibilities of the officers and staff of the interstate commission;

(6) providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of that compact after paying and reserving all of its debts and obligations; and

(7) providing start-up rules for initial administration of the Interstate Compact on Educational Opportunity for Military Children.

B. The interstate commission shall, by a majority of the members, elect annually from among its members a chair, a vice chair and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chair or, in the chair's absence or disability, the vice chair shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission, provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses

incurred by them in the performance of their responsibilities as officers of the interstate commission.

C. The executive committee shall have such authority and duties as may be set forth in the bylaws, including:

(1) managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;

(2) overseeing an organizational structure within, and appropriate procedures for, the interstate commission to provide for the creation of rules, operating procedures and administrative and technical support functions; and

(3) planning, implementing and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the interstate commission.

D. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

E. The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend the interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional or willful and wanton misconduct on the part of the person.

ARTICLE 12

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Interstate Compact on Educational Opportunity for Military Children. If the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of that compact, or the powers granted under that compact, then such an action by the interstate commission shall be invalid and have no force or effect.

B. Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act" (1981), Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the interstate commission.

C. Not later than thirty days after the date a rule is promulgated, any person may file a petition for judicial review of the rule, provided that the filing of the petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the Interstate Compact on Educational Opportunity for Military Children, then the rule shall have no further force and effect in any compacting state.

ARTICLE 13

OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION

A. All courts shall take judicial notice of the Interstate Compact on Educational Opportunity for Military Children and the rules promulgated under that compact in any judicial or administrative proceeding in a member state pertaining to the subject matter of that compact that may affect the powers, responsibilities or actions of the interstate commission.

B. The interstate commission shall be entitled to receive all service of process in any proceeding provided in Subsection A of this article and shall have standing to intervene in the proceeding for all purposes.

C. If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the Interstate Compact on Educational Opportunity for Military Children or the bylaws or promulgated rules, the interstate commission shall:

(1) provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default and any action taken by the interstate commission. The interstate commission shall specify the means by which the defaulting state shall cure its default; and

(2) provide remedial training and specific technical assistance regarding the default.

D. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the Interstate Compact on Educational Opportunity for Military Children upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by that compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

E. Suspension or termination of membership in the Interstate Compact on Educational Opportunity for Military Children shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature and each of the member states.

F. The state that has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination, including obligations the performance of which extends beyond the effective date of suspension or termination.

G. The interstate commission shall not bear any costs relating to any state that has been found to be in default or that has been suspended or terminated from the Interstate Compact on Educational Opportunity for Military Children unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

H. The defaulting state may appeal the action of the interstate commission by petitioning the United States district court for the District of Columbia or the federal district where the interstate commission has its principal offices.

I. The interstate commission shall attempt, upon the request of a member state, to resolve disputes that are subject to the Interstate Compact on Educational Opportunity for Military Children and that may arise among member states and between member and non-member states.

J. The interstate commission shall promulgate a rule providing for both mediation and dispute resolution for disputes as appropriate.

K. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Interstate Compact on Educational Opportunity for Military Children.

L. The interstate commission may, by majority vote of the members, initiate legal action to enforce compliance with the provisions of the Interstate Compact on Educational Opportunity for Military Children and its promulgated rules and bylaws against a member state in default. The venue for the action shall be consistent with the determination in other interstate compacts to which the state of New Mexico is a member under the laws of the state of New Mexico.

M. The remedies in the Interstate Compact on Educational Opportunity for Military Children shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or under the regulation of a profession.

ARTICLE 14

FINANCING OF THE INTERSTATE COMMISSION

A. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff that must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

C. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the obligations; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

ARTICLE 15

MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state is eligible to become a member state.

B. The Interstate Compact on Educational Opportunity for Military Children shall become effective and binding upon legislative enactment of that compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2007. Thereafter, it shall become effective and binding as to any other member state upon enactment of that compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of that compact by all states.

C. The interstate commission may propose amendments to the Interstate Compact on Educational Opportunity for Military Children for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE 16

WITHDRAWAL AND DISSOLUTION

A. Once effective, the Interstate Compact on Educational Opportunity for Military Children shall continue in force and remain binding upon each and every member state, provided that a member state may withdraw from that compact by specifically repealing the statute that enacted that compact into law.

B. Withdrawal from the Interstate Compact on Educational Opportunity for Military Children shall be by the enactment of a statute repealing that compact.

C. The withdrawing state shall immediately notify the chair of the interstate commission in writing upon the introduction of legislation repealing the Interstate Compact on Educational Opportunity for Military Children in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt of the notice.

D. The withdrawing state is responsible for all assessments, obligations and liabilities incurred on its behalf through the effective date of withdrawal, including obligations the performance of which extends beyond the effective date of withdrawal.

E. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the Interstate Compact on Educational Opportunity for Military Children or upon such later date as determined by the interstate commission.

F. The Interstate Compact on Educational Opportunity for Military Children shall dissolve effective upon the date of the withdrawal or default of the member state that reduces the membership in that compact to one member state.

G. Upon the dissolution of the Interstate Compact on Educational Opportunity for Military Children, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded, and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE 17

SEVERABILITY AND CONSTRUCTION

A. The provisions of the Interstate Compact on Educational Opportunity for Military Children shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of that compact shall be enforceable.

B. The provisions of the Interstate Compact on Educational Opportunity for Military Children shall be liberally construed to effectuate its purposes.

C. Nothing in the Interstate Compact on Educational Opportunity for Military Children shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE 18

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Nothing in the Interstate Compact on Educational Opportunity for Military Children prevents the enforcement of any other law of a member state.

B. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

C. All agreements between the interstate commission and the member states are binding in accordance with their terms.

D. In the event any provision of the Interstate Compact on Educational Opportunity for Military Children exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.".

History: Laws 2010, ch. 41, § 1; 2025, ch. 118, § 1.

ANNOTATIONS

The 2025 amendment, effective June 20, 2025, corrected a reference to a United States Code provision in the interstate compact on educational opportunity for military children; in Article 2, Subsection A, after "10 U.S.C." changed "Sections" to "Chapters".

11-8B-2. Military children education compact state council; military family education liaison; compact commissioner.

A. The "military children education compact state council" is created to provide for the coordination among state agencies, local education agencies and military installations concerning the state's participation in and compliance with the Interstate Compact on Educational Opportunity for Military Children.

B. The military children education compact state council shall designate a "military family education liaison" to assist military families and the state in facilitating the implementation of the Interstate Compact on Educational Opportunity for Military Children. The military family education liaison shall serve as an ex-officio nonvoting member of the military children education compact state council, unless the person designated as the liaison is already a voting member of the council.

C. The governor shall appoint a compact commissioner to administer the Interstate Compact on Educational Opportunity for Military Children in New Mexico and to represent the state on the interstate commission. The compact commissioner shall serve as an ex-officio nonvoting member of the military children education compact state council, unless the person appointed as the compact commissioner is already a voting member of the council.

D. Members of the military children education compact state council shall not receive per diem and mileage or other compensation, perquisite or allowance.

History: Laws 2010, ch. 41, § 2.

ANNOTATIONS

Effective dates. — Laws 2010, ch. 41 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

ARTICLE 9
Western Interstate Nuclear Compact

11-9-1. Western Interstate Nuclear Compact.

The Western Interstate Nuclear Compact is entered into with all other jurisdictions legally joining therein in a form substantially as follows:

WESTERN INTERSTATE NUCLEAR COMPACT

Article 1. Policy and purpose. — The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the west and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to

provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the west and contribute to the individual and community well-being of the region's people.

Article 2. The board. — A. There is hereby created an agency of the party states to be known as the "western interstate nuclear board," hereinafter called the board. The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

B. The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

C. The board shall have a seal.

D. The board shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

E. The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

F. The board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

G. The board may borrow, accept or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency or from any institution, person, firm or corporation.

H. The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state or the United States or any subdividion [subdivision] or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to Subsection G of this article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the board.

I. The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold and convey real and personal property and any interest therein.

J. The board shall adopt bylaws, rules and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules and regulations. The board shall publish its bylaws, rules and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

K. The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

Article 3. Finances. — A. The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

B. Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

C. The board may meet any of its obligations in whole or in part with funds available to it under Article 2 H of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under Article 2 H hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

D. Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

E. The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the board.

F. The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board and duly designated representatives of governments contributing to the board's support.

Article 4. Advisory committees. — The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

Article 5. Powers. — The board shall have power to:

A. encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields;

B. ascertain and analyze on a continuing basis the position of the west with respect to the employment in industry of nuclear and related scientific findings and technologies;

C. encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products and all other appropriate adaptations of scientific and technological advances and discoveries;

D. collect, correlate and disseminate information relating to the peaceful uses of nuclear energy, materials and products and other products and processes resulting from the application of related science and technology;

E. encourage the development and use of nuclear energy, facilities, installations and products as part of a balanced economy;

F. conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

(1) nuclear industry, medicine or education, or the promotion or regulation thereof;

(2) applying nuclear scientific advances or discoveries, and any industrial commercial or other processes resulting therefrom; and

(3) the formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto;

G. organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates;

H. undertake such nonregulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the west;

I. study industrial, health, safety and other standards, laws, codes, rules, regulations and administrative practices in or related to nuclear fields;

J. recommend such changes in, or amendments or additions to, the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions;

K. consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis;

L. consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields;

M. advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields;

N. cooperate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States and any other governmental

unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest;

O. act as licensee, contractor or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the board by this compact;

P. prepare, publish and distribute, with or without charge, such reports, bulletins, newsletters or other materials as it deems appropriate;

Q. ascertain from time to time such methods, practices, circumstances and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact. Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall coordinate requests for aid pursuant to Article 6 of this compact and the furnishing of aid in response thereto. Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states. However, the plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances. From time to time, the board shall analyze the information gathered from reports of aid pursuant to Article 6 and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available;

R. prepare, maintain and implement a regional plan or regional plans for carrying out the duties, powers or functions conferred upon the board by this compact; and

S. undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful in connection with the fields covered by this compact.

Article 6. Mutual aid. — A. Whenever a party state, or any state or local governmental authorities therein, request [requests] aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

B. Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

C. No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

D. All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

E. Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such requests; provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

F. Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

Article 7. Supplementary agreements. — A. To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of Article 5 of this compact, any two or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes, its duration and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

B. Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

C. No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

D. The provisions to this article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

Article 8. Other laws and relations. — Nothing in this compact shall be construed to:

A. permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force;

B. limit, diminish or otherwise impair jurisdiction exercise by the atomic energy commission, any agency successor thereto or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of congress; nor limit, diminish, affect or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor;

C. alter the relations between, and respective internal responsibilities of, the government of a party state and its subdivisions; or

D. permit or authorize the board to own or operate any facility, reactor or installation for industrial or commercial purposes.

Article 9. Eligible parties; entry into force and withdrawal. — A. Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming shall be eligible to become party to this compact.

B. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided, that it shall not become initially effective until enacted into law by five states.

C. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the governor of

the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

D. Guam and American Samoa, or either of them, may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. However, such participation shall not include the furnishing or receipt of mutual aid pursuant to Article 6, unless that article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board unless it has become a full party to the compact.

Article 10. Severability and construction. — The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

History: 1953 Comp., § 4-34-1, enacted by Laws 1969, ch. 40, § 1.

ANNOTATIONS

Compiler's notes. — States which have adopted the Western Interstate Nuclear Compact include: Alaska, Arizona, Colorado, Idaho, Nevada, Oregon, Utah, Washington and Wyoming.

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

11-9-2. Board members.

The member of the western interstate nuclear compact board shall be appointed by the governor. The alternate provided under Article 2 A of the compact [11-9-1 NMSA 1978] shall be designated by the member representing this state and shall serve at his pleasure.

History: 1953 Comp., § 4-34-2, enacted by Laws 1969, ch. 40, § 2.

11-9-3. Regulations.

Under Article 2 J of the compact [11-9-1 NMSA 1978], the western interstate nuclear board shall file copies of its bylaws and any amendments in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1953 Comp., § 4-34-3, enacted by Laws 1969, ch. 40, § 3.

ARTICLE 9A
Low-Level Radioactive Waste

11-9A-1. Short title.

This act [11-9A-1 to 11-9A-3 NMSA 1978] may be cited as the "Rocky Mountain Low-Level Radioactive Waste Compact".

History: Laws 1983, ch. 20, § 1.

ANNOTATIONS

Law reviews. — For article, "The Never Ending Story: Low-Level Waste and the Exclusionary Authority of Noncompacting States," 30 Nat. Resources J. 65 (1990).

For article, "Collective Bads: The Case of Low-Level Radioactive Waste Compacts," see 34 Nat. Resources J. 563 (1994).

11-9A-2. Compact entered into.

The Rocky Mountain Low-Level Radioactive Waste Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT

ARTICLE 1

Findings and Purpose

A. The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. Moreover, the party states find that the United States congress, by enacting the Low-Level Radioactive Waste Policy Act (P.L. 96-573), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

B. It is the purpose of the party states, by entering into an interstate compact, to establish the means for cooperative effort in managing low-level radioactive waste; to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities; to encourage reduction of the volume of low-level radioactive waste requiring disposal within the region; to restrict management within the region of low-level radioactive waste generated outside the region; to distribute the costs, benefits and obligations of low-level radioactive waste management equitably among the party states; and by these means to promote the health, safety and welfare of the residents within the region.

ARTICLE 2

Definitions

As used in this compact [11-9A-1 to 11-9A-3 NMSA 1978], unless the context clearly indicates otherwise:

A. "board" means the Rocky mountain low-level radioactive waste board;

B. "carrier" means a person who transports low-level waste;

C. "disposal" means the isolation of waste from the biosphere, with no intention of retrieval, such as by land burial;

D. "facility" means any property, equipment or structure used or to be used for the management of low-level waste;

E. "generate" means to produce low-level waste;

F. "host state" means a party state in which a regional facility is located or being developed;

G. "low-level waste" or "waste" means radioactive waste, other than:

(1) waste generated as a result of defense activities of the federal government or federal research and development activities;

(2) high-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel or solids into which any such liquid waste has been converted;

(3) waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram of waste material;

(4) byproduct material as defined in Section 11 e. (2) of the Atomic Energy Act of 1954, as amended on November 8, 1978; or

(5) wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for minerals other than radium;

H. "management" means collection, consolidation, storage, treatment, incineration or disposal;

I. "operator" means a person who operates a regional facility;

J. "person" means an individual, corporation, partnership or other legal entity, whether public or private;

K. "region" means the combined geographical area within the boundaries of the party states; and

L. "regional facility" means a facility within any party state which either:

(1) has been approved as a regional facility by the board; or

(2) is the low-level waste facility in existence on January 1, 1982, at Beatty, Nevada.

ARTICLE 3

Rights, Responsibilities and Obligations

A. There shall be regional facilities sufficient to manage the low-level waste generated within the region. At least one regional facility shall be open and operating in a party state other than Nevada within six years after this compact becomes law in Nevada and in one other state.

B. Low-level waste generated within the region shall be managed at regional facilities without discrimination among the party states; provided, however, that a host state may close a regional facility when necessary for public health or safety.

C. Each party state which, according to reasonable projections made by the board, is expected to generate twenty percent or more in cubic feet, except as otherwise determined by the board, of the low-level waste generated within the region has an obligation to become a host state in compliance with Subsection D of this article.

D. A host state, or a party state seeking to fulfill its obligation to become a host state, shall:

(1) cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in Article 4 before allowing site preparation or physical construction to begin;

(2) ensure by its own law, consistent with any applicable federal law, the protection and preservation of public health and safety in the siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state;

(3) subject to the approval of the board, ensure that charges for management of low-level waste at the regional facilities within the state are reasonable;

(4) solicit comments from each other party state and the board regarding siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state and respond in writing to such comments;

(5) submit an annual report to the board which contains projections of the anticipated future capacity and availability of the regional facilities within the state, together with other information required by the board; and

(6) notify the board immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the board.

E. Once a party state has served as a host state, it shall not be obligated to serve again until each other party state having an obligation under Subsection C of this article has fulfilled that obligation. Nevada, already being a host state, shall not be obligated to serve again as a host state until every other party state has so served.

F. Each party state:

(1) agrees to adopt and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to packaging and transportation requirements and regulations. Such procedures shall include but are not limited to:

(a) periodic inspections of packaging and shipping practices;

(b) periodic inspections of waste containers while in the custody of carriers; and

(c) appropriate enforcement actions with respect to violations;

(2) agrees that after receiving notification from a host state that a person in the party state has violated packaging, shipping or transportation requirements or

regulations, it shall take appropriate action to ensure that violations do not recur. Appropriate action may include but is not limited to the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected;

(3) may impose fees to recover the cost of the practices provided for in Paragraphs (1) and (2) of this subsection;

(4) shall maintain an inventory of all generators within the state that may have low-level waste to be managed at a regional facility; and

(5) may impose requirements or regulations more stringent than those required by this subsection.

ARTICLE 4

Board Approval of Regional Facilities

A. Within ninety days after being requested to do so by a party state, the board shall approve or disapprove a regional facility to be located within that state.

B. A regional facility shall be approved by the board if and only if the board determines that:

(1) there will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility; and

(2) the facility will have sufficient capacity to serve the needs of the region for a reasonable period of years.

ARTICLE 5

Surcharges

A. The board shall impose a "compact surcharge" per unit of waste received at any regional facility. The surcharge shall be adequate to pay the costs and expenses of the board in the conduct of its authorized activities and may be increased or decreased as the board deems necessary.

B. A host state may impose a "state surcharge" per unit of waste received at any regional facility within the state. The host state may fix and change the amount of the state surcharge subject to approval by the board. Money received from the state surcharge may be used by the host state for any purpose authorized by its own law, including but not limited to costs of licensure and regulatory activities related to the

regional facility, reserves for decommissioning and long-term care of the regional facility and local impact assistance.

ARTICLE 6

The Board

A. The "Rocky mountain low-level radioactive waste board," which shall not be an agency or instrumentality of any party state, is created.

B. The board shall consist of one member from each party state. Each party state shall determine how and for what term its member shall be appointed, and how and for what term any alternate may be appointed to perform that member's duties on the board in the member's absence.

C. Each party state is entitled to one vote. A majority of the board constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the board is necessary for the board to take any action.

D. The board shall meet at least once a year and otherwise as its business requires. Meetings of the board may be held in any place within the region deemed by the board to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment shall be given with respect to any meeting; provided, however, that nothing in this subsection shall preclude the board from meeting in executive session when seeking legal advice from its attorneys or when discussing the employment, discipline or termination of any of its employees.

E. The board shall pay necessary travel and reasonable per diem expenses of its members, alternates and advisory committee members.

F. The board shall organize itself for the efficient conduct of its business. It shall adopt and publish rules consistent with this compact regarding its organization and procedures. In special circumstances the board, with unanimous consent of its members, may take actions by telephone; provided, however, that any action taken by telephone shall be confirmed in writing by each member within thirty days. Any action taken by telephone shall be noted in the minutes of the board.

G. The board may use for its purposes the services of any personnel or other resources which may be offered by any party state.

H. The board may establish its offices in space provided for that purpose by any of the party states or, if space is not provided or is deemed inadequate, in any space within the region selected by the board.

I. Consistent with available funds, the board may contract for necessary personnel services and may employ such staff as it deems necessary to carry out its duties. Staff shall be employed without regard for the personnel, civil service or merit system laws of any of the party states and shall serve at the pleasure of the board. The board may provide appropriate employee benefit programs for its staff.

J. The board shall establish a fiscal year which conforms to the extent practicable to the fiscal years of the party states.

K. The board shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the board shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the board.

L. The board shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

M. Upon legislative enactment of this compact, each party state shall appropriate seventy thousand dollars ($70,000) to the board to support its activities prior to the collection of sufficient funds through the compact surcharge imposed pursuant to Subsection A of Article 5 of this compact.

N. The board may accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source. The nature, amount and condition, if any, attendant upon any donation, grant or other resources accepted pursuant to this subsection, together with the identity of the donor or grantor, shall be detailed in the annual report of the board.

O. In addition to the powers and duties conferred upon the board pursuant to other provisions of this compact, the board:

(1) shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the board, including an annual report to be submitted by December 15;

(2) may assemble and make available to the governments of the party states and to the public through its members information concerning low-level waste management needs, technologies and problems;

(3) shall keep a current inventory of all generators within the region, based upon information provided by the party states;

(4) shall keep a current inventory of all regional facilities, including information on the size, capacity, location, specific wastes capable of being managed and the projected useful life of each regional facility;

(5) may keep a current inventory of all low-level waste facilities in the region, based upon information provided by the party states;

(6) shall ascertain on a continuing basis the needs for regional facilities and capacity to manage each of the various classes of low-level waste;

(7) may develop a regional low-level waste management plan;

(8) may establish such advisory committees as it deems necessary for the purpose of advising the board on matters pertaining to the management of low-level waste;

(9) may contract as it deems appropriate to accomplish its duties and effectuate its powers, subject to its projected available resources; but no contract made by the board shall bind any party state;

(10) shall make suggestions to appropriate officials of the party states to ensure that adequate emergency response programs are available for dealing with any exigency that might arise with respect to low-level waste transportation or management;

(11) shall prepare contingency plans, with the cooperation and approval of the host state, for management of low-level waste in the event any regional facility should be closed;

(12) may examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge;

(13) shall have the power to sue; and

(14) when authorized by unanimous vote of its members, may intervene as of right in any administrative or judicial proceeding involving low-level waste.

ARTICLE 7

Prohibited Acts and Penalties

A. It shall be unlawful for any person to dispose of low-level waste within the region, except at a regional facility; provided, however, that a generator who, prior to January 1, 1982, had been disposing of only his own waste on his own property may, subject to applicable federal and state law, continue to do so.

B. After January 1, 1986, it shall be unlawful for any person to export low-level waste which was generated within the region outside the region unless authorized to do so by the board. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(1) the economic impact of the export of the waste on the regional facilities;

(2) the economic impact on the generator of refusing to permit the export of the waste; and

(3) the availability of a regional facility appropriate for the disposal of the waste involved.

C. After January 1, 1986, it shall be unlawful for any person to manage any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the board and by the state in which said management takes place. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(1) the impact of importing waste on the available capacity and projected life of the regional facilities;

(2) the economic impact on the regional facilities; and

(3) the availability of a regional facility appropriate for the disposal of the type of waste involved.

D. It shall be unlawful for any person to manage at a regional facility any radioactive waste other than low-level waste as defined in this compact, unless authorized to do so both by the board and the host state. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(1) the impact of allowing such management on the available capacity and projected life of the regional facilities;

(2) the availability of a facility appropriate for the disposal of the type of waste involved;

(3) the existence of transuranic elements in the waste; and

(4) the economic impact on the regional facilities.

E. Any person who violates Subsection A or B of this article shall be liable to the board for a civil penalty not to exceed ten times the charges which would have been charged for disposal of the waste at a regional facility.

F. Any person who violates Subsection C or D of this article shall be liable to the board for a civil penalty not to exceed ten times the charges which were charged for management of the waste at a regional facility.

G. The civil penalties provided for in Subsections E and F of this article may be enforced and collected in any court of general jurisdiction within the region where necessary jurisdiction is obtained by an appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

H. Out of any civil penalty collected for a violation of Subsection A or B of this article, the board shall pay to the appropriate operator a sum sufficient in the judgment of the board to compensate the operator for any loss of revenue attributable to the violation. Such compensation may be subject to state and compact surcharges as if received in the normal course of the operator's business. The remainder of the civil penalty collected shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

I. Any civil penalty collected for a violation of Subsection C or D of this article shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

J. Violations of Subsection A, B, C or D of this article may be enjoined by any court of general jurisdiction within the region where necessary jurisdiction is obtained in any appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

K. No state attorney general shall be required to bring any proceeding under any subsection of this article, except upon his consent.

ARTICLE 8

Eligibility, Entry Into Effect, Congressional Consent, Withdrawal, Exclusion

A. Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming are eligible to become parties to this compact. Any other state may be made eligible by unanimous consent of the board.

B. An eligible state may become a party state by legislative enactment of this compact or by executive order of its governor adopting this compact; provided, however, a state becoming a party by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless before such adjournment the legislature shall have enacted this compact.

C. This compact shall take effect when it has been enacted by the legislatures of two eligible states. However, Subsections B and C of Article 7 shall not take effect until

congress has by law consented to this compact. Every five years after such consent has been given, congress may by law withdraw its consent.

D. A state which has become a party state by legislative enactment may withdraw by legislation repealing its enactment of this compact; but no such repeal shall take effect until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal; provided, however, this provision shall not apply to the existing facility in Beatty, Nevada.

E. A party state may be excluded from this compact by a two-thirds' vote of the members representing the other party states, acting in a meeting, on the ground that the state to be excluded has failed to carry out its obligations under this compact. Such an exclusion may be terminated upon a two-thirds' vote of the members acting in a meeting.

ARTICLE 9

Construction and Severability

A. The provisions of this compact shall be broadly construed to carry out the purposes of the compact.

B. Nothing in this compact shall be construed to affect any judicial proceeding pending on the effective date of this compact.

C. If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

History: Laws 1983, ch. 20, § 2.

ANNOTATIONS

Compiler's notes. — States adopting the Rocky Mountain Low-Level Radioactive Waste Compact include Colorado, Nevada, and Wyoming.

Cross references. — For provisions of the Low-Level Radioactive Waste Policy Act (P.L. 96-573) referred to in Subsection A of Article 1, *see* 42 U.S.C. § 2021b et seq.

For Section 11 e. (2) of the Atomic Energy Act of 1954, as amended November 8, 1983, referred to in Subsection G(4) of Article 2, *see* 42 U.S.C. § 2014 (e)(2).

11-9A-3. Board member; alternate; appointment.

A. The governor shall appoint the New Mexico member of the Rocky mountain low-level radioactive waste board, who shall serve at the pleasure of the governor.

B. The board member may, with the approval of the governor, designate an alternate to represent New Mexico in the absence of the member.

History: Laws 1983, ch. 20, § 3.

ARTICLE 10
Western Regional Cooperation in Higher Education Compact

11-10-1. [Compact for Western Regional Cooperation in Higher Education.]

That the state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

THE COMPACT FOR WESTERN REGIONAL COOPERATION IN HIGHER EDUCATION

ARTICLE I

Whereas, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

Whereas, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

Whereas, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof:

Now, therefore, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and the territories [states] of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the western interstate commission for higher education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The terms of each commissioner shall be four years; provided however that the first three commissioners shall be appointed as follows: one for two years, one for three years and one for four years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

ARTICLE VI

The commission shall elect from its number a chairman and a vice chairman, and may appoint, and at its pleasure dismiss or remove, such officers, agents and employees as may be required to carry out the purpose of this compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

The commission shall adopt a seal and by-laws and shall adopt and promulgate rules and regulations for its management and control.

The commission may elect such committees as it deems necessary for the carrying out of its functions.

The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The chairman may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

On or before the fifteenth day of January of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or his designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

ARTICLE VIII

It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the

commission to provide adequate services and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

For this purpose the commission may enter into contractual agreements:

(a) with the governing authority of any educational institution in the region, or with any compacting state or territory, to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties; and

(b) with the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs and the long-range effects of the compact on higher education; and from time to time to prepare comprehensive reports on such research for presentation to the western governors' conference and to the legislatures of the compacting states and territories. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories, uniform legislation dealing with problems of higher education in the region.

For the purposes of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two years after written notice thereof by the governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

Unless such default shall be remedied within a period of two years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

Any such defaulting state may be reinstated by:

(a) performing all acts and obligations upon which it has heretofore defaulted; and

(b) application to and the approval by a majority vote of the commission.

History: 1978 Comp., § 11-10-1, enacted by Laws 1951, ch. 138, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1951, ch. 138, was not compiled in the 1941 Comp. or the 1953 Comp.

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

Cross references. — For the Western Interstate Commission on Higher Education Loans for Service Act, *see* 21-29-1 through 21-29-6 NMSA 1978.

11-10-2. [Notice of approval.]

Notice of approval of said compact shall be given by the governor of the state of New Mexico to the governors of the states of Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and the territories [states] of Alaska and Hawaii, and to the president of the United States.

History: 1978 Comp., § 11-10-2, enacted by Laws 1951, ch. 138, § 2.

ANNOTATIONS

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

11-10-3. [Effective date.]

That ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislatures of the states of Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and the territories [states] of Alaska and Hawaii, and consented [to] by the Congress of the United States of America.

History: 1978 Comp., § 11-10-3, enacted by Laws 1951, ch. 138, § 3.

ANNOTATIONS

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

ARTICLE 11
Interstate Mining (Repealed.)

11-11-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 61, § 2, effective April 1, 1991, repealed 11-11-1 NMSA 1978, as enacted by Laws 1982, ch. 89, § 1, relating to the Interstate Mining Compact, effective on the first anniversary of the date that the governor of New Mexico gives notice to the governors of all other states that are members of the compact that New Mexico is withdrawing. Governor Bruce King notified the governors of the other states of

the withdrawal by letter dated April 29, 1991, making the repeal effective April 29, 1992. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

11-11-2. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 61, § 2, effective April 1, 1991, repealed 11-11-2 NMSA 1978, as enacted by Laws 1982, ch. 89, § 2, relating to the Interstate Mining Compact advisory board, effective on the first anniversary of the date that the governor of New Mexico gives notice to the governors of all other states that are members of the compact that New Mexico is withdrawing. Governor Bruce King notified the governors of the other states of the withdrawal by letter dated April 29, 1991, making the repeal effective April 29, 1992. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

11-11-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 61, § 2, effective April 1, 1991, repealed 11-11-3 NMSA 1978, as enacted by Laws 1982, ch. 89, § 3, relating to authority to enter into agreements, approval of the secretary of finance and administration required, effective on the first anniversary of the date that the governor of New Mexico gives notice to the governors of all other states that are members of the compact that New Mexico is withdrawing. Governor Bruce King notified the governors of the other states of the withdrawal by letter dated April 29, 1991, making the repeal effective April 29, 1992. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

ARTICLE 12
Interstate Agricultural Grain Marketing (Repealed.)

11-12-1. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 21, § 1 repealed 11-12-1 NMSA 1978, as enacted by Laws 1987, ch. 239, § 1, relating to the Interstate Compact on Agricultural Grain Marketing, effective June 20, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com.*

ARTICLE 13
Indian Gaming Compact (Superseded.)

11-13-1. Superseded.

ANNOTATIONS

Compiler's notes. — Section 11-13-1 NMSA 1978 enacted into law the Indian Gaming Compact of 1997. In 2001, the State of New Mexico entered into a new gaming compact that superseded the 1997 compact. *See* R & R Deli, Inc. v. Santa Ana Star Casino, 2006-NMCA-020, 139 N.M. 85, 128 P.3d 513, cert. denied, 2006-NMCERT-002, 139 N.M. 339, 132 P.3d 596. The Indian Gaming Compact of 2001 expires on June 30, 2015. *See* 2001 Tribal-State Class III Gaming Compact Between the State of New Mexico and the Pueblos of Acoma, Isleta, Laguna, Sandia, San Felipe, San Juan, Santa Ana, Santa Clara, Taos and Tesuque and the Jicarilla Apache Nation, Section 12(A).

In 2007, the State of New Mexico entered into a new Indian gaming compact with many of the tribes that were signatories of the 2001 compact. The 2001 compact became null and void for those tribes that entered into the 2007 Indian Gaming Compact. *See* 2007 Tribal-State Class III Gaming Compact Between the State of New Mexico and the Pueblos of Isleta, Laguna, Nambe, Ohkay Owingeh (Pueblo of San Juan), Picuris, San Felipe, Sandia, Santa Ana, Santa Clara, Taos, and Tesuque, Section 9(D). The 2007 compact expires on June 30, 2037. *See* 2007 Indian Gaming Compact, Section 12(A).

In 2015, the State of New Mexico entered into a new Indian gaming compact. *See* 2015 Tribal-State Class III Gaming Compact (Approved by Laws 2015, S.J.R. No. 19). The 2015 Indian gaming compact fully supplants and replaces any predecessor agreements between the State of New Mexico and any Indian tribe that is a signatory of the 2015 Indian Gaming Compact. *See* 2015 Indian Gaming Compact, Section 9(A). The 2015 compact expires on June 30, 2037. *See* 2015 Indian Gaming Compact, Section 12(A).

Workers' compensation claims. — Where worker was injured during the course of worker's employment by an Indian tribe at a ski run that was operated by the Indian tribe, and in the Indian Gaming Compact, the tribe agreed to provide all of its employees workers' compensation benefits at least as favorable as those provided by comparable state programs, the Indian tribe did not waive its sovereign immunity with respect to workers' compensation disputes and the state workers' compensation judge lacked subject matter jurisdiction of worker's claim. *Antonio v. Inn of the Mountain Gods Resort & Casino*, 2010-NMCA-077, 148 N.M. 858, 242 P.3d 425, cert. denied, 2010-NMCERT-007, 148 N.M. 610, 241 P.3d 611.

Injured patron common law dramshop liability. — Where plaintiff alleged that defendant sold alcohol to decedents at a social function at an Indian casino despite the decedents' intoxication and, as a result, the decedents were killed in a single vehicle accident, and a third person, who was a passenger in the back seat of the vehicle, was injured; the police and the passenger were unable to determine which of the decedents was driving the vehicle at the time of the accident; plaintiff was licensed by the Indian tribe to sell and serve alcoholic beverages at the casino; and the Indian tribe had

enacted an ordinance which prohibited the sale of alcohol to intoxicated persons, plaintiff stated an injured, third-party common law negligence claim against defendant on behalf of whichever decedent was driving. *Mendoza v. Tamaya Enters., Inc.*, 2010-NMCA-074, 148 N.M. 534, 238 P.3d 903, cert. granted, 2010-NMCERT-007, 148 N.M. 610, 241 P.3d 611.

Injured, third-party common law dramshop liability. — Where plaintiff alleged that defendant sold alcohol to decedents at a social function at an Indian casino despite the decedents' intoxication and, as a result, the decedents were killed in a single vehicle accident, and a third person, who was a passenger in the back seat of the vehicle, was injured; the police and the passenger were unable to determine which of the decedents was driving the vehicle at the time of the accident; plaintiff was licensed by the Indian tribe to sell and serve alcoholic beverages at the casino; and the Indian tribe had enacted an ordinance which prohibited the sale of alcohol to intoxicated persons, plaintiff stated an injured, third-party common law negligence claim against defendant on behalf of whichever decedent was not driving. *Mendoza v. Tamaya Enters., Inc.*, 2010-NMCA-074, 148 N.M. 534, 238 P.3d 903, cert. granted, 2010-NMCERT-007, 148 N.M. 610, 241 P.3d 611.

District court jurisdiction over common law dramshop liability claims. — Where defendant sold alcohol to decedents at a social function at an Indian casino despite the decedents' intoxication and, as a result, the decedents were killed in a single vehicle accident; plaintiff was licensed by the Indian tribe to sell and serve alcoholic beverages at the casino; and pursuant to the Indian Gaming Compact, the Indian tribe had enacted an ordinance which prohibited the sale of alcohol to intoxicated persons, waived sovereign immunity in connection with claims for compensatory damages for bodily injury or property damage, and agreed that any claim could be brought in district court, the district court had jurisdiction over the parties and the subject matter of the action. *Mendoza v. Tamaya Enters., Inc.*, 2010-NMCA-074, 148 N.M. 534, 238 P.3d 903, cert. granted, 2010-NMCERT-007, 148 N.M. 610, 241 P.3d 611.

Tribes indispensable parties to Indian gaming legislation challenge. — Dismissal of an action attacking the legality of legislation authorizing Indian gaming in New Mexico (11-13-1 and 11-13-2 NMSA 1978) was required because the plaintiffs cannot join certain indispensable parties, namely the various tribes and pueblos that have gaming compacts with the state. *State ex rel. Coll v. Johnson*, 1999-NMSC-036, 128 N.M. 154, 990 P.2d 1277.

Standing to challenge the compact. — State, legislators, private citizens and nonprofit corporation did not have standing as beneficially interested parties or under the great public importance doctrine to challenge the legality of legislation authorizing Indian gaming. *State ex rel. Coll v. Johnson*, 1999-NMSC-036, 128 N.M. 154, 990 P.2d 1277.

Sovereign immunity not waived. — Where plaintiff sued defendant for breach of contract, prima facie tort, and violation of the Unfair Practices Act because defendant

refused to pay plaintiff a gambling prize; defendant was a casino that was a wholly-owned, operated, and unincorporated enterprise of defendant; and defendant was a party to the tribal-state Class III Gaming Compact, sovereign immunity barred plaintiff's claims and the district court lacked subject matter jurisdiction. *Hoffman v. Sandia Resort and Casino*, 2010-NMCA-034, 148 N.M. 222, 232 P.3d 901, cert. denied, 2010-NMCERT-003, 148 N.M. 560, 240 P.3d 15, cert. denied, 131 S. Ct. 227, 178 L.Ed.2d 135 (2010).

Waiver of sovereign immunity for bodily injury or property damage in a tribal-state Class III Gaming Compact cannot be construed to mean or include emotional injury resulting from the invasion of privacy rule. *Holguin v. Tsay Corp.*, 2009-NMCA-056, 146 N.M. 346, 210 P.3d 243.

Immunity from suit for emotional injury. — Where the plaintiff, who sued the defendant for emotional injuries resulting from the invasion of the plaintiff's privacy, claimed that the plaintiff won a random drawing for $250,000 at the defendant's casino; that the defendant refused to pay the plaintiff the full $250,000 and instead required the plaintiff to elect to receive half of the $250,000, less income taxes, or an annuity valued at $250,000 payable over twenty years; and that the defendant falsely advertised the plaintiff as winning the full $250,000 and used the plaintiff's likeness and name for the defendant's benefit and where the defendant was party to a tribal-state Class III Gaming Compact which contained a limited waiver of tribal sovereign immunity with respect to claims for damages for bodily injury or property damage, the waiver of immunity cannot be construed to mean or include emotional injury resulting from application of the invasion of privacy rule. *Holguin v. Tsay Corp.*, 2009-NMCA-056, 146 N.M. 346, 210 P.3d 243.

Jurisdiction over personal injury actions. — State courts have jurisdiction over personal injury actions filed against pueblos arising from negligent acts alleged against casinos owned and operated by the pueblos and occurring on pueblo land. *Doe v. Santa Clara Pueblo*, 2007-NMSC-008, 141 N.M. 269, 154 P.3d 644.

Dram shop liability. — Where decedents attended a wedding reception at a Pueblo casino where decedents were served alcoholic beverages and became intoxicated; casino employees continued to serve alcohol to decedents despite their apparent intoxication; decedents left the casino and were killed when their vehicle left the road and rolled over; decedents' estates filed wrongful death actions in state district court; the casino was licensed to sell alcohol by the Pueblo; the service of alcohol to decedents while they were intoxicated violated the Pueblo liquor ordinance; the ordinance reserved exclusive jurisdiction over violations of the ordinance in tribal courts; and in Section 8 of the Tribal-State Class III Gaming Compact (2001) the Pueblo agreed to state court jurisdiction of claims involving injuries proximately caused by the conduct of the casino, the state district court had jurisdiction over the case. *Mendoza v. Tamaya Enters., Inc.*, 2011-NMSC-030, 150 N.M. 258, 258 P.3d 1050, *aff'g* 2010-NMCA-074, 148 N.M. 534, 238 P.3d 903.

Prospective application. — The 1997 compact between a tribe and the state is to be applied prospectively only and not have retroactive application. *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, 132 N.M. 207, 46 P.3d 668, cert. dismissed, 536 U.S. 990, 123 S. Ct. 32, 153 L. Ed. 2d 894 (2002).

2001 compact. — The 2001 gaming compact superceded the 1997 gaming compact. *R & R Deli, Inc. v. Santa Ana Star Casino*, 2006-NMCA-020, 139 N.M. 85, 128 P.3d 513, cert. denied, 2006-NMCERT-002, 139 N.M. 339, 132 P.3d 596.

The 2001 gaming compact's reference to "persons who suffer bodily injury" supports the conclusion that the waiver of sovereign immunity was intended to cover only claims for physical injuries to persons and property and not claims which involve contract law and business torts. *R & R Deli, Inc. v. Santa Ana Star Casino*, 2006-NMCA-020, 139 N.M. 85, 128 P.3d 513, cert. denied, 2006-NMCERT-002, 139 N.M. 339, 132 P.3d 596.

Compact meets requirements for joinder of insurer. – The Indian Gaming Compact satisfies all three factors of the test for joinder of an insurer, because the language of Paragraph B of Section 8 unequivocally requires insurance coverage, the title of section 8, "Protection of Visitors", reflects that one of the compact's purposes is to protect the general public, and the compact contains no express negation of joinder. *Romero v. Pueblo of Sandia*, 2003-NMCA-137, 134 N.M. 553, 80 P.3d 490.

Purposes of compact. – Because the Indian Gaming Compact has wide-ranging goals, it does not follow that any purposes outside of the "Purpose and Objectives" section of the compact are rendered incidental. *Romero v. Pueblo of Sandia*, 2003-NMCA-137, 134 N.M. 553, 80 P.3d 490.

Approval of compacts under Indian Gaming Regulatory Act. — In order for class III Indian gaming operations to be valid under The Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.): the state and the tribe must have "entered into" a compact and the compact must be "in effect" pursuant to secretarial approval and notice; state law determines the procedures by which a state may validly enter into a compact; and in determining whether the state and the tribes have entered into valid and binding compacts under New Mexico law the New Mexico Supreme Court decision of *State ex rel. Clark v. Johnson,* 1995-NMSC-048, 120 N.M. 562, 904 P.2d 11 controls. *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir.), cert. denied, 522 U.S. 807, 118 S. Ct. 45, 139 L. Ed. 2d 11 (1997).

Gaming commission immune from suit. — Under the Indian Gaming Compact, the governmental actions of a gaming commission in regulating gaming are distinguishable from the commercial activities of a gaming enterprise. Plaintiff, whose loss of his gaming license is alleged to have been caused by the improper governmental action of a gaming commission, lacks standing to assert the waiver of immunity in Section 8 of the Indian Gaming Compact, which is limited to victims whose injuries are caused by the conduct of the gaming enterprise. *Kosiba v. Pueblo of San Juan*, 2006-NMCA-057, 139

N.M. 533, 135 P.3d 234, cert. denied, 2006-NMCERT-003, 139 N.M. 352, 132 P.3d 1038.

Gaming application triggered the requirement that the state reopen good faith negotiations with Indian tribes to evaluate the application's impact. — Under Section 17 of the Indian Gaming Compact, the authorization of "internet gaming" in New Mexico triggers a requirement that the state reopen good faith negotiations with the signatory Indian tribes to consider the impact on Indian gaming operations, and therefore an online application, which allows individuals to play state lottery games online using mobile devices or computers and which satisfies the definition of "internet gaming" in the state of New Mexico, triggers the requirement that the state reopen good faith negotiations with the tribes to evaluate the application's impact. 2025 Op. Att'y Gen. No. 25-07.

Expansion of Class II gaming for non-tribal horse racetrack. — Neither the federal Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 - 2721, nor the 2001 and 2007 Indian gaming compacts affect the legislature's authority to authorize Class II gaming activities outside of Indian lands and if authorized by the legislature, a non-tribal horse racetrack can engage in Class II gaming activities without violating the terms of the compacts. 2013 Op. Att'y Gen. No. 13-02.

The expansion of Class III gaming for non-tribal horse racetracks beyond the currently authorized activities of betting on live horse racing, horse race simulcasting, slot machines and similar gaming machines requires legislative authorization and, if granted, will terminate the gaming tribes' revenue-sharing obligations under the 2001 and 2007 Indian gaming compacts. 2013 Op. Att'y Gen. No. 13-02.

Limits on arbitration. — An arbitration panel selected under Section 7 of the compact could not change or invalidate the regulatory fees specified in Paragraph E(5) of Section 4. 1999 Op. Att'y Gen. No. 99-02.

If the revenue sharing agreement, codified at former 11-3-2 NMSA 1978, is covered by Section 7 of the compact, the arbitration panel would not have authority to determine the legal validity of the revenue-sharing amount. 1999 Op. Att'y Gen. No. 99-02.

11-13-2. Revenue sharing of tribal gaming revenue.

The governor is authorized to execute a revenue-sharing agreement in the form substantially set forth in this section with any New Mexico Indian nation, tribe or pueblo that has also entered into an Indian gaming compact as provided by law. Execution of an Indian gaming compact is conditioned upon execution of a revenue-sharing agreement. The consideration for the Indian entity entering into the revenue-sharing agreement is the condition of the agreement providing limited exclusivity of gaming activities to the tribal entity. The revenue-sharing agreement shall be in substantially the following form and is effective when executed by the governor on behalf of the state and the appropriate official of the Indian entity:

"REVENUE-SHARING AGREEMENT

1. Summary and consideration. The Tribe shall agree to contribute a portion of its Class III Gaming revenues identified in and under procedures of this Revenue-Sharing Agreement, in return for which the State agrees that the Tribe:

A. has the exclusive right within the State to provide all types of Class III Gaming described in the Indian Gaming Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and veterans' and fraternal organizations; and

B. will only share that part of its revenue arising from the use of Gaming Machines and all other gaming revenue is exclusively the Tribe's.

2. Revenue to State. The parties agree that, after the effective date hereof, the Tribe shall make the quarterly payments provided for in Paragraph 3 of the Revenue Sharing Agreement to the state treasurer for deposit into the General Fund of the State ("State General Fund").

3. Calculation of Revenue to State.

A. As used in this Revenue-Sharing Agreement, "net win" means the annual total amount wagered at a Gaming Facility on Gaming Machines less the following amounts:

(1) the annual amount paid out in prizes from gaming on Gaming Machines;

(2) the actual amount of regulatory fees paid to the state; and

(3) the sum of two hundred fifty thousand dollars ($250,000) per year as an amount representing tribal regulatory fees, with these amounts increasing by five percent (5%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

B. The Tribe shall pay the state sixteen percent (16%) of the net win.

C. For purposes of these payments, all calculations of amounts due shall be based upon the quarterly activity of the gaming facility. Quarterly payments due to the State pursuant to these terms shall be paid no later than twenty-five (25) days after the last day of each calendar quarter. Any payments due and owing from the Tribe in the quarter the Compact is approved, or the final quarter the Compact is in force, shall reflect the net win, but only for the portion of the quarter the Compact is in effect.

4. Limitations. The Tribe's obligation to make the payments provided for in Paragraphs 2 and 3 of this section shall apply and continue only so long as there is a binding Indian Gaming Compact in effect between the Tribe and the State, which

Compact provides for the play of Class III Gaming, but shall terminate in the event of any of the following conditions:

A. If the State passes, amends, or repeals any law, or takes any other action, which would directly or indirectly attempt to restrict, or has the effect of restricting, the scope of Indian gaming.

B. If the State permits any expansion of nontribal Class III Gaming in the State. Notwithstanding this general prohibition against permitted expansion of gaming activities, the State may permit: (1) the enactment of a State lottery, (2) any fraternal, veterans or other nonprofit membership organization to operate such electronic gaming devices lawfully, but only for the benefit of such organization's members, (3) limited fundraising activities conducted by nonprofit tax exempt organizations pursuant to Section 30-19-6 NMSA 1978, and (4) any horse racetracks to operate electronic gaming devices on days on which live or simulcast horse racing occurs.

5. Effect of Variance. In the event the acts or omissions of the State cause the Tribe's obligation to make payments under Paragraph 3 of this section to terminate under the provisions of Paragraph 4 of this section, such cessation of obligation to pay will not adversely affect the validity of the Compact, but the amount that the Tribe agrees to reimburse the State for regulatory fees under the Compact shall automatically increase by twenty percent (20%).

6. Third-Party Beneficiaries. This Agreement is not intended to create any third-party beneficiaries and is entered into solely for the benefit of the Tribe and the State."

FORM A

New Mexico Gaming Control Board
COMPACT COMPLIANCE CHECKLIST
Compliance Report
Fiscal Year 20

Key: X – Compliance (Blank) – Non-Compliance
/ – Partial Compliance NA – Non Applicable

Compliance with Section	Tribal-State Compact	Compliance with Section	Tribal-State Compact	Compliance with Section	Tribal-State Compact
[ ]	Section 3. Authorized Class III Gaming.	[ ]	Section 4.B.(17)	[ ]	Section 8. Protection of Visitors.
		[ ]	Section 4.B.(18)	[ ]	Section 8.A.
		[ ]	Section 4.B.(19)	[ ]	Section 8.B.
	Section 4. Conduct of Class II Gaming.	[ ]	Section 4.C.	[ ]	Section 8.C.
[ ]		[ ]	Section 4.D.	[ ]	Section 8.D.
[ ]		[ ]	Section 4.E.(1)	[ ]	Section 8.E.
				[ ]	Section 8.F.

[ ] Section 4.A.(1)
[ ] Section 4.A.(2)
[ ] Section 4.A.(3)
[ ] Section 4.A.(4)
[ ] Section 4.A.(5)
[ ] Section 4.A.(6)
[ ] Section 4.A.(7)
[ ] Section 4.A.(8)
[ ] Section 4.A.(9)
[ ] Section 4.B.(1)
[ ] Section 4.B.(2)
[ ] Section 4.B.(3)
Section 4.B.(4)
Section 4.B.(5)
Section 4.B.(6)
Section 4.B.(7)
Section 4.B.(8)
Section 4.B.(9)
Section 4.B.(10)
Section 4.B.(11)
Section 4.B.(12)
Section 4.B.(13)
Section 4.B.(14)

[ ] Section 4.E.(2)
[ ] Section 4.E.(3)
[ ] Section 4.E.(4)
[ ] Section 4.E.(5)
Section 4.E.(6)
[ ] Section 4.F.(1)
Section 4.F.(2)

[ ] Section 5.
[ ] Licensing
[ ] Requirements.
[ ] Section 5.A.
Section 5.B.
[ ] Section 5.C.
Section 5.D.

Section 6.
[ ] Providers of
[ ] Class III
[ ] Gaming Equipment or Devices or Supplies.
Section 6.A.
Section 6.B.
Section 6.C.

[ ] Section 8.G.
[ ] Section 8.H.
Section 8.I.

[ ] Section 10.
Criminal Jusrisdiction.
[ ] Section 10.C.

[ ] Section 11.
Revenue
[ ] Section 11.A.
[ ] Section 11.B.
[ ] Section 11.C.

[ ] Appendix
[ ] Section II.A.
Audit
Section II.B.
Inspection
Section III.
Progressive Games
Section IV.
Credit
Section V.
Comps

Section
4.B.(15)
Section
4.B.(16)

Appendix to Article 13

Indian Gaming Compacts
2001 Tribal-State Class III Gaming Compact
Between the State of New Mexico
and
the Pueblos of Acoma, Isleta, Laguna, Sandia, San Felipe, San Juan, Santa Ana, Santa Clara, Taos and Tesuque and the Jicarilla Apache Nation
(Approved by Laws 2001, S.J.R. No. 37
Expires June 30, 2015)

INDIAN GAMING COMPACT

INTRODUCTION

The State of New Mexico ("State") is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Tribe;

The _____Tribe ("Tribe") is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this Compact, with the State;

The Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § § 2701-2721 (hereinafter "IGRA"), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to a tribal-state compact entered into for that purpose;

The 1999 State legislature has enacted SB 737, as 1999 N.M. Laws, ch. 252, known as the "Compact Negotiation Act," creating a process whereby the State and the Tribe have engaged in negotiations leading to this Compact, with review by a joint legislative committee, and with final approval by a majority vote in each house of the legislature;

The Tribe owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility; The State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.

NOW, THEREFORE, the State and the Tribe agree as follows:

TERMS AND CONDITIONS SECTION

SECTION 1. Purpose and Objectives.

The purpose and objectives of the State and the Tribe in making this Compact are as follows:

A. To evidence the good will and cooperative spirit between the State and the Tribe;

B. To continue the development of an effective government-to-government relationship between the State and the Tribe;

C. To provide for the regulation of Class III Gaming on Indian Lands as required by the IGRA;

D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;

E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;

F. To provide for the effective regulation of Class III Gaming in which the Tribe shall have the sole proprietary interest and be the primary beneficiary; and

G. To address the State's interest in the establishment, by the Tribe, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming enterprise on Indian Lands.

H. To settle and resolve certain disputes that have arisen between the Tribe and the State under the provisions of the Predecessor Agreements.

SECTION 2. Definitions.

For purposes of this Compact, the following definitions pertain:

A. "Class III Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

B. "Compact" means this compact between the State and the Tribe.

C. "Gaming Employee" means a person connected directly with the conduct of Class III Gaming, or handling the proceeds thereof or handling any Gaming Machine; but "Gaming Employee" does not include:

1. Bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;

2. Secretarial or janitorial personnel;

3. Stage, sound and light technicians; or

4. Other nongaming personnel.

D. "Gaming Enterprise" means the tribal entity created and designated by the Tribe as having authority to conduct Class III Gaming pursuant to this Compact.

E. "Gaming Facility" means the buildings or structures in which Class III Gaming is conducted on Indian Lands.

F. "Gaming Machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the Gaming Machine or in any other manner.

G. "Indian Lands" means:

1. all lands within the exterior boundaries of the Tribe's reservation and its confirmed grants from prior sovereigns; or

2. any other lands title to which is either held in trust by the United States for the exclusive benefit of the Tribe or a member thereof or is held by the Tribe or a member thereof subject to restrictions against alienation imposed by the United States, and over which the Tribe exercises jurisdiction and governmental authority, but not including any land within the boundaries of a municipality that is outside of the boundaries of the Tribe's reservation or confirmed Spanish grant, as those boundaries existed on October 17, 1988.

H. "Key Employee" means that term as defined in 25 CFR Section 502.14.

I. "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

J. "Management Contractor" means any person or entity that has entered into a Management Contract with the Tribe.

K. "Ordinance" means the gaming ordinance and any amendments thereto adopted by the Tribal Council of the Tribe.

L. "Predecessor Agreements" means the tribal-state class III gaming compact and the accompanying revenue sharing agreement entered into between the Tribe and the State pursuant to 1997 Laws, ch. 190, §§ 1, 2.

M. "Primary Management Official" means that term as defined in 25 CFR Section 502.19.

N. "State" means the State of New Mexico.

O. "State Gaming Representative" means that person designated by the gaming control board pursuant to the Gaming Control Act [Chapter 60, Article 2E NMSA 1978] who will be responsible for actions of the State set out in the Compact. The State Legislature may enact legislation to establish an agency of the State to perform the duties of the State Gaming Representative.

P. "Tribal Gaming Agency" means the tribal governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the Tribe set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.

Q. "Tribe" means any Indian Tribe, Nation or Pueblo located within the State of New Mexico entering into this Compact as provided for herein.

SECTION 3. Authorized Class III Gaming.

The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all forms of Class III Gaming.

Subject to the foregoing, the Tribe shall establish, in its discretion, by tribal law, such limitations as it deems appropriate on the number and type of Class III Gaming conducted, the location of Class III Gaming on Indian Lands, the hours and days of operation, and betting and pot limits, applicable to such gaming.

SECTION 4. Conduct of Class III Gaming.

A. Tribal Gaming Agency. The Tribal Gaming Agency will assure that the Tribe will:

1. operate all Class III Gaming pursuant to this Compact, tribal law, the IGRA and other applicable Federal law;

2. provide for the physical safety of patrons in any Gaming Facility;

3. provide for the physical safety of personnel employed by the Gaming Enterprise;

4. provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;

5. provide for the protection of the property of the patrons and the Gaming Enterprise from illegal activity;

6. participate in licensing of primary management officials and key employees of a Class III Gaming Enterprise;

7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and 8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

B. Regulations. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);

2. prohibiting the employment of any person as a Gaming Employee who is under the age of twenty-one (21) or who has not been licensed in accordance with the applicable requirements of federal and tribal law;

3. requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws generally applicable to Indian tribes relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

4. requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;

5. prohibiting the Tribe, the Gaming Enterprise and a Management Contractor from discriminating in the employment of persons to work for the gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap, provided, however, that nothing herein shall be interpreted to prevent the Tribe from granting preference in employment actions to tribal members or other Indians in accordance with established tribal laws and policies;

6. providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable state programs;

7. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

8. permitting State Department of Environment inspectors to inspect Gaming Facilities' food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act [Chapter 25, Article 1 NMSA 1978] are maintained;

9. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance check, including Social Security, TANF, pension and other similar checks, for any patron;

10. prohibiting a gaming enterprise from extending credit by accepting IOUs or markers from its patrons;

11. requiring that the Gaming Enterprise post on each Gaming Machine the odds of a player achieving a winning outcome from the games available on that Gaming Machine;

12. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to TANF recipients for access to TANF benefits;

13. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%);

14. providing that all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each Gaming Machine in use at the Gaming Facility, and that by no later than ninety days after this Compact takes effect, the wager and payout data of each machine, once it is fed into the Gaming Enterprise’s central computer, may be accessed electronically by the State Gaming Representative by a dedicated telecommunications connection, on a "read-only" basis, upon entry of appropriate security codes; but provided that in no event shall the State Gaming Representative be able to alter or affect the operation of any Gaming Machine or other device on the premises of the Gaming Facility, or the data provided to the central computer, and provided further that the system for electronic access to the machine wager and payout data collected by the Gaming

Enterprise's central computer shall be constructed and installed at the State's cost, and shall be designed in conjunction with Gaming Enterprise technical staff so as to preserve the integrity of the system and the data contained therein, to minimize any possibility of unauthorized access to the system or tampering with the data, and to minimize any access by the State Gaming Representative to information other than machine wager and payout data residing in the central reporting and auditing system;

15. enacting provisions that:

(a) prohibit an employee of the Gaming Enterprise from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

(b) require Gaming Enterprise employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and

(c) require the Gaming Enterprise to purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars ($1,000,000) per incident and two million dollars ($2,000,000) aggregate per policy year;

16. prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;

17. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers in New Mexico or who patronize New Mexico gaming facilities, and for the prevention of compulsive gambling in New Mexico; and requiring that a substantial portion of such funds be distributed to an organization that has expertise in and provides counseling, intervention or other services for compulsive gamblers in New Mexico, and whose services are available to all persons without regard to race or tribal membership;

18. governing any Management Contract regarding its Class III Gaming activity so that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;

19. prohibiting the operation of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays);

20. prohibiting a Tribal Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide alcoholic beverages for no charge or at reduced prices, or from providing, allowing, contracting to provide or

arranging to provide food or lodging for no charge or at nominal prices, at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game; and

21. requiring the Tribe, the Tribal Gaming Enterprise or a Management Contractor to report to the secretary of state, in the same manner and at the same times as are required of political committees under the provisions of the State's Campaign Reporting Act (NMSA 1978 §§ 1-19-25 through 1-19-36) any and all contributions, whether directly or through an agent, representative or employee, of any moneys derived from revenue from the Gaming Enterprise, or of anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act and provided that in the event any report required to be made hereunder is not made within the time specified herein, or is false or incomplete in any respect, the Tribe shall be liable to pay to the secretary of state a penalty in the amount of fifty dollars ($50.00) for each working day after the day on which the report was due until the day on which the complete or true report is filed, up to a maximum of five thousand dollars ($5000), except that with respect to the report due on the Friday before an election the penalty shall be five hundred dollars ($500) for the first working day after the due date and fifty dollars ($50.00) per working day thereafter, up to a maximum of five thousand dollars ($5000).

The Tribal Gaming Agency will provide true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment or approval, if any.

C. Audit and Financial Statements. The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principles. All such books and records shall be retained for a period of at least five (5) years from the date of creation, as required by 25 C.F.R. § 571.7(c). Not less than annually, the Tribal Gaming Agency shall require an audit and a certified financial statement covering all financial activities of the gaming enterprise by an independent certified public accountant licensed by the State. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall be submitted to the Tribal Gaming Agency within one hundred twenty (120) days of the close of the Tribe's fiscal year. Copies of the financial statement and the audit shall be furnished to the State Gaming Representative and the state treasurer by the Tribal Gaming Agency within one hundred twenty days of the agency's receipt of the documents, but such documents shall be subject to the provisions of § 4(E)(3) of this Compact. The Tribe will maintain the following records for not less than five (5) years:

1. revenues, expenses, assets, liabilities and equity for each Gaming Enterprise;

2. daily cash transactions for each Class III Gaming activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox and gaming room bank;

3. all markers, IOUs, returned checks, hold checks or other similar credit instruments;

4. individual and statistical game records, except for card games, to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

5. contracts, correspondence and other transaction documents relating to all vendors and contractors;

6. records of all tribal gaming enforcement activities;

7. audits prepared by or on behalf of the Tribe; and

8. personnel information on all Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.

D. Violations. The agents of the Tribal Gaming Agency shall have unrestricted access to the Gaming Facility during all hours of Class III Gaming activity, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. The agents shall report immediately to the Tribal Gaming Agency any suspected violation of this Compact, the Ordinance, or regulations of the Tribal Gaming Agency by the gaming enterprise, Management Contractor, or any person, whether or not associated with Class III Gaming.

E. State Gaming Representative.

1. Upon written request by the State to the Tribe, the Tribe will provide information on primary management officials, key employees and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5 of this Compact. The Tribe shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the Tribal Gaming Agency will certify annually to the State Gaming Representative that the Tribal Gaming Agency has met its obligations under this Compact. Additionally, the State Gaming Representative

shall have the right to inspect a Gaming Facility, Class III Gaming activity, and all records relating to Class III Gaming of the Tribe, subject to the following conditions:

(a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal Gaming Facility business hours;

(b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Enterprise business hours, immediately after notifying the Tribal Gaming Agency and Gaming Enterprise of his or her presence on the premises and presenting proper identification, and requesting access to the non-public areas of the Gaming Facility. The Tribe, in its sole discretion, may require an employee of the Gaming Enterprise or the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming Enterprise or the Tribal Gaming Agency to be available at all times for such purpose;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State; and

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Enterprise.

The State Gaming Representative may contract with private persons, firms or other entities for the purpose of performing certain of his functions, but the State Gaming Representative will be the single contact with the Tribe and may be relied upon as such by the Tribe.

3. a) Any information, documents or communications provided to the State Gaming Representative, his agents or contractors, or to any other official, agency or entity of the State (all of which are collectively hereinafter referred to as "the State entities") by the Tribe, the Tribal Gaming Agency or the Gaming Enterprise, or prepared from information obtained from the Tribe, the Tribal Gaming Agency or the Gaming Enterprise, under the provisions of this Compact or under the provisions of the Predecessor Agreements, are confidential. Any State entity that has received any information, documents or communications from the Tribe, the Tribal Gaming Agency or the Gaming Enterprise:

i) may release or disclose the same only with the prior written consent of the Tribe or pursuant to a lawful court order after timely notice of the proceeding has been given to the Tribe;

ii) shall maintain all such information, documents and communications in a secure place accessible only to authorized officials and employees of the State entity that has received the same; and

iii) shall adopt procedures and regulations to protect the confidentiality of the information, documents and communications provided by the Tribe, Tribal Gaming Agency or Gaming Enterprise.

b) These prohibitions shall not be construed to prohibit:

i) the furnishing of any information to a law enforcement or regulatory agency of the Federal Government;

ii) the State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;

iii) publishing the terms of this Compact; iv) disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and v) complying with subpoenas or court orders issued by courts of competent jurisdiction.

c) Notwithstanding the foregoing, the Tribe agrees that:

i) the following documents and information may be released by a State entity to the public: the Tribe’s gaming ordinance and regulations of the Tribal Gaming Agency; official rulings of the Tribal Gaming Agency in matters not subject to a confidentiality order imposed by the Agency; other information and documents of the Tribal Gaming Agency or the Gaming Enterprise ordinarily available to the public; quarterly Net Win figures used as the basis for computation of the Tribe’s revenue sharing payment under the provisions of Section 11 of this Compact; and correspondence between the Tribe or a tribal entity and a State entity, unless such correspondence is specifically labeled "Confidential;"

ii) a State entity may release to the public aggregate figures compiled by totaling comparable figures from the annual financial statements of all of the New Mexico gaming tribes; and

iii) the report of the annual audit of the Gaming Enterprise that is provided by the Tribe to the State Gaming Representative shall be available to the public to the same extent that similar information that is required to be provided to the State by non- Indian gaming entities is available to the public, pursuant to the provisions of applicable law and the policies and regulations of the Gaming Control Board, at the time the request for the report of the annual audit is made.

4. To the fullest extent allowed by State law, the Tribe shall have the right to inspect State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.

5. The Tribe shall reimburse the State for the costs the State incurs in carrying out any functions authorized by the terms of this Compact. The Tribe and the State agree that to require the State to keep track of and account to the Tribe for all such costs would be unreasonably burdensome, and that a fair estimate of the State's costs of such activity as of the date on which this Compact takes effect is one hundred thousand dollars ($100,000) per year, and that those costs will increase over time. The Tribe therefore agrees to pay the State the sum of one hundred thousand dollars ($100,000) per year as reimbursement of the State's costs of regulation, which amount shall increase by three percent (3%) each year, beginning as of January 1 of the first calendar year after this Compact has been in effect for at least twelve (12) months, in quarterly payments of one-fourth of the annual amount due each, in advance, beginning with the first day of the first full calendar quarter after this Compact takes effect, and on the first day of each quarter thereafter, for as long as this Compact remains in effect. The Tribe and the State further agree that such amount fairly reflects the State's costs of regulation during the period of time that the Predecessor Agreements were in effect, and that the Tribe should pay the State that amount for such period, but no more. The Tribe therefore agrees that with its first quarterly payment due to the State under the provisions of this Paragraph, it will also pay to the State an amount equal to the number of full calendar quarters that the Predecessor Agreements were in effect, times twenty-five thousand dollars ($25,000), less the total amount that the Tribe actually paid to the State during such period under the provisions of Section 4(E)(5) of the compact portion of the Predecessor Agreements. If the amount thus determined is a negative number, such amount shall be credited against the payments due to the State under the provisions of this Paragraph until the Tribe has recouped such amount in full, but in such case the Tribe shall nevertheless provide to the State, on or before the due date for each quarterly payment, a statement of the amount of the overpayment still to be recouped, and the amount credited for the current payment.

6. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.

F. The Tribe shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the Internal Revenue Service.

SECTION 5. Licensing Requirements.

A. License Required. The Gaming Facility operator, but not including the Tribe, including its principals, primary management officials, and key employees, the Management Contractor and its principals, primary management officials, and key

employees (if the Tribe hires a Management Contractor); any person, corporation, or other entity that has supplied or proposes to supply any gaming device to the Tribe or the Management Contractor; and any person, corporation or other entity providing gaming services within or without a Gaming Facility, shall apply for and receive a license from the Tribal Gaming Agency before participating in any way in the operation or conduct of any Class III Gaming on Indian Lands. The Tribal Gaming Agency shall comply fully with the requirements of this Section and of the Indian Gaming Regulatory Act, especially at 25 U.S.C. §§ 2710-2711, and the regulations issued thereunder at 25 C.F.R. Parts 550-559, as well as the requirements of the Tribe's gaming ordinance and any regulations issued thereunder, in processing license applications and issuing licenses.

B. License Application. Each applicant for a license shall file with the Tribal Gaming Agency a written application in the form prescribed by the Tribal Gaming Agency, along with the applicant's fingerprint card, current photograph and the fee required by the Tribal Gaming Agency.

C. Background Investigations. Upon receipt of a completed application and required 14 fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

D. Provision of Information to State Gaming Representative. Whenever the Tribal Gaming Agency is required by federal or tribal law or regulations to provide to the National Indian Gaming Commission ("the Commission") any information, document or notice relating to the licensing of any key employee or primary management official of the Gaming Enterprise, a copy of such information, document or notice shall also be provided to the State Gaming Representative. The State Gaming Representative shall be entitled to the same right to request additional information concerning an applicant licensee, to comment on the proposed licensing of any applicant licensee, and to supply the Tribal Gaming Agency with additional information concerning any applicant licensee, as is enjoyed by the Commision.

SECTION 6. Providers of Class III Gaming Equipment or Devices or Supplies.

A. Within thirty (30) days after the effective date of this Compact, if it has not already done so, the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies to be used in any Gaming Facility, which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices or supplies within the State of Nevada. Any and all Class III Gaming equipment, devices or supplies used by the Tribe shall meet or exceed the standards thereby adopted.

B. Prior to entering into any future lease or purchase agreement for Class III Gaming equipment, devices or supplies, the Tribe shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or

indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribe to license those persons in accordance with applicable federal and tribal law.

C. The seller, lessor, manufacturer or distributor shall provide, assemble and install all Class III Gaming equipment, devices or supplies in a manner approved and licensed by the Tribe.

SECTION 7. Dispute Resolution.

A. In the event either party believes that the other party has failed to comply with or has otherwise breached any provision of this Compact, such party may invoke the following procedure:

1. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific Compact provision believed to have been violated and shall specify the factual and legal basis for the allegation of noncompliance. The notice shall specifically identify the date, time and nature of the alleged noncompliance.

2. In the event an allegation by the complaining party is not resolved to the satisfaction of such party within twenty (20) days after service of the notice set forth in Paragraph A(1) of this section, the complaining party may serve upon the other party a notice to cease conduct of the particular game(s) or activities alleged by the complaining party to be in noncompliance. Upon receipt of such notice, the responding party may elect to stop the game(s) or activities specified in the notice or invoke arbitration and continue the game(s) or activities pending the results of arbitration. The responding party shall act upon one of the foregoing options within ten (10) days of receipt of notice from the complaining party, unless the parties agree to a longer period, but if the responding party takes neither action within such period the complaining party may invoke arbitration by written notice to the responding party within ten (10) days of the end of such period.

3. The arbitrators shall be attorneys who are licensed members in good standing of the State Bar of New Mexico or of the bar of another state. The State will select one arbitrator, the Tribe a second arbitrator, and the two so chosen shall select a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is selected, the third arbitrator will be chosen by the American Arbitration Association. The arbitrators thereby selected shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the matters at issue. The arbitrators shall determine, after hearing from each party, hether the arbitration proceeding or any portions thereof shall be closed to the public, but in the absence of such determination the proceedings shall be open to the public. The arbitrators shall make determinations as to each issue presented by the parties, but the arbitrators shall have no authority to determine any question as to the validity or effectiveness of this Compact or of any provision hereof.

4. All parties shall bear their own costs of arbitration and attorneys' fees.

5. The results of arbitration shall be final and binding, and shall be enforceable by an action for injunctive or mandatory injunctive relief against the State and the Tribe in any court of competent jurisdiction. For purposes of any such action, the State and the Tribe acknowledge that any action or failure to act on the part of any agent or employee of the State or the Tribe, contrary to a decision of the arbitrators in an arbitration proceeding conducted under the provisions of this section, occurring after such decision, shall be wholly unauthorized and ultra vires acts, not protected by the sovereign immunity of the State or the Tribe.

B. Nothing in Subsection 7(A) shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nothing in this Section shall be deemed a waiver of the Tribe's sovereign immunity. Nothing in this Section shall be deemed a waiver of the State's sovereign immunity.

SECTION 8. Protection of Visitors.

A. Policy Concerning Protection of Visitors. The safety and protection of visitors to a Gaming Facility is a priority of the Tribe, and it is the purpose of this Section to assure that any such persons who suffer bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise have an effective remedy for obtaining fair and just compensation. To that end, in this Section, and subject to its terms, the Tribe agrees to carry insurance that covers such injury or loss, agrees to a limited waiver of its immunity from suit, and agrees to proceed either in binding arbitration proceedings or in a court of competent jurisdiction, at the visitor's election, with respect to claims for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise. For purposes of this Section, any such claim may be brought in state district court, including claims arising on tribal land, unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.

B. Insurance Coverage for Claims Required. The Gaming Enterprise shall maintain in effect policies of liability insurance insuring the Tribe, its agents and employees against claims, demands or liability for bodily injury and property damages by a visitor arising from an occurrence described in Paragraph A of this Section. The policies shall provide bodily injury and property damage coverage in an amount of at least fifty million dollars ($50,000,000) per occurrence and fifty million dollars ($50,000,000) annual aggregate. The Tribe shall provide the State Gaming Representative annually a certificate of insurance showing that the Tribe, its agents and employees are insured to the required extent and in the circumstances described in this Section.

C. Limitation on Time to Bring Claim. Claims brought pursuant to the provisions of this section must be commenced by filing an action in court or a demand for arbitration within three years of the date the claim accrues.

D. Specific Waiver of Immunity and Choice of Law. The Tribe, by entering into this Compact and agreeing to the provisions of this section, waives its defense of sovereign immunity in connection with any claims for compensatory damages for bodily injury or property damage up to the amount of fifty million dollars ($50,000,000) per occurrence asserted as provided in this section. This is a limited waiver and does not waive the Tribe's immunity from suit for any other purpose. The Tribe shall ensure that a policy of insurance that it acquires to fulfill the requirements of this section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured, up to the limits of liability set forth in this Paragraph. The Tribe agrees that in any claim brought under the provisions of this Section, New Mexico law shall govern the substantive rights of the claimant, and shall be applied, as applicable, by the forum in which the claim is heard, except that the tribal court may but shall not be required to apply New Mexico law to a claim brought by a member of the Tribe.

E. Election by Visitor. A visitor having a claim described in this section may pursue that claim in any court of competent jurisdiction, or in binding arbitration. The visitor shall make a written election that is final and binding upon the visitor.

F. Arbitration. Arbitration pursuant to an election by a visitor as provided in Subsection E of this section shall be conducted as follows:

1. the visitor shall submit a written demand for arbitration to the Gaming Enterprise, by certified mail, return receipt requested;

2. the visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of receipt of the demand, and the two arbitrators shall select a third arbitrator, but in the event the two arbitrators cannot agree on the selection of the third arbitrator within thirty (30) days of their appointment, they shall apply to the American Arbitration Association to appoint the third arbitrator;

3. the arbitration panel shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the claim; and

4. the award of the arbitration panel shall be final and binding, and may be enforced in a court of competent jurisdiction.

G. Increase in Liability Limits. As of the fifth anniversary of this Compact, and at five-year intervals thereafter, the liability insurance coverage requirements set forth in Paragraph B of this Section, and the limit on the Tribe’s waiver of sovereign immunity set forth in Paragraph D of this Section, shall be increased by a percentage equal to the percentage increase in the CPI-U published by the Bureau of Labor Statistics of the United States Department of Labor, for the same period, rounded to the nearest one hundred thousand dollars ($100,000).

H. Public Health and Safety. The Tribe shall establish for its Gaming Facility health, safety and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code and the Uniform Plumbing Code, and any and all Gaming Facilities or additions thereto constructed by the Tribe hereafter shall be constructed and all facilities shall be maintained so as to comply with such standards. Inspections will be conducted with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the State Gaming Representative may be present during such inspection. The Tribe agrees to correct any deficiencies noted in such inspections within a time agreed upon between the State and Tribe. The Tribal Gaming Agency will provide copies of such inspection reports to the State Gaming Representative, if requested to do so in writing.

SECTION 9. Conditions for Execution; Effective Date.

A. The parties acknowledge that they have been engaged in litigation, captioned State of New Mexico v. Jicarilla Apache Tribe, et al., No. 00-0851 (D.N.M.) (the "Lawsuit"), that was initiated by the State in United States District Court on June 13, 2000, in which the State seeks an injunction against the Tribe's conduct of Class III gaming under the Predecessor Agreements unless the Tribe pays the State the full amount that the State claims it is owed under the revenue sharing provision of the Predecessor Agreements. The Tribe disputes the validity of such provision of the Predecessor Agreements, but the parties have agreed to settle the dispute addressed in the Lawsuit, and have agreed to enter into this new Compact.

B. This Compact may not be executed by the Governor of the State unless and until it has been executed by the appropriate representative of the Tribe, and until the State Attorney General has certified to the Governor in writing that the Tribe and the State have negotiated a complete settlement of the issues in dispute in the Lawsuit (except that such settlement shall be contingent upon this Compact going into effect under the provisions of IGRA), and that the Tribe has either paid in full the amount agreed to by the terms of the settlement, into the registry of the federal court, or has entered into a binding and fully enforceable agreement for the payment of such amount that is acceptable to the Attorney General. Upon receiving such certification, the Governor shall execute the Compact and forward it to the Secretary of the Interior for approval. Upon the Secretary's affirmative approval of this Compact, as set forth in Paragraph C of this Section, such sum, plus interest, shall be immediately paid into the State General Fund. In the event the Secretary fails to affirmatively approve this Compact, such sum, plus interest, shall be immediately repaid to the Tribe.

C. This Compact shall take effect upon publication of notice in the Federal Register of its approval by the Secretary of the Interior, or of the Secretary's failure to act on it within 45 days from the date on which it was submitted to him; provided, however, that notwithstanding its taking effect, the parties expressly agree that the provisions of this Compact shall remain suspended, and shall confer no rights or obligations on either party, and that the terms and provisions of the Predecessor Agreements shall remain

fully in force and effect, subject to the Tribe's and the State's claims in the Lawsuit, unless and until the Secretary shall have affirmatively approved this Compact, pursuant to 25 U.S.C. § 2710(d)(8)(A).

D. Upon the publication of notice of the Secretary's affirmative approval of this Compact in the Federal Register, the Predecessor Agreements shall be and become null and void, and of no further effect, and any and all actions as between the Tribe and the State arising out of the Predecessor Agreements, including dispute resolution proceedings, shall thereafter be dismissed with prejudice with no relief to either party, and the terms and provisions of this Compact shall go into full force and effect, fully supplanting and replacing the Predecessor Agreements.

SECTION 10. Criminal Jurisdiction.

A. The Tribe and the State acknowledge that under the provisions of § 23 of the IGRA, especially that portion codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.

B. The Tribe and the State hereby agree that, in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof or that occurs on the premises of the Tribal Gaming Facility, that is committed by any person who is not a member of the Tribe, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to prosecute such person, under its laws and in its courts.

C. Immediately upon becoming aware of any such suspected crime by a nonmember of the Tribe the Gaming Enterprise or the Tribal Gaming Agency shall notify the state attorney general and the district attorney for the district in which the Gaming Facility is located, supplying all particulars available to the tribal entity at the time. The Tribe agrees that its law enforcement and gaming agencies shall perform such additional investigation or take such other steps in furtherance of the investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State; provided, however, that in the event of emergency circumstances involving a possible violation, the Tribe and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property. The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.

D. The State agrees that no less frequently than annually it will provide the Tribal Gaming Agency with a written report of the status and disposition of each matter

referred to it under the provisions of this section since the last report or that was still pending at the time of the last report. In the event the district attorney to whom a matter is referred under the provisions of this section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal Gaming Agency of such decision in writing. The Tribal Gaming Agency may in that event ask the attorney general of the state to pursue the matter.

E. The district attorney for the district in which the Gaming Facility is situated may decline to accept referrals of cases under the provisions of this section unless and until the Tribe has entered into a Memorandum of Understanding with the office of the district attorney to which Memorandum of Understanding the United States Attorney for the District of New Mexico may also be a party addressing such matters as the specific procedures by which cases are to be referred, participation of the Tribal Gaming Agency and tribal law enforcement personnel in the investigation and prosecution of any such case, payments by the Tribe to the office of the district attorney to defray the costs of handling cases referred under the provisions of this section, and related matters.

SECTION 11. Revenue Sharing.

A. Consideration. The Tribe shall pay to the State a portion of its Class III Gaming revenues identified in and under procedures of this Section, in return for which the State agrees that the Tribe has the exclusive right within the State to conduct all types of Class III Gaming described in this Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and for veterans' and fraternal organizations as such organizations are described in 1997 Laws ch. 190, §5(FF).

B. Revenue to State. The parties agree that, after the effective date hereof, the Tribe shall make the quarterly payments provided for in Paragraph C of this Section. Each payment shall be made to the State Treasurer for deposit into the General Fund of the State.

C. Calculation of Payment Amounts.

1. As used in this Compact, "Net Win" means the total amount wagered in Class III Gaming at a Gaming Facility, on all Gaming Machines less:

(a) the amount paid out in prizes, including the cost to the Tribe of noncash prizes, won on Gaming Machines;

(b) the amount paid to the State by the Tribe under the provisions of Section 4(E)(5) of this Compact; and

(c) the sum of two hundred seventy-five thousand dollars ($275,000) per year as an amount representing tribal regulatory costs, which amount shall increase by three

percent (3%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

2. The amount payable by the Tribe to the State shall be an amount equal to eight percent (8%) of the Net Win, except that if the total Net Win in a calendar year is less than twelve million dollars ($12,000,000), the amount payable by the Tribe shall be an amount equal to three percent (3%) of the first four million dollars ($4,000,000) of Net Win, and eight percent (8%) of the rest of the Net Win for the year.

3. Payments due pursuant to these terms shall be paid quarterly, no later than twenty-five (25) days after the last day of each calendar quarter, and shall be based upon the Net Win during the preceding quarter. If the Tribe reasonably believes that the total Net Win for the calendar year will be less than twelve million dollars ($12,000,000), it may base its payment on the first four million dollars ($4,000,000) on the lower rate as set forth in paragraph (C)(2) of this Section, but if the Net Win exceeds twelve million dollars ($12,000,000) during the calendar year, the Tribe shall pay the additional amount due on the first four million dollars ($4,000,000), plus interest as provided in this paragraph, with its next quarterly payment. In the event the Tribe makes its quarterly payments based on the rate of eight percent (8%), and its Net Win for the calendar year totals less than twelve million dollars ($12,000,000), the Tribe may deduct the overpayment from its payment for the final quarter of the year. Any payment or any portion thereof that is not made within ten (10) days of the due date shall accrue interest at the rate of ten percent (10%) per annum, from the original due date until paid. The Tribe shall accompany any payment to the State with a detailed breakdown of the particular obligation to which such payment applies, and the basis for the calculation of such payment.

D. Limitations.

1. The Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section shall apply and continue only so long as this Compact remains in effect; and provided that that obligation shall terminate altogether in the event the State: a) passes, amends, or repeals any law, or takes any other action, that would directly or indirectly attempt to restrict, or has the effect of restricting, the scope or extent of Indian gaming; b) licenses, permits or otherwise allows any person or entity other than licensed horse racetracks and veterans and fraternal organizations as described in 1997 Laws, ch. 190, §5(FF) to operate Gaming Machines; c) licenses, permits or otherwise allows any non-Indian person or entity to engage in any other form of Class III gaming other than a state-sponsored lottery, parimutuel betting on horse racing and bicycle racing, operation of Gaming Machines, and limited fundraising by non-profit organizations.

2. The parties agree that the State’s allowance of the following forms of Class III Gaming, subject to the limitations expressly set forth herein, shall not be considered an expansion of nontribal Class III gaming for purposes of this agreement,

and shall have no effect on the Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section:

(a) the operation of a State lottery;

(b) the operation of Gaming Machines by any fraternal or veterans organization as described in 1997 Laws ch. 190, § 5(FF) but only for the benefit of such organization's members;

(c) limited fundraising activities conducted by nonprofit tax exempt organizations ;

(d) the conduct by licensed horse racetracks and bicycle tracks of parimutuel betting on races at such tracks, and on simulcast races at other tracks elsewhere in the country; and

(e) the operation by a licensed horse racetrack of Gaming Machines on days on which live or simulcast horse racing occurs.

E. Third-Party Beneficiaries. The provisions of this Section are not intended to create any third-party beneficiaries and are entered into solely for the benefit of the Tribe and the State.

SECTION 12. Duration; Termination for Non-Payment.

A. This Compact shall have a term commencing on the date on which it goes into full force and effect as provided in Section 9, and ending at midnight on June 30, 2015.

B. Notwithstanding the provisions of Paragraph A of this Section, if the Tribe fails to comply with any of its payment obligations to the State under Sections 4(E)(5), 9(B) or 11 of this Compact, and persists in such failure for a period of thirty (30) days after receipt, by certified mail, of a Notice of Noncompliance sent by the State Gaming Representative, which Notice shall specify the amount due and the provision of the Compact under which such payment is required, this Compact, and the conduct of Class III Gaming by the Tribe hereunder, shall terminate automatically as of the end of the thirty (30)-day period, unless within such thirty (30)-day period the Tribe shall have invoked arbitration on a matter of fact as provided in Section 7(A)(2) of this Compact, and simultaneously shall have placed into escrow, in an institution that is unaffiliated with either the Tribe or the State, a sum of money equal to the amount claimed due by the State. In the event the Tribe invokes arbitration, this Compact and the Tribe's right to conduct Class III gaming shall terminate automatically at the end of the thirtieth (30th) day after the entry of a final, nonappealable decision by the arbitrators or by a court having jurisdiction of the dispute, unless the Tribe has paid the full amount determined by the arbitrators or by such court to be due the State, if any. The Tribe shall not be entitled to avoid any pre-existing contractual obligations accruing to third parties under this Compact solely by virtue of the termination of the Compact.

SECTION 13. Notice to Parties.

Unless otherwise indicated, all notices, payments, requests, reports, information or demand that any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first-class mail sent to the other party at the address provided in writing by the other party. Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt or, if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

SECTION 14. Entire Agreement.

This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged or terminated orally, but only by an instrument, in writing, signed by the Tribe and the State and approved by the Secretary of the Interior. This Compact shall not be amended without the express approval of the Tribe, the Governor of the State and the State Legislature, as provided in the Compact Negotiation Act.

SECTION 15. Filing of Compact with State Records Center.

Upon the effective date of this Compact, a copy shall be filed by the Governor with the New Mexico Records Center. Any subsequent amendment or modification of this Compact shall be filed with the New Mexico Records Center.

SECTION 16. Counterparts.

This Compact may be executed by the parties in any number of separate counterparts with the same effect as if the signatures were upon the same instrument. All such counterparts shall together constitute one and the same document.

SECTION 17. Severability.

Should any provision of this Compact be found to be invalid or unenforceable by any court, such determination shall have no effect upon the validity or enforceability of any other portion of this Compact, and all such other portions shall continue in full force and effect, except that this provision shall not apply to Sections 4, 5, 6, 9 and 11 hereof, or to any portions thereof, which the parties agree are nonseverable.

[*signature lines*]

and
the Pueblos of Isleta, Laguna, Nambe, Ohkay Owingeh (Pueblo of San Juan), Picuris, San Felipe, Sandia, Santa Ana, Santa Clara, Taos, and Tesuque
(Approved by Laws 2007, S.J.R. No. 21
Expires 2037)

TRIBAL-STATE CLASS III GAMING COMPACT State of New Mexico
_____ as Amended, _____, 2007.

INTRODUCTION

The State of New Mexico ("State") is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Tribe;

The _____Tribe ("Tribe") is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this Compact, with the State;

The Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § § 2701-2721 (hereinafter "IGRA"), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to a tribal-state compact entered into for that purpose;

The 1999 State legislature has enacted SB 737, as 1999 N.M. Laws, ch. 252, known as the "Compact Negotiation Act," creating a process whereby the State and the Tribe have engaged in negotiations leading to this Compact, with review by a joint legislative committee, and with final approval by a majority vote in each house of the legislature;

The Tribe owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility; The State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.

NOW, THEREFORE, the State and the Tribe agree as follows:

SECTION 1. Purpose and Objectives.

The purpose and objectives of the State and the Tribe in making this Compact are as follows:

A. To evidence the good will and cooperative spirit between the State and the Tribe;

B. To continue the development of an effective government-to-government relationship between the State and the Tribe;

C. To provide for the regulation of Class III Gaming on Indian Lands as required by the IGRA;

D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;

E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;

F. To provide for the effective regulation of Class III Gaming in which the Tribe shall have the sole proprietary interest and be the primary beneficiary; and

G. To address the State's interest in the establishment, by the Tribe, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming enterprise on Indian Lands.

H. To settle and resolve certain disputes that have arisen between the Tribe and the State under the provisions of the Predecessor Agreements.

SECTION 2. Definitions.

For purposes of this Compact, the following definitions pertain:

A. "Class III Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

B. "Compact" means this compact between the State and the Tribe, and including the Appendix attached hereto.

C. "Gaming Employee" means a person connected directly with the conduct of Class III Gaming, or handling the proceeds thereof or handling any Gaming Machine; but "Gaming Employee" does not include:

1. Bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;

2. Secretarial or janitorial personnel;

3. Stage, sound and light technicians; or

4. Other nongaming personnel.

D. "Gaming Enterprise" means the tribal entity created and designated by the Tribe as having authority to conduct Class III Gaming pursuant to this Compact.

E. "Gaming Facility" means all buildings or structures in which Class III Gaming is conducted on the Tribe’s Indian Lands, subject to the limitations set forth in Section 3 of this Compact.

F. "Gaming Machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration in any manner, is available to play or operate a game of chance in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, whether the payoff is made automatically from the Gaming Machine or in any other manner; but Gaming Machine does not include a Table Game or any device utilized in Table Games. Additional clarification of this definition is set forth in the attached Appendix.

G. "Indian Lands" means:

1. all lands within the exterior boundaries of the Tribe's reservation and its confirmed grants from prior sovereigns; or

2. any other lands title to which is either held in trust by the United States for the exclusive benefit of the Tribe or a member thereof or is held by the Tribe or a member thereof subject to restrictions against alienation imposed by the United States, and over which the Tribe exercises jurisdiction and governmental authority, but not including any land within the boundaries of a municipality that is outside of the boundaries of the Tribe's reservation or confirmed Spanish grant, as those boundaries existed on October 17, 1988.

H. "Key Employee" means that term as defined in 25 CFR Section 502.14.

I. "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

J. "Management Contractor" means any person or entity that has entered into a Management Contract with the Tribe or the Gaming Enterprise.

K. "Ordinance" means the gaming ordinance and any amendments thereto adopted by the Tribal Council of the Tribe.

L. "Predecessor Agreements" means the tribal-state class III gaming compact and the accompanying revenue sharing agreement entered into between the Tribe and the State pursuant to 1997 Laws, ch. 190, §§ 1, 2.

M. "Primary Management Official" means that term as defined in 25 CFR Section 502.19.

N. "State" means the State of New Mexico.

O. "State Gaming Representative" means that person designated by the gaming control board pursuant to the Gaming Control Act [Chapter 60, Article 2E NMSA 1978] who will be responsible for actions of the State set out in the Compact. The State Legislature may enact legislation to establish an agency of the State to perform the duties of the State Gaming Representative.

P. "Tribal Gaming Agency" means the tribal governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the Tribe set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.

Q. "Tribe" means any Indian Tribe, Nation or Pueblo located within the State of New Mexico entering into this Compact as provided for herein.

R. "Table Game" means a Class III game of chance, in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, that is played using a wheel, cards or dice, and that requires an attendant to initiate the game or to collect wagers or pay prizes. Additional clarification of this definition is set forth in the attached Appendix.

SECTION 3. Authorized Class III Gaming.

A. The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all forms of Class III Gaming.

B. Subject to the foregoing, the Tribe shall establish, in its discretion, by tribal law, such limitations as it deems appropriate on the number and type of Class III Gaming conducted, the location of Class III Gaming on Indian Lands, the hours and days of operation, and betting and pot limits, applicable to such gaming.

C. In no event shall the Tribe’s Gaming Facility consist of more than two separate physical buildings or structures on its Indian Lands; but provided that in addition to the two separate physical buildings or structures otherwise permitted by this Section 3(C), the Pueblo of Laguna is authorized to conduct gaming operations at the Route 66 Casino Express, subject to the limitations that: (1) the Route 66 Casino Express shall not be moved from its location as of December 1, 2006, except as may be made necessary by improvements to the highway interchange with I-40; (2) the gaming operations at the Route 66 Casino Express shall not be expanded beyond the level of gaming operations in existence on December 1, 2006; and (3) the Pueblo of Laguna shall have an authorized representative sign a sworn affidavit that shall provide a detailed description of the gaming operations as of that date, including the hours and

days of operation, the specific number of Gaming Machines, and any other gaming activities, and shall submit said affidavit to the State Gaming Representative.

SECTION 4. Conduct of Class III Gaming.

A. Tribal Gaming Agency. The Tribal Gaming Agency will assure that the Tribe will:

1. operate all Class III Gaming pursuant to this Compact, tribal law, the IGRA and other applicable Federal law;

2. provide for the physical safety of patrons in any Gaming Facility;

3. provide for the physical safety of personnel employed by the Gaming Enterprise;

4. provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;

5. provide for the protection of the property of the patrons and the Gaming Enterprise from illegal activity;

6. participate in licensing of primary management officials and key employees of a Class III Gaming Enterprise;

7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and

8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

B. Regulations. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);

2. prohibiting the employment of any person as a Gaming Employee who is under the age of twenty-one (21) or who has not been licensed in accordance with the applicable requirements of federal and tribal law;

3. requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws generally applicable to Indian tribes relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

4. requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;

5. prohibiting the Tribe, the Gaming Enterprise and a Management Contractor from discriminating in the employment of persons to work for the gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap, provided, however, that nothing herein shall be interpreted to prevent the Tribe from granting preference in employment actions to tribal members or other Indians in accordance with established tribal laws and policies;

6. providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable state programs, and which programs shall afford the employees due process of law and shall include an effective means for an employee to appeal an adverse determination by the insurer to an impartial forum, such as (but not limited to) the Tribe's tribal court, which appeal shall be decided in a timely manner and in an administrative or judicial proceeding and as to which no defense of tribal sovereign immunity would be available; and provided that to fulfill this requirement the Tribe may elect to participate in the State's program upon execution of an appropriate agreement with the State;

7. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

8. permitting State Department of Environment inspectors to inspect the Gaming Facility's food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act [Chapter 25, Article 1 NMSA 1978] are maintained;

9. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance check, including Social Security, TANF, pension and other similar checks, for any patron;

10. prohibiting a gaming enterprise from extending credit by accepting IOUs or markers from its patrons;

11. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to TANF recipients for access to TANF benefits;

12. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%), and requiring the Gaming Enterprise to prominently post in visible locations within the Gaming Facility notices stating that the Gaming Enterprise is in compliance with this requirement, and providing a comprehensible explanation of the meaning of this requirement;

13. providing that all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the unaltered activity of each Gaming Machine in use at the Gaming Facility, and that, the wager and payout data of each machine, electronically captured by the Gaming Enterprise's central computer, may be accessed and downloaded electronically by the State Gaming Representative by a dedicated telecommunications connection, on a "read-only" basis, upon entry of appropriate security codes; but provided that in no event shall the State Gaming Representative be able to alter or affect the operation of any Gaming Machine or other device on the premises of the Gaming Facility, or the data provided to the central computer, and provided further that the system for electronic access to the machine wager and payout data collected by the Gaming Enterprise's central computer shall be constructed and installed at the State's cost, and shall be designed in conjunction with Gaming Enterprise technical staff so as to preserve the integrity of the system and the data contained therein, to minimize any possibility of unauthorized access to the system or tampering with the data, and to minimize any access by the State Gaming Representative to information other than machine wager and payout data residing in the central reporting and auditing system;

14. enacting provisions that:

(a) prohibit an employee of the Gaming Enterprise from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

(b) require Gaming Enterprise employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and

(c) require the Gaming Enterprise to purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars ($1,000,000) per incident and two million dollars ($2,000,000) aggregate per policy year;

15. prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;

16. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers in New Mexico or who patronize New Mexico gaming facilities, and for the prevention of compulsive gambling in New Mexico; and requiring that a substantial portion of such funds be distributed to an organization that has expertise in and provides counseling, intervention or other services for compulsive gamblers in New Mexico, and whose services are available to all persons without regard to race or tribal membership; and provided that any information existing as a result of this Section, not including information that may identify or contain information referring to any gaming patron, shall not be subject to the confidentiality provisions of Section 4(E)(4) of this Compact and shall be made available for inspection and publication without restriction or limitation;

17. governing any Management Contract regarding its Class III Gaming activity so that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;

18. prohibiting the operation of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays);

19. prohibiting a Tribal Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide alcoholic beverages for no charge or at reduced prices, or from providing, allowing, contracting to provide or arranging to provide food or lodging for no charge or at nominal prices, at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game, except that this provision shall not apply to rewards received by patrons in exchange for points or credits accrued under any form of a players' club program; and

20. requiring the Tribe, the Tribal Gaming Enterprise or a Management Contractor to report to the secretary of state, in the same manner and at the same times as are required of political committees under the provisions of the State's Campaign Reporting Act (NMSA 1978 §§ 1-19-25 through 1-19-36) any and all contributions, whether directly or through an agent, representative or employee, of any moneys derived from revenue from the Gaming Enterprise, or of anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act and provided that in the event any report required to be made hereunder is not made within the time specified herein, or is false or incomplete in any respect, the Tribe shall be liable to pay to the secretary of state a penalty in the amount of fifty dollars ($50.00) for each working day after the day on which the report was due until the day on which the complete or true report is filed, up to a maximum of five thousand dollars ($5,000), except that with respect to the report due on the Friday before an election the penalty shall be five hundred dollars ($500) for the first working day after the due date and fifty dollars ($50.00) per working day thereafter, up to a maximum of five thousand dollars ($5,000).

The Tribal Gaming Agency will provide true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment or approval, if any.

C. Audit and Financial Statements. The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principles. All such books and records shall be retained for a period of at least five (5) years from the date of creation, as required by 25 C.F.R. § 571.7(c). Not less than annually, the Tribal Gaming Agency shall require an audit and a certified financial statement covering all financial activities of the Gaming Enterprise, including written verification of the accuracy of the quarterly Net Win calculation, by an independent certified public accountant licensed by the State. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall specify the total amount wagered in Class III Gaming on all Gaming Machines at the Tribe's Gaming Facility for purposes of calculating "Net Win" under Section 11 of this Compact using the format specified therein. The financial statement and audit report shall be submitted to the Tribal Gaming Agency, the State Gaming Representative , and the State Treasurer, within one hundred twenty (120) days of the close of the Tribe's fiscal year. Such documents shall be subject to the provisions of § 4(E)(4) of this Compact. The Tribe will maintain the following records for not less than five (5) years:

1. revenues, expenses, assets, liabilities and equity for each Gaming Enterprise;

2. daily cash transactions for each Class III Gaming activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox and gaming room bank;

3. individual and statistical game records, except for card games, to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

4. contracts, correspondence and other transaction documents relating to all vendors and contractors;

5. records of all tribal gaming enforcement activities;

6. audits prepared by or on behalf of the Tribe; and

7. personnel information on all Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.

D. Violations. The agents of the Tribal Gaming Agency shall have unrestricted access to the Gaming Facility during all hours of Class III Gaming activity, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. The agents shall report immediately to the Tribal Gaming Agency any suspected violation of this Compact, the Ordinance, or regulations of the Tribal Gaming Agency by the gaming enterprise, Management Contractor, or any person, whether or not associated with Class III Gaming.

E. State Gaming Representative.

1. Upon written request by the State to the Tribe, the Tribe will provide information on primary management officials, key employees and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5 of this Compact. The Tribe shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the Tribal Gaming Agency will certify annually to the State Gaming Representative that the Tribe has met its obligations under this Compact in accordance with the instructions and form set forth in the attached Appendix.

3. The State Gaming Representative shall have the right to inspect a Gaming Facility, Class III Gaming activity, including all Gaming Machines, and all records relating to Class III Gaming of the Tribe, subject to the following conditions:

(a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal Gaming Facility business hours;

(b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Enterprise business hours, immediately after notifying the Tribal Gaming Agency and Gaming Enterprise of his or her presence on the premises and presenting proper identification, and requesting access to the non-public areas of the Gaming Facility. The Tribe, in its sole discretion, may require an employee of the Gaming Enterprise or the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming Enterprise or the Tribal Gaming Agency to be available at all times for such purpose;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and

4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State;

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Enterprise; and

(e) in accordance with the additional requirements set forth in the attached Appendix.

The State Gaming Representative may contract with private persons, firms or other entities for the purpose of performing certain of his functions, but the State Gaming Representative will be the single contact with the Tribe and may be relied upon as such by the Tribe.

4. a) Any information, documents or communications provided to the State Gaming Representative, his agents or contractors, or to any other official, agency or entity of the State (all of which are collectively hereinafter referred to as "the State entities") by the Tribe, the Tribal Gaming Agency or the Gaming Enterprise, or prepared from information obtained from the Tribe, the Tribal Gaming Agency or the Gaming Enterprise, or any information, documents or communications provided to the Tribe, the Tribal Gaming Agency, or the Gaming Enterprise by any State entity, or prepared from information obtained from any State entity, under the provisions of this Compact or under the provisions of the Predecessor Agreements, are confidential. Any State entity that has received any information, documents or communications from the Tribe, the Tribal Gaming Agency or the Gaming Enterprise: i) may release or disclose the same only with the prior written consent of the Tribe or pursuant to a lawful court order after timely notice of the proceeding has been given to the Tribe; ii) shall maintain all such information, documents and communications in a secure place accessible only to authorized officials and employees of the State entity that has received the same; and iii) shall adopt procedures and regulations to protect the confidentiality of the information, documents and communications provided by the Tribe, Tribal Gaming Agency or Gaming Enterprise.

b) These prohibitions shall not be construed to prohibit:

i) the furnishing of any information to a law enforcement or regulatory agency of the Federal Government;

ii) the State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;

iii) publishing the terms of this Compact;

iv) disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and

v) complying with subpoenas or court orders issued by courts of competent jurisdiction.

c) Notwithstanding the foregoing, the Tribe agrees that:

i) the following documents and information may be released by a State entity to the public: the Tribe's gaming ordinance and regulations of the Tribal Gaming Agency; official rulings of the Tribal Gaming Agency in matters not subject to a confidentiality order imposed by the Agency; other information and documents of the Tribal Gaming Agency or the Gaming Enterprise ordinarily available to the public; quarterly Net Win figures used as the basis for computation of the Tribe's revenue sharing payment under the provisions of Section 11 of this Compact; information that exists as a result of the requirements in Section 4(B)(16); and correspondence between the Tribe or a tribal entity and a State entity, unless such correspondence is specifically labeled "Confidential;"

ii) a State entity may release to the public aggregate figures compiled by totaling comparable figures from the annual financial statements of all of the New Mexico gaming tribes; and

iii) the report of the annual audit of the Gaming Enterprise that is provided by the Tribe to the State Gaming Representative shall be available to the public to the same extent that similar information that is required to be provided to the State by non-Indian gaming entities is available to the public, pursuant to the provisions of applicable law and the policies and regulations of the Gaming Control Board, at the time the request for the report of the annual audit is made.

5. To the fullest extent allowed by State law, the Tribe shall have the right to inspect State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.

6. The Tribe shall reimburse the State for the costs the State incurs in carrying out any functions authorized by the terms of this Compact. The Tribe and the State agree that to require the State to keep track of and account to the Tribe for all such costs would be unreasonably burdensome, and that a fair estimate of the State's costs of such activity as of January 1, 2007, is One Hundred Sixteen Thousand Dollars ($116,000) per year, and that those costs will increase over time. The Tribe therefore agrees to pay the State the sum of One Hundred Sixteen Thousand Dollars ($116,000) per year as reimbursement of the State's costs of regulation, which amount shall increase by five percent (5%) as of January 1 of 2012 and as of January 1 of every fifth year thereafter as long as this Compact remains in effect, such sum to be paid in

quarterly payments of one-fourth of the annual amount due each, in advance. The Tribe and the State further agree that such amount fairly reflects the State's costs of regulation.

7. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.

F. The Tribe shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the Internal Revenue Service.

G. At least annually, appropriate representatives of the Tribe shall meet with one or more representatives of the Office of the Governor appointed by the Governor, one or more members of the House of Representatives appointed by the Speaker of the New Mexico House of Representatives, and one or more members of the Senate appointed by the President Pro Tempore of the New Mexico Senate, to discuss matters of mutual interest arising under the terms of this Compact and concerning Indian gaming in New Mexico. Such meeting shall be coordinated so as to involve the representatives of as many New Mexico gaming tribes as possible, and shall be conducted in the context of the government-to-government relationship between the State and the Tribe.

SECTION 5. Licensing Requirements.

A. License Required. The Gaming Facility operator, but not including the Tribe, including its principals, primary management officials, and key employees, the Management Contractor and its principals, primary management officials, and key employees (if the Tribe hires a Management Contractor); any person, corporation, or other entity that has supplied or proposes to supply any gaming device to the Tribe or the Management Contractor; and any person, corporation or other entity providing gaming services within or without a Gaming Facility, shall apply for and receive a license from the Tribal Gaming Agency before participating in any way in the operation or conduct of any Class III Gaming on Indian Lands. The Tribal Gaming Agency shall comply fully with the requirements of this Section and of the Indian Gaming Regulatory Act, especially at 25 U.S.C. §§ 2710-2711, and the regulations issued thereunder at 25 C.F.R. Parts 550-559, as well as the requirements of the Tribe's gaming ordinance and any regulations issued thereunder, in processing license applications and issuing licenses.

B. License Application. Each applicant for a license shall file with the Tribal Gaming Agency a written application in the form prescribed by the Tribal Gaming Agency, along with the applicant's fingerprint card, current photograph and the fee required by the Tribal Gaming Agency.

C. Background Investigations. Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

D. Provision of Information to State Gaming Representative. Whenever the Tribal Gaming Agency is required by federal or tribal law or regulations to provide to the National Indian Gaming Commission ("the Commission") any information, document or notice relating to the licensing of any key employee or primary management official of the Gaming Enterprise, a copy of such information, document or notice shall also be provided to the State Gaming Representative. The State Gaming Representative shall be entitled to the same right to request additional information concerning an applicant licensee, to comment on the proposed licensing of any applicant licensee, and to supply the Tribal Gaming Agency with additional information concerning any applicant licensee, as is enjoyed by the Commission.

SECTION 6. Providers of Class III Gaming Equipment or Devices or Supplies.

A. Within thirty (30) days after the effective date of this Compact, if it has not already done so, the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies to be used in any Gaming Facility, which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices or supplies within the State of Nevada. Any and all Class III Gaming equipment, devices or supplies used by the Tribe shall meet or exceed the standards thereby adopted.

B. Prior to entering into any future lease or purchase agreement for Class III Gaming equipment, devices or supplies, the Tribe shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribe to license those persons in accordance with applicable federal and tribal law.

C. The seller, lessor, manufacturer or distributor shall provide, assemble and install all Class III Gaming equipment, devices or supplies in a manner approved and licensed by the Tribe.

SECTION 7. Dispute Resolution.

A. In the event either party believes that the other party has failed to comply with or has otherwise breached any provision of this Compact, such party may invoke the following procedure:

1. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific Compact provision believed to have been violated and shall specify the factual and legal basis for the allegation of noncompliance. The notice shall specifically identify the date, time and nature of the alleged noncompliance.

2. In the event an allegation by the complaining party is not resolved to the satisfaction of such party within twenty (20) days after service of the notice set forth in Paragraph A(1) of this section, the complaining party may serve upon the other party a notice to cease conduct of the particular game(s) or activities alleged by the complaining party to be in noncompliance. Upon receipt of such notice, the responding party may elect to stop the game(s) or activities specified in the notice or invoke arbitration and continue the game(s) or activities pending the results of arbitration. The responding party shall act upon one of the foregoing options within ten (10) days of receipt of notice from the complaining party, unless the parties agree to a longer period, but if the responding party takes neither action within such period the complaining party may invoke arbitration by written notice to the responding party within ten (10) days of the end of such period.

3. The arbitrators shall be attorneys who are licensed members in good standing of the State Bar of New Mexico or of the bar of another state. The State will select one arbitrator, the Tribe a second arbitrator, and the two so chosen shall select a third arbitrator. The party that served the written notice of noncompliance shall select its arbitrator within thirty (30) days after the party has invoked arbitration and the responding party shall select its arbitrator within thirty (30) days of the selection of the first arbitrator. If the third arbitrator is not chosen within thirty (30) days after the second arbitrator is selected, the third arbitrator will be chosen by the American Arbitration Association. The arbitrators thereby selected shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the matters at issue. The arbitrators shall determine, after hearing from each party, whether the arbitration proceeding or any portions thereof shall be closed to the public, but in the absence of such determination the proceedings shall be open to the public. The arbitrators shall make determinations as to each issue presented by the parties, but the arbitrators shall have no authority to determine any question as to the validity or effectiveness of this Compact or of any provision hereof.

4. All parties shall bear their own costs of arbitration and attorneys' fees.

5. The results of arbitration shall be final and binding, and shall be enforceable by an action for injunctive or mandatory injunctive relief against the State and the Tribe in any court of competent jurisdiction. For purposes of any such action, the State and the Tribe acknowledge that any action or failure to act on the part of any agent or employee of the State or the Tribe, contrary to a decision of the arbitrators in an arbitration proceeding conducted under the provisions of this section, occurring after such decision, shall be wholly unauthorized and ultra vires acts, not protected by the sovereign immunity of the State or the Tribe.

B. Nothing in Subsection 7(A) shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nothing in this Section shall be deemed a waiver of the Tribe's sovereign immunity. Nothing in this Section shall be deemed a waiver of the State's sovereign immunity.

SECTION 8. Protection of Visitors.

A. Policy Concerning Protection of Visitors. The safety and protection of visitors to a Gaming Facility is a priority of the Tribe, and it is the purpose of this Section to assure that any such persons who suffer bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise have an effective remedy for obtaining fair and just compensation. To that end, in this Section, and subject to its terms, the Tribe agrees to carry insurance that covers such injury or loss, agrees to a limited waiver of its immunity from suit, and agrees to proceed either in binding arbitration proceedings or in a court of competent jurisdiction, at the visitor's election, with respect to claims for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise. For purposes of this Section, any such claim may be brought in state district court, including claims arising on tribal land, unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.

B. Insurance Coverage for Claims Required. The Gaming Enterprise shall maintain in effect policies of liability insurance insuring the Tribe, its agents and employees against claims, demands or liability for bodily injury and property damages by a visitor arising from an occurrence described in Paragraph A of this Section. The policies shall provide bodily injury and property damage coverage in an amount of at least ten million dollars ($10,000,000) per occurrence and ten million dollars ($10,000,000) annual aggregate. The Tribe shall provide the State Gaming Representative annually a certificate of insurance showing that the Tribe, its agents and employees are insured to the required extent and in the circumstances described in this Section.

C. Limitation on Time to Bring Claim. Claims brought pursuant to the provisions of this section must be commenced by filing an action in court or a demand for arbitration within three years of the date the claim accrues.

D. Specific Waiver of Immunity and Choice of Law. The Tribe, by entering into this Compact and agreeing to the provisions of this section, waives its defense of sovereign immunity in connection with any claims for compensatory damages for bodily injury or property damage up to the amount of ten million dollars ($10,000,000) per occurrence asserted as provided in this section. This is a limited waiver and does not waive the Tribe's immunity from suit for any other purpose. The Tribe shall ensure that a policy of insurance that it acquires to fulfill the requirements of this section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured, up to the limits of liability set forth in this Paragraph. The Tribe agrees that in any claim brought under the provisions of this Section, New Mexico law shall govern the substantive rights of the claimant, and shall be applied, as applicable, by the forum in which the claim is heard, except that the tribal court may but shall not be required to apply New Mexico law to a claim brought by a member of the Tribe.

E. Election by Visitor. A visitor having a claim described in this section may pursue that claim in any court of competent jurisdiction, or in binding arbitration. The visitor shall make a written election that is final and binding upon the visitor.

F. Arbitration. Arbitration pursuant to an election by a visitor as provided in Subsection E of this section shall be conducted as follows:

1. the visitor shall submit a written demand for arbitration to the Gaming Enterprise, by certified mail, return receipt requested;

2. the visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of receipt of the demand, and the two arbitrators shall select a third arbitrator, but in the event the two arbitrators cannot agree on the selection of the third arbitrator within thirty (30) days of their appointment, they shall apply to the American Arbitration Association to appoint the third arbitrator;

3. the arbitration panel shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the claim; and

4. the award of the arbitration panel shall be final and binding, and may be enforced in a court of competent jurisdiction.

G. Increase in Liability Limits. As of the fifth anniversary of this Compact, and at five-year intervals thereafter, the liability insurance coverage requirements set forth in Paragraph B of this Section, and the limit on the Tribe's waiver of sovereign immunity set forth in Paragraph D of this Section, shall be increased by a percentage equal to the percentage increase in the CPI-U published by the Bureau of Labor Statistics of the United States Department of Labor, for the same period, rounded to the nearest one hundred thousand dollars ($100,000).

H. Public Health and Safety. The Tribe shall establish for its Gaming Facility health, safety and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code and the Uniform Plumbing Code, and any and all construction and maintenance of the Gaming Facility shall comply with such standards. Inspections shall be conducted with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the State Gaming Representative may be present during such inspection. The Tribe agrees to correct any deficiencies noted in such inspections within a time agreed upon between the State and Tribe. The Tribal Gaming Agency will provide copies of such inspection reports to the State Gaming Representative, if requested to do so in writing.

SECTION 9. Conditions for Execution; Effective Date.

A. The parties acknowledge that they have been engaged in litigation, captioned State of New Mexico v. Jicarilla Apache Tribe, et al., No. 00-0851 (D.N.M.) (the "Lawsuit"), that was initiated by the State in United States District Court on June 13, 2000, in which the State seeks an injunction against the Tribe's conduct of Class III gaming under the Predecessor Agreements unless the Tribe pays the State the full amount that the State claims it is owed under the revenue sharing provision of the Predecessor Agreements. The Tribe disputes the validity of such provision of the Predecessor Agreements, but the parties have agreed to settle the dispute addressed in the Lawsuit, and have agreed to enter into this new Compact.

B. This Compact may not be executed by the Governor of the State unless and until it has been executed by the appropriate representative of the Tribe, and until the State Attorney General has certified to the Governor in writing that the Tribe and the State have negotiated a complete settlement of the issues in dispute in the Lawsuit (except that such settlement shall be contingent upon this Compact going into effect under the provisions of IGRA), and that the Tribe has either paid in full the amount agreed to by the terms of the settlement, into the registry of the federal court, or has entered into a binding and fully enforceable agreement for the payment of such amount that is acceptable to the Attorney General. Upon receiving such certification, the Governor shall execute the Compact and forward it to the Secretary of the Interior for approval. Upon the Secretary's affirmative approval of this Compact, as set forth in Paragraph C of this Section, such sum, plus interest, shall be immediately paid into the State General Fund. In the event the Secretary fails to affirmatively approve this Compact, such sum, plus interest, shall be immediately repaid to the Tribe.

C. This Compact shall take effect upon publication of notice in the Federal Register of its approval by the Secretary of the Interior, or of the Secretary's failure to act on it within 45 days from the date on which it was submitted to him; provided, however, that notwithstanding its taking effect, the parties expressly agree that the provisions of this Compact shall remain suspended, and shall confer no rights or obligations on either party, and that the terms and provisions of the Predecessor Agreements shall remain fully in force and effect, subject to the Tribe's and the State's claims in the Lawsuit, unless and until the Secretary shall have affirmatively approved this Compact, pursuant to 25 U.S.C. § 2710(d)(8)(A).

D. Upon the publication of notice of the Secretary's affirmative approval of this Compact in the Federal Register, the Predecessor Agreements shall be and become null and void, and of no further effect, and any and all actions as between the Tribe and the State arising out of the Predecessor Agreements, including dispute resolution proceedings, shall thereafter be dismissed with prejudice with no relief to either party, and the terms and provisions of this Compact shall go into full force and effect, fully supplanting and replacing the Predecessor Agreements.

SECTION 10. Criminal Jurisdiction.

A. The Tribe and the State acknowledge that under the provisions of § 23 of the IGRA, especially that portion codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.

B. The Tribe and the State hereby agree that, in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof or that occurs on the premises of the Tribe's Gaming Facility, that is committed by any person who is not a member of the Tribe, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to prosecute such person, under its laws and in its courts.

C. Immediately upon becoming aware of any such suspected crime by a nonmember of the Tribe the Gaming Enterprise or the Tribal Gaming Agency shall notify the state attorney general and the district attorney for the district in which the alleged crime occurred, supplying all particulars available to the tribal entity at the time. The Tribe agrees that its law enforcement and gaming agencies shall perform such additional investigation or take such other steps in furtherance of the investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State; provided, however, that in the event of emergency circumstances involving a possible violation, the Tribe and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property. The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.

D. The State agrees that no less frequently than annually it will provide the Tribal Gaming Agency with a written report of the status and disposition of each matter referred to it under the provisions of this section since the last report or that was still pending at the time of the last report. In the event the district attorney to whom a matter is referred under the provisions of this section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal Gaming Agency of such decision in writing. The Tribal Gaming Agency may in that event ask the attorney general of the state to pursue the matter.

E. The district attorney for a district in which the Tribe conducts Class III Gaming may decline to accept referrals of cases under the provisions of this section unless and until the Tribe has entered into a Memorandum of Understanding with the office of the district attorney to which Memorandum of Understanding the United States Attorney for the District of New Mexico may also be a party addressing such matters as the specific procedures by which cases are to be referred, participation of the Tribal Gaming Agency and tribal law enforcement personnel in the investigation and prosecution of any such

case, payments by the Tribe to the office of the district attorney to defray the costs of handling cases referred under the provisions of this section, and related matters.

SECTION 11. Revenue Sharing.

A. Consideration. The Tribe shall pay to the State a portion of its Class III Gaming revenues identified in and under procedures of this Section, in return for which the State agrees that the Tribe has the exclusive right within the State to conduct all types of Class III Gaming described in this Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and for veterans' and fraternal organizations as such organizations are described in 1997 Laws ch. 190, §5(FF).

B. Revenue to State. The parties agree that, after the effective date hereof, the Tribe shall make the quarterly payments provided for in Paragraph C of this Section. Each payment shall be made to the State Treasurer for deposit into the General Fund of the State.

C. Calculation of Payment Amounts.

1. As used in this Compact, "Net Win" means the total amount wagered in Class III Gaming at a Gaming Facility, on all Gaming Machines less:

(a) the amount paid out in prizes to winning patrons, including the cost to the Tribe of noncash prizes, won on Gaming Machines. The phrase "won on Gaming Machines" means the patron has made a monetary wager, and as a result of that wager, has won a prize of any value. Any rewards, awards or prizes, in any form, received by or awarded to a patron under any form of a players’ club program (however denominated) or as a result of patron-related activities, are not deductible. The value of any complimentaries given to patrons, in any form, are not deductible;

(b) the amount paid to the State by the Tribe under the provisions of Section 4(E)(6) of this Compact; and

(c) the sum of two hundred seventy-five thousand dollars ($275,000) per year as an amount representing tribal regulatory costs, which amount shall increase by three percent (3%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

2. The Tribe shall pay the State a percentage of its Net Win, determined in accordance with this chart:

Annual Net Win (July 1 - June 30)	2007 - 2015	2015 - 2030	2030 - 2037

Under $15 million:	3% of the first $5 million, and 9.25% on the rest	3% of the first $5 million, and 9.50% on the rest	3% of the first $5 million, and 10.25% on the rest
$15 - $50 million:	9.25%	9.50%	10.25%
More than $50 million:	9.75%	10.00%	10.75%

3. Payments due pursuant to these terms shall be paid quarterly, no later than twenty-five (25) days after the last day of each calendar quarter, and shall be based upon the Net Win during the preceding quarter. The Tribe shall ascertain the applicable revenue sharing percentage in Section 11(C)(2) above and shall base its quarterly payments on the following factors: (1) the prior year's total "Net Win" amount and the applicable revenue sharing percentage; and (2) its best good faith estimate of its annual "Net Win" for the July 1 – June 30 period. In the event its total "Net Win" for any such period varies from such estimate, such that the amount due the State for the first three quarters as set forth in Section 11(C)(2), above, is different from the amount paid, the payment due for the fourth quarter shall include any additional amounts due for the first three quarters, or shall reflect a credit for any overpayment. Any payment or any portion thereof that is not made within ten (10) days of the due date shall accrue interest at the rate of ten percent (10%) per annum, from the original due date until paid. The Tribe shall accompany any payment to the State with a detailed breakdown of the particular obligation to which such payment applies, and the basis for the calculation of such payment on a form provided by the State Gaming Representative.

4. For purposes of calculating "Net Win," the Tribe shall combine the total amount wagered on all Class III Gaming Machines at all of its gaming locations on its Indian Lands.

D. Limitations.

1. The Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section shall apply and continue only so long as this Compact remains in effect; and provided that that obligation shall terminate altogether in the event the State:

a) passes, amends, or repeals any law, or takes any other action, that would directly or indirectly attempt to restrict, or has the effect of restricting, the scope or extent of Indian gaming;

b) licenses, permits or otherwise allows any person or entity other than six licensed horse racetracks and veterans and fraternal organizations as described in 1997 Laws, ch.190, §5(FF) to operate Gaming Machines;

c) permits any licensed horse racetrack to operate a larger number of Gaming Machines, or to operate any Gaming Machines for longer hours, than is set forth in subsection (D)(2)(e), below, or to operate any Gaming Machines outside of its licensed premises, or to operate any Table Game;

d) licenses, permits or otherwise allows any non-Indian person or entity to engage in any other form of Class III gaming other than a state-sponsored lottery, parimutuel betting on horse racing and bicycle racing, operation of Gaming Machines, and limited fundraising by non-profit organizations, as set forth in subsection (D)(2), below.

2. The parties agree that the State's allowance of the following forms of Class III Gaming, subject to the limitations expressly set forth herein, shall not be considered an expansion of nontribal Class III gaming for purposes of this agreement, and shall have no effect on the Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section:

(a) the operation of a State lottery;

(b) the operation of Gaming Machines by any fraternal or veterans organization as described in 1997 Laws ch. 190, § 5(FF) but only for the benefit of such organization's members;

(c) limited fundraising activities conducted by nonprofit tax exempt organizations;

(d) the conduct by licensed horse racetracks and bicycle tracks of parimutuel betting on races at such tracks, and on simulcast races at other tracks elsewhere in the country; and

(e) the operation by a licensed horse racetrack of Gaming Machines on days on which live or simulcast horse racing occurs, provided that such operation is limited to no more than eighteen (18) hours in any one day, and to no more than a total of one hundred twelve (112) hours in any calendar week, and provided further that no licensed horse racetrack shall have more than six hundred (600) licensed Gaming Machines, nor be authorized to operate more than seven hundred and fifty (750) Gaming Machines.

3. The limitations set forth in this Section shall not prohibit a horse racetrack from relocating, selling, transferring or assigning its operations in accordance with applicable procedures and authorizations set forth in New Mexico law.

4. Prior to granting the approval of an application for a racing license for a horse racetrack other than the five horse racetracks holding such licenses as of January 1, 2007, or the approval of an application by a licensed horse racetrack to move its racing and gaming facilities to a new location after January 1, 2007, the State Racing Commission shall adopt, put into effect, and shall have substantially complied with

regulations requiring the Commission to solicit and consider the Tribe's views on the application.

E. Third-Party Beneficiaries. The provisions of this Section are not intended to create any third-party beneficiaries and are entered into solely for the benefit of the Tribe and the State.

SECTION 12. Duration; Termination for Non-Payment.

A. This Compact shall have a term commencing on the date on which it goes into full force and effect as provided in Section 9, and ending at midnight on June 30, 2037.

B. Notwithstanding the provisions of Paragraph A of this Section, if the Tribe fails to comply with any of its payment obligations to the State under Sections 4(E)(5), 9(B) or 11 of this Compact, and persists in such failure for a period of thirty (30) days after receipt, by certified mail, of a Notice of Noncompliance sent by the State Gaming Representative, which Notice shall specify the amount due and the provision of the Compact under which such payment is required, this Compact, and the conduct of Class III Gaming by the Tribe hereunder, shall terminate automatically as of the end of the thirty (30)-day period, unless within such thirty (30)-day period the Tribe shall have invoked arbitration on a matter of fact as provided in Section 7(A)(2) of this Compact, and simultaneously shall have placed into escrow, in an institution that is unaffiliated with either the Tribe or the State, a sum of money equal to the amount claimed due by the State, with instructions to the escrow agent specifying that such sum shall not be released except by direction of the arbitration panel or pursuant to a settlement agreement of the parties. The Tribe shall give written notice to the State of the deposit of the amount in dispute into escrow, and of the escrow instructions. At the conclusion of the arbitration proceeding, or, in the event the parties reach a settlement, immediately after execution of the settlement agreement, the escrow agent shall disburse the sum deposited by the Tribe in accordance with the settlement agreement or arbitration award, as applicable. In the event the Tribe invokes arbitration, this Compact and the Tribe's right to conduct Class III gaming shall terminate automatically at the end of the thirtieth (30th) day after the entry of a final, nonappealable decision by the arbitrators or by a court having jurisdiction of the dispute, unless the full amount determined by the arbitrators or by such court to be due the State, if any, has been paid by such date. The Tribe shall not be entitled to avoid any pre-existing contractual obligations accruing to third parties under this Compact solely by virtue of the termination of the Compact.

SECTION 13. Notice to Parties.

Unless otherwise indicated, all notices, payments, requests, reports, information or demand that any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first-class mail sent to the other party at the address provided in writing by the other party. Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt or, if mailed, upon receipt or the expiration of the third day

following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

SECTION 14. Entire Agreement.

This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged or terminated orally, but only by an instrument, in writing, signed by the Tribe and the State and approved by the Secretary of the Interior. This Compact shall not be amended without the express approval of the Tribe, the Governor of the State and the State Legislature, as provided in the Compact Negotiation Act.

SECTION 15. Filing of Compact with State Records Center.

Upon the effective date of this Compact, a copy shall be filed by the Governor with the New Mexico Records Center. Any subsequent amendment or modification of this Compact shall be filed with the New Mexico Records Center.

SECTION 16. Counterparts.

This Compact may be executed by the parties in any number of separate counterparts with the same effect as if the signatures were upon the same instrument. All such counterparts shall together constitute one and the same document.

SECTION 17. Severability.

Should any provision of this Compact be found to be invalid or unenforceable by any court, such determination shall have no effect upon the validity or enforceability of any other portion of this Compact, and all such other portions shall continue in full force and effect, except that this provision shall not apply to Sections 4, 5, 6, 9 and 11 hereof, or to any portions thereof, which the parties agree are nonseverable.

Executed as Amended this _____ day of _____, 2007.

By: _____
[Authorized Official]

STATE OF NEW MEXICO

By: _____
Governor

APPENDIX to the 2007 Compact Amendments

WHEREAS, _____ ("Tribe"), a federally recognized Indian tribe, operates a Gaming Enterprise on its land located within the exterior boundaries of the

Tribe’s reservation; WHEREAS, the Tribe conducts Gaming activities pursuant to a compact entered into between the Tribe and the State of New Mexico ("State") and approved by the United States Department of Interior ("Compact");

WHEREAS, the _____ Gaming Commission is the Tribal Gaming Agency ("TGA") identified to the State Gaming Representative ("SGR") as the agency responsible for actions of the Tribe set out in the Compact and is the single contact with the State and may be relied upon as such by the State;

WHEREAS, the SGR is the person designated by the New Mexico Gaming Control Board ("NMGCB") pursuant to the Gaming Control Act [Chapter 60, Article 2E NMSA 1978] who shall be responsible for the actions of the State set out in the Compact;

WHEREAS, the Tribes and the State have engaged in negotiations leading to amendments to the 2001 Compact to be submitted for approval by the 2007 legislature.

WHEREAS, the parties wish to submit for approval certain details concerning certain aspects of their agreement to be made an integral part of the 2007 Compact, but to be designated as the Appendix to the Compact;

NOW, THEREFORE, the State and the Tribe agree to the following terms and conditions:

1. Section 2 (F) and Section 2(R) of the Compact provide definitions for gaming machines and table games. The definition of a gaming machine is intended to encompass the traditional slot machine. The definition of a table game is intended to encompass traditional games that use cards such as poker, Pai-gow and blackjack, wheel games such as roulette and the Big Wheel, and dice games such as craps.

However, technology is constantly changing in the area of casino gaming and the once clear line between slot machines and table games is becoming less clear. It is the intention of the parties to accommodate and clarify revenue sharing requirements of new games that blur the line between traditional games. Generally, games that are predominantly mechanical, electromechanical or electronic are subject to revenue sharing and games that rely significantly on a casino attendant (a live person) to play the game are not subject to that obligation. Casino attendant involvement ranges from minimal interaction such as initiating the game and taking bets and/or making payout to substantial interaction such as participating in the game as a player (e.g. blackjack) or being involved in nearly every aspect of the game (e.g. craps). The greater the involvement of the casino attendant, the more likely the game is a table game. For example, a casino attendant may have some minimal involvement in an electromechanical slot machine game, such as making a pay-out, but that is not a significant enough involvement to exclude it from revenue sharing obligations. Similarly, although roulette has a mechanical aspect, it is not significant enough to make it subject to revenue sharing obligations.

Recognizing the dynamic nature of gaming technology, the parties shall attempt to agree on whether new mechanical, electromechanical or electronic games that utilize traditional components of table games, e.g. cards, wheels or dice, are subject to revenue sharing on a case by case basis. In the event the parties are unable to agree, the matter shall be submitted to arbitration pursuant to section 7.

2. Section 4 (B)(13) of the Compact provides that the Tribe shall make available to the SGR, unaltered data from all gaming machines. The information shall be downloadable from the Tribe's "slot account system." The parties agree that access to such data shall be made available as follows:

A. The SGR or designee shall have access to the gaming machine accounting data from the production side of the Tribe's "slot accounting system." The gaming machine accounting data consists of the raw, unaltered, data used by the Tribe to calculate "Net Win." This information shall not be in an altered, processed or manipulated format. This information shall be accessible by the SGR, as the SGR shall from time to time determine is required, on a per machine and/or aggregate basis based on a full game day cycle. The purpose of this information is to allow the SGR to verify the Tribe's "Net Win" calculation. A system for electronic access to the Tribe's gaming machine accounting data shall be constructed and installed at the State's cost.

B. The security codes for log-in by the SGR or designee shall be defined collectively by the TGA, the manufacturer of the "slot accounting system", and the SGR.

C. Access to the gaming machine accounting data shall be limited to the SGR or designee solely for purposes authorized in the Compact.

D. Any part of the gaming machine accounting data obtained herein is designated as confidential under the Compact and shall not be made available for public inspection by the SGR.

E. The information referred to herein shall be transferred over secure telecommunications lines.

F. The TGA shall ensure that the systems and connections necessary to provide access to the gaming machine accounting data are in place and operating as required under the Compact.

G. The TGA shall ensure that the SGR or designee is notified promptly either by electronic mail or telephone of any technical problems related to the generation, transfer or access of the gaming machine accounting data.

H. The TGA shall ensure that the SGR has access to the gaming machine accounting data on a periodic basis as determined from time to time by the SGR, but in no event shall access be more often than once in a 24 hour period and the SGR shall

strive to access such information in a reasonable manner and only to the extent necessary to meet his obligations under the Compact.

I. The TGA shall at all times designate a person and an alternate as the daily contact person of the SGR or designee.

3. Section 4 (E)(2) provides that the TGA will certify annually to the SGR that the TGA has met its obligations under this compact.

A. The TGA shall annually certify to the SGR that the Tribe is in compliance with the provisions of the Compact by completing and submitting a Compliance Report.

B. The Compliance Report is a checklist of the applicable sections of the Compact outlined in form A provided at the end of this Appendix. The Compliance Report shall serve as an annual attestation to certify that the Tribe, TGA and Tribal Gaming Enterprise have met the obligations under the Compact.

C. The TGA shall complete and submit to the SGR its Compliance Report within thirty days of the end of the Tribe's fiscal year.

D. The TGA shall rely upon its records in preparing the Compliance Report. As evidence that the elements or requirements of the Compact have been met, the TGA shall conduct a comprehensive review of their gaming operations, which may include sample testing. The TGA shall determine the sample size to be used and will provide the methodology of the chosen sample size to the SGR. The TGA shall maintain all records relied upon in preparing the Compliance Report. The records shall be made available for review by the SGR or agent as requested.

E. The TGA shall attach a written explanation of the course of action taken to remedy or explain any portions of the audit checklist that are listed as non-compliant or partially compliant.

F. The SGR reserves the right to review the audit or compliance review and request additional documentation if necessary.

G. The SGR reserves the right of inspection pursuant to section 4(E)(3) of the 2007 Compact.

4. Section 4 (E)(3) of the Compact provides authorization for the SGR to inspect a Gaming Facility, Class III Gaming activity, individual gaming machines and all records relating to Class III Gaming of the Tribe. The parties agree that the protocol for inspection of gaming machines shall include the following:

A. The SGR shall have access to inspect individual gaming machines upon the terms and conditions set forth in Section 4 (E) (3) of the 2007 Compact.

B. The SGR recognizes that the Tribal gaming enterprise is a business and will take reasonable steps to not interfere with the normal conduct of gaming business.

C. The SGR recognizes that the TGA has primary responsibility to administer and enforce the regulatory requirements of the compact and does so through internal controls, direct control of the gaming media and the security and access of the gaming media in a gaming machine.

D. The TGA shall be present at any inspection, upon having been given notice as set out in section 4 (E) (3) (d), and testing of the gaming media shall be conducted by the TGA representative and verified by the SGR.

E. The SGR's inspection of individual gaming machines shall be limited to purposes authorized by the Compact.

New Mexico Gaming Control Board
COMPACT COMPLIANCE CHECKLIST
Compliance Report
Fiscal Year 20___

Key: X – Compliance (Blank) – Non-Compliance
/ – Partial Compliance NA – Not Applicable

Compliance with Section	Tribal-State Compact	Compliance with Section	Tribal-State Compact	Compliance with Section	Tribal-State Compact
[ ]	Section 3. Authorized Class III Gaming.	[ ]	Section 4.B.(17)	[ ]	Section 8. Protection of Visitors.
[ ]	Section 4. Conduct of Class III Gaming.	[ ]	Section 4.B.(18)	[ ]	Section 8.A.
[ ]	Section 4.A.(1)	[ ]	Section 4.B.(19)	[ ]	Section 8.B.
[ ]	Section 4.A.(2)	[ ]	Section 4.B.(20)	[ ]	Section 8.C.
[ ]	Section 4.A.(3)	[ ]	Section 4.C.	[ ]	Section 8.D.
[ ]	Section 4.A.(4)	[ ]	Section 4.D.	[ ]	Section 8.E.
[ ]	Section 4.A.(5)	[ ]	Section 4.E.(1)	[ ]	Section 8.F.
[ ]	Section 4.A.(6)	[ ]	Section 4.E.(2)	[ ]	Section 8.G.
		[ ]	Section 4.E.(3)	[ ]	Section 8.H.
		[ ]	Section 4.E.(4)	[ ]	Section 10. Criminal Jusrisdiction.
				[ ]	Section 10.C.
				[ ]	Section 11. Revenue Sharing
				[ ]	

[ ] Section 4.A.(7)
[ ] Section 4.A.(8)
[ ]
[ ] Section 4.B.(1)
[ ] Section 4.B.(2)
[ ] Section 4.B.(3)
[ ] Section 4.B.(4)
Section 4.B.(5)
Section 4.B.(6)
Section 4.B.(7)
Section 4.B.(8)
Section 4.B.(9)
Section 4.B.(10)
Section 4.B.(11)
Section 4.B.(12)
Section 4.B.(13)
Section 4.B.(14)
Section 4.B.(15)
Section 4.B.(16)

[ ] Section 4.E.(5)
Section 4.E.(6)

Section 5. Licensing Requirements.
Section 5.A.
[ ] Section 5.B.
[ ] Section 5.C.
[ ] Section 5.D.

Section 6. Providers of Class III Gaming Equipment or Devices or Supplies.
Section 6.A.
Section 6.B.
Section 6.C.

Section 11.B.
Section 11.C.

2015 Tribal-State Class III Gaming Compact
(Approved by Laws 2015, S.J.R. No. 19
Expires 2037)

The State of New Mexico ("State") is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Tribe;

The _____ Tribe ("Tribe") is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this Compact, with the State;

The Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 et. seq. (hereinafter "IGRA"), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to tribal-state compacts entered into for that purpose;

The 1999 State Legislature has enacted SB 737, as 1999 N.M. Laws, ch. 252, known as the "Compact Negotiation Act," creating a process whereby the State and the Tribe have engaged in negotiations leading to this Compact, with review by a joint legislative committee, and with final approval by a majority vote in each house of the Legislature;

The Tribe owns or controls Indian Lands and by Ordinance has adopted, or will adopt, rules and regulations governing Class III games played and related activities at any Gaming Facility;

The State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith, government-to-government negotiations recognizing and respecting the interests of each party and have agreed to this Compact, and following those individual negotiations, have combined multiple tribal-state negotiations to develop this single Compact;

The Tribe has informed the State that it does not intend to conduct Class III Gaming on Indian Lands that are eligible for gaming pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii). If, in the future, the Tribe desires to conduct Class III Gaming on Indian Lands eligible for gaming pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii), the Tribe intends to negotiate a separate compact with the State to address the unique circumstances and conditions associated with such lands. The Tribe acknowledges and agrees that it has not addressed those circumstances and conditions in the negotiations leading up to this Compact and that there are federal authorizations required to determine eligibility to game on those lands. For those reasons, the Tribe agrees that the execution of this Compact is not evidence of and cannot be used to support a determination that any land located in the State is eligible for gaming pursuant to the 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii).

NOW, THEREFORE, the State and the Tribe agree as follows:

SECTION 1. Purpose and Objectives.

The purpose and objectives of the State and the Tribe in making this Compact are as follows:

A. To evidence the good will and cooperative spirit between the State and the Tribe;

B. To continue the development of an effective government-to-government relationship between the State and the Tribe;

C. To provide for the regulation of Class III Gaming on Indian Lands within the State of New Mexico as required by the IGRA;

D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;

E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;

F. To provide for the effective regulation of Class III Gaming in which the Tribe shall have the sole proprietary interest and be the primary beneficiary; and

G. To address the State's interest in the establishment, by the Tribe, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming Enterprise on Indian Lands.

SECTION 2. Definitions.

For purposes of this Compact, the following definitions pertain:

A. "Adjusted Net Win" is Net Win with certain deductions for purposes of calculating revenue sharing as set forth in Section 11(C) of this Compact.

B. "Card Minder" means a technological aid for a bingo game that serves as an electronic substitute for bingo cards and is used by a player to monitor bingo cards and called bingo numbers. A Card Minder does not include a device which permits a player to cover or daub a bingo card other than through overt action after numbers are released.

C. "Class III Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

D. "Compact" means this compact between the State and the Tribe, and including the Appendix attached hereto.

E. "Compliance Report" is the report submitted annually to the State Gaming Representative by the Tribal Gaming Agency according to the requirements set forth in the Appendix attached to this Compact.

F. "Effective Date" has the meaning set forth in Section 9(A) of this Compact.

G. "Free Play" means play on a Class III Gaming Machine initiated by points or credits provided to patrons without monetary consideration, and which have no cash redemption value.

H. "Gaming Employee" means a person connected directly with the conduct of Class III Gaming, handling the proceeds thereof, or handling any Gaming Machine; but "Gaming Employee" does not include:

1. Bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;

2. Secretarial or janitorial personnel;

3. Stage, sound and light technicians; or

4. Other nongaming personnel.

I. "Gaming Enterprise" means the tribal entity created and designated by the Tribe as having authority to conduct Class III Gaming pursuant to this Compact.

J. "Gaming Facility" means each separate physical building or structure in which Class III Gaming is conducted on the Tribe’s Indian Lands.

K. "Gaming Machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration in any manner, is available to play or operate a game of chance in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, whether the payoff is made automatically from the Gaming Machine or in any other manner; but Gaming Machine does not include a Card Minder or a Table Game or any devices utilized in Table Games. Additional clarification of the definitions of a Gaming Machine and a Table Game is set forth in the attached Appendix.

L. "Indian Lands" means:

1. all lands within the exterior boundaries of the Tribe’s reservation and its confirmed grants from prior sovereigns; or

2. any other lands title to which is either held in trust by the United States for the exclusive benefit of the Tribe or a member thereof or is held by the Tribe or a member thereof subject to restrictions against alienation imposed by the United States, and over which the Tribe exercises jurisdiction and governmental authority, but not including any land within a municipality that is outside of the boundaries of the Tribe’s

reservation or confirmed Spanish grant as those boundaries existed on October 17, 1988.

M. "Key Employee" means that term as defined in 25 C.F.R. § 502.14.

N. "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

O. "Management Contractor" means any person or entity that has entered into a Management Contract with the Tribe or the Gaming Enterprise.

P. "Net Win" means the win from gaming activities, which is the difference between gaming wins and losses before deducting costs and expenses or deducting incentives or adjusting for changes in progressive jackpot liability accruals. Generally, Net Win is the difference between patron wagers and payouts made on winning wagers. Additional clarification of the accounting for Free Play, Point Play, Participation Fees, and amounts paid with respect to wide area progressive Class III Gaming Machines is set forth in the attached Appendix.

Q. "Ordinance" means the gaming ordinance, any amendments thereto adopted by the Tribal Council of the Tribe, and any regulations which are promulgated pursuant to the gaming ordinance.

R. "Point Play" means play on a Class III Gaming Machine initiated by points earned or accrued by a player through previous Gaming Machine play, players' clubs, or any other method, and which have no cash redemption value.

S. "Predecessor Agreement" means the last tribal-state Class III Gaming compact, if any, entered into between the Tribe and the State preceding the execution of this Compact.

T. "Primary Management Official" means that term as defined in 25 C.F.R. §502.19.

U. "State" means the State of New Mexico.

V. "State Gaming Representative" means that person designated by the Gaming Control Board pursuant to the Gaming Control Act [NMSA 1978, §§ 60-2E-1 to -62 (1997, as amended through 2014)] who will be responsible for actions of the State set out in the Compact. The State Legislature may enact legislation to establish an agency of the State to perform the duties of the State Gaming Representative.

W. "Table Game" means a Class III game of chance, in which the outcome depends to a material degree on an element of chance, notwithstanding that some skill may be a factor, that is played using a wheel, cards or dice, and that requires an attendant to initiate the game or to collect wagers or pay prizes. Additional clarification of this definition is set forth in the attached Appendix.

X. "Tribal Gaming Agency" means the tribal governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the Tribe set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.

Y. "Tribe" means the federally recognized Indian Tribe, Nation, or Pueblo located within the State of New Mexico entering into this Compact.

SECTION 3. Authorized Class III Gaming.

A. Permitted Class III Gaming. The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all forms of Class III Gaming.

B. Limitations. Subject to the foregoing, and subject to all of the terms and conditions of this Compact, the Tribe shall establish, at its discretion, by tribal law, such limitations as it deems appropriate on the amount and type of Class III Gaming conducted, the location of Class III Gaming on Indian Lands, the hours and days of operation, and betting and pot limits, applicable to such gaming.

C. Number of Facilities.

1. The Tribe may operate:

(a) Two (2) Gaming Facilities; or

(b) Three (3) Gaming Facilities if the Tribe has at least seventy five thousand (75,000) tribal members residing in the State. The Tribal membership shall be based on official figures from the Tribe's tribal enrollment office. Prior to the opening of a third Gaming Facility, the Tribe shall provide the State Gaming Representative with documentation to show that its Tribal membership numbers meet the requirements set forth herein.

2. In addition to the number of Gaming Facilities permitted under Section 3(C)(1), the Tribe may operate one (1) Legacy Gaming Facility if it meets the requirements in Section (C)(5) below.

3. If the Tribe is eligible for a third Gaming Facility pursuant to Section (C)(1)(b) above, it shall not open such Gaming Facility to the public earlier than the date that is six (6) years from the Effective Date of the Compact.

4. In no event shall the Tribe be permitted to operate more than the number of Gaming Facilities authorized under Section (C)(1) and one (1) Legacy Gaming Facility.

5. If, as of June 30, 2015, the Tribe is already operating more than two Gaming Facilities and those Gaming Facilities are permitted under the terms of its Predecessor Agreement, it may designate one (1) Gaming Facility as a "Legacy Gaming Facility" and the following shall apply:

(a) The Legacy Gaming Facility shall be that Gaming Facility with the fewest Class III Gaming Machines in operation as of June 30, 2015 (the "Legacy Gaming Facility Deadline Date"), or in the event that a Tribe has more than one (1) Gaming Facility that operates less than one hundred and thirty (130) Class III Gaming Machines, the Tribe may designate one of those Gaming Facilities as its Legacy Gaming Facility by the Legacy Gaming Facility Deadline Date.

(b) Within ten (10) days of the Legacy Gaming Facility Deadline Date, the Tribe shall have an authorized representative sign a sworn affidavit that designates the Legacy Gaming Facility, provides the location of the Legacy Gaming Facility, and a detailed description of its gaming operations at the Legacy Gaming Facility as of that date, including the specific number of Gaming Machines and any other gaming activities and shall submit said affidavit to the State Gaming Representative.

(c) The Legacy Gaming Facility shall be permitted to move one (1) time from its location as of June 30, 2015 (the "Existing Location"), subject to the following restrictions:

i) the Legacy Gaming Facility shall not be moved more than seventeen (17) miles from its Existing Location; and

ii) the Legacy Gaming Facility shall not be permitted to move if its Existing Location is located within fifty (50) miles from another Tribe’s Gaming Facility located within the State.

(d) The Gaming Enterprise shall not operate in excess of one hundred thirty (130) Class III Gaming Machines at the Legacy Gaming Facility.

SECTION 4. Conduct of Class III Gaming.

A. Tribal Gaming Agency. The Tribal Gaming Agency will assure that the Tribe will:

1. operate all Class III Gaming pursuant to this Compact, tribal law, the IGRA and other applicable federal law;

2. provide for the physical safety of patrons in any Gaming Facility;

3. provide for the physical safety of personnel employed by the Gaming Enterprise;

4. provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;

5. provide for the protection of the property of the patrons and the Gaming Enterprise from illegal activity;

6. participate in licensing of Primary Management Officials and Key Employees of a Class III Gaming Enterprise;

7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities;

8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility; and

9. comply with all applicable provisions of the Bank Secrecy Act, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the Department of the Treasury, the Internal Revenue Service, the Financial Crimes Enforcement Network, and any other related divisions thereof, as applicable, and make all such documentation available to the State Gaming Representative for inspection, scanning, or copying upon request.

B. Regulations. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);

2. prohibiting the employment of any person as a Gaming Employee who is under the age of twenty-one (21) or who has not been licensed in accordance with the applicable requirements of federal and tribal law;

3. requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws generally applicable to Indian tribes relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

4. requiring that, on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;

5. prohibiting the Tribe, the Gaming Enterprise and a Management Contractor from discriminating in the employment of persons to work for the Gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin,

gender, sexual orientation, age or handicap, provided, however, that nothing herein shall be interpreted to prevent the Tribe from granting preference in employment actions to tribal members or other Indians in accordance with established tribal laws and policies;

6. requiring the Tribe, through its Gaming Enterprise or through a third-party entity, to provide to all employees of the Gaming Enterprise employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave or paid time off and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable State programs, and which programs shall afford the employees due process of law and shall include an effective means for an employee to appeal an adverse determination by the insurer to an impartial forum, such as (but not limited to) the Tribe's Tribal Court, which appeal shall be decided in a timely manner and in an administrative or judicial proceeding and as to which no defense of tribal sovereign immunity would be available; and provided that to fulfill this requirement the Tribe may elect to participate in the State's program upon execution of an appropriate agreement with the State;

7. providing a grievance process for an employee of the Gaming Enterprise in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

8. permitting inspectors from the Indian Health Service, a federal agency within the Department of Health and Human Services, to inspect the Gaming Facility's food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act [NMSA 1978, § 25-1-1 (1977, as amended through 2014)] are maintained and if such inspections have occurred, the Tribe shall provide documentation of the inspections to the State Gaming Representative with the Compliance Report referenced in Section 4(E)(2) of this Compact, or if the Indian Health Service does not conduct such inspections, permitting the State Department of Environment to conduct such inspections;

9. prohibiting the Gaming Enterprise, and the Tribe in connection with gaming, from cashing any paycheck or any type of government assistance check, including Social Security, TANF, pension, and other similar checks, for any patron;

10. prohibiting the Gaming Enterprise, and the Tribe in connection with gaming, from extending credit by accepting IOUs or markers from its patrons, except that short-term credit may be extended to certain qualified patrons with sufficient demonstrated available cash balances to cover the amount of the credit extended (not less than ten thousand dollars ($10,000) to be repaid within thirty (30) days); provided that the Tribe complies with all applicable federal law and all provisions of the Appendix related to credit (including the State reporting requirements), and provides a copy of the

regulations referenced in the Appendix to the State for review and comment prior to implementation;

11. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to TANF recipients for access to TANF benefits;

12. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%), and requiring the Gaming Enterprise to prominently post in visible locations within the Gaming Facility notices stating that the Gaming Enterprise is in compliance with this requirement, and providing a comprehensible explanation of the meaning of this requirement;

13. providing that all Class III Gaming Machines on the premises of the Gaming Facility will be connected to a central computerized monitoring and control system on the Gaming Facility premises, which shall collect on a continual basis the unaltered activity of each Gaming Machine in use at the Gaming Facility, and that the wager and payout data of each machine, electronically captured by the Gaming Enterprise's central computer, may be accessed and downloaded electronically by the State Gaming Representative by a dedicated telecommunications connection, on a "read-only" basis, upon entry of appropriate security codes; but provided that in no event shall the State Gaming Representative be able to alter or affect the operation of any Gaming Machine or other device on the premises of the Gaming Facility, or the data provided to the central computer, and provided further that the system for electronic access to the machine wager and payout data collected by the Gaming Enterprise's central computer shall be constructed and installed at the State's cost, and shall be designed in conjunction with Gaming Enterprise technical staff so as to preserve the integrity of the system and the data contained therein, to minimize any possibility of unauthorized access to the system or tampering with the data, and to minimize any access by the State Gaming Representative to information other than machine wager and payout data residing in the central monitoring and control system;

14. enacting provisions that:

(a) prohibit an employee of the Gaming Enterprise from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

(b) require Gaming Enterprise employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and

(c) require the Gaming Enterprise to purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million

dollars ($1,000,000) per incident and two million dollars ($2,000,000) aggregate per policy year;

15. prohibiting alcoholic beverages from being sold, served, delivered, or consumed in that part of a Gaming Facility where gaming is allowed;

16. requiring the Gaming Enterprise to spend, annually, an amount that is no less than one-quarter of one percent (.25%) of its Adjusted Net Win as that term is defined in Section 11(C)(1), to fund or support programs that the Tribe selects for the treatment and assistance of compulsive gamblers in New Mexico or who patronize New Mexico gaming facilities, and for the prevention of compulsive gambling in New Mexico; and requiring that a substantial portion of such funds be distributed to an organization that has expertise in and provides counseling, intervention or other services for compulsive gamblers in New Mexico, and whose services are available to all persons without regard to race or tribal membership; and requiring that the Tribe submit a report accounting for the use of these funds as described in the attached Appendix, and that this report and any other information existing as a result of this paragraph, not including information that may identify or contain information referring to any gaming patron, shall not be subject to the confidentiality provisions of Section 4(E)(4) of this Compact and shall be made available for inspection and publication without restriction or limitation;

17. governing any Management Contract regarding its Class III Gaming activity so that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;

18. prohibiting the Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide alcoholic beverages for no charge or at reduced prices within a Gaming Facility; and

19. prohibiting the Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide food or lodging for no charge or at reduced prices, at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game ("Complimentaries"), except that (i) this provision shall not apply to rewards received by patrons in exchange for points or credits accrued under any form of a players' club program; and (ii) the Gaming Enterprise or Tribe may provide discretionary Complimentaries provided that the cumulative market value of all discretionary Complimentaries, on an annual basis, does not exceed three percent (3%) of the Tribe's annual Adjusted Net Win for the same year. The Tribe shall, on a quarterly basis, report to the State the total amount of the discretionary Complimentaries during the previous quarter in dollars and as a percentage of Adjusted Net Win for such quarter. The Tribe shall adopt and follow the minimum internal control standard and policies and procedures set forth in the Appendix, shall comply with all applicable federal law and all provisions of the Appendix related to Complimentaries (including the State reporting requirements), and shall provide a copy of the regulations referenced in the Appendix to the State for review and comment prior to implementation.

C. Audit and Financial Statements.

1. Annual Audit. Not less than annually at the Gaming Enterprise's fiscal year end, the Tribal Gaming Agency shall require, at the expense of the Gaming Enterprise, an audit and audit report of the financial statements covering all financial activities of the Gaming Enterprise in the State of New Mexico. The audit and audit report shall be prepared by an independent certified public accountant licensed by the New Mexico Public Accountancy Board. The audit report shall include written verification by the independent certified public accountant of the accuracy of the quarterly Adjusted Net Win calculation as required by Section 11(C) and shall specify the total amount of patron wagers and total amount of payouts made on winning wagers in Class III Gaming on all Gaming Machines at the Tribe's Gaming Facilities for purposes of calculating Adjusted Net Win. The financial statements shall be prepared in accordance with generally accepted accounting principles (GAAP). All books and records relating to Class III Gaming shall be retained for a period of at least five (5) years from the date of creation, as required by 25 C.F.R. § 571.7(c). The independent certified public accountant shall issue a report on audited financial statements of the Tribe's Gaming Enterprise in the State of New Mexico. The independent certified public accountant shall perform the audit in accordance with generally accepted auditing standards published by the American Institute of Certified Public Accountants, and submit the audited financial statements, along with any reports or management letter(s) the accountant has prepared, to the Tribal Gaming Agency within one hundred twenty (120) days after the Gaming Enterprise's fiscal year end. Promptly upon receipt of the audited financial statements, and in no event later than one hundred twenty (120) days after the fiscal year end, the Tribal Gaming Agency shall provide copies of the financial statement and audit report to the State Gaming Representative, along with copies of any and all documents the independent certified public accountant has provided to the Tribe or the Tribal Gaming Agency concerning the audit, including but not limited to copies of any and all reports and management letter(s). If the Gaming Enterprise changes its fiscal year end, it may elect either to prepare financial statements for a short fiscal year or for an extended fiscal year, but in no event shall an extended fiscal year extend more than fifteen (15) months.

2. Maintenance of Records. The Tribe will maintain the following records for not less than five (5) years:

(a) revenues, expenses, assets, liabilities and equity for the Gaming Enterprise;

(b) daily cash transactions for each Class III Gaming activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox and gaming room bank;

(c) individual and statistical game records, except for card games, to reflect statistical drop and statistical win; for electronic, computer, or other technologically

assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

(d) contracts, correspondence and other transaction documents relating to all vendors and contractors;

(e) records of all tribal gaming enforcement activities;

(f) audits prepared by or on behalf of the Tribe;

(g) records documenting compliance with the terms of this Compact; and

(h) personnel information on all Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.

D. Violations. The agents of the Tribal Gaming Agency shall have unrestricted access to the Gaming Facility during all hours of Class III Gaming activity, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. The agents shall report immediately to the Tribal Gaming Agency any suspected violation of this Compact, the Ordinance, or regulations of the Tribal Gaming Agency by the Gaming Enterprise, Management Contractor, or any person, whether or not associated with Class III Gaming.

E. State Gaming Representative. The State Gaming Representative may utilize staff from the Gaming Control Board or contract with private persons, firms, or other entities for the purpose of assisting in performing his functions set forth in this Compact, but the State Gaming Representative will be the single contact with the Tribe and may be relied upon as such by the Tribe.

1. Background Investigations. Upon written request by the State to the Tribe, the Tribal Gaming Agency will provide information on Primary Management Officials, Key Employees and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5 of this Compact. The Tribal Gaming Agency shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Gaming Enterprise or the Tribal Gaming Agency shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Compliance Reports. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the Tribal Gaming Agency will certify annually to the State Gaming Representative that the Tribe has met its obligations under this Compact in accordance with the instructions and Form A set forth in the attached Appendix. The Tribal Gaming Agency shall allow the State Gaming Representative to inspect and verify, and obtain copies (either

scanned electronically or in paper form), upon request, of any and all documents related to any item in the Compliance Report, including all source documents and data.

3. Inspections. The State Gaming Representative shall have the right to inspect a Gaming Facility and any Class III Gaming activity, including all Gaming Machines, and to inspect, verify, and obtain copies (either scanned electronically or in paper form), upon request, of any and all records relating to any Class III Gaming of the Tribe, including all source documents and data, subject to the following conditions:

(a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal Gaming Facility business hours;

(b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Enterprise business hours, immediately after notifying the Tribal Gaming Agency and Gaming Enterprise of his or her presence on the premises and presenting proper identification, and requesting access to the non-public areas of the Gaming Facility. The Tribe, in its sole discretion, may require an employee of the Gaming Enterprise or the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require such an employee of the Gaming Enterprise or the Tribal Gaming Agency to be available at all times for such purpose;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State, although the State may, at its option, choose to scan documents electronically at no charge;

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Enterprise; and

(e) in accordance with the additional requirements set forth in the attached Appendix.

4. Confidentiality.

(a) Any information, documents or communications provided to the State Gaming Representative, his agents or contractors, or to any other official, agency or entity of the State (all of which are collectively hereinafter referred to as "the State entities") by the Tribe, the Tribal Gaming Agency or the Gaming Enterprise, or prepared from information obtained from the Tribe, the Tribal Gaming Agency or the Gaming Enterprise, or any information, documents or communications provided to the Tribe, the Tribal Gaming Agency, or the Gaming Enterprise by any State entity, or prepared from

information obtained from any State entity, under the provisions of this Compact or under the provisions of any Predecessor Agreement, are confidential. Any State entity that has received any information, documents or communications from the Tribe, the Tribal Gaming Agency or the Gaming Enterprise: i) may release or disclose the same only with the prior written consent of the Tribe or pursuant to a lawful court order after timely notice of the proceeding has been given to the Tribe; ii) shall maintain all such information, documents and communications in a secure place accessible only to authorized officials and employees of the State entity that has received the same; and iii) shall adopt procedures and regulations to protect the confidentiality of the information, documents and communications provided by the Tribe, Tribal Gaming Agency or Gaming Enterprise.

(b) These prohibitions shall not be construed to prohibit:

i) the furnishing of any information to a law enforcement or regulatory agency of the Federal Government;

ii) the State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;

iii) publishing the terms of this Compact;

iv) disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State;

v) disclosures to other State agencies as required by State law, provided that the confidentiality provisions of this Section shall apply to the agencies receiving such information; and

vi) complying with subpoenas or court orders issued by courts of competent jurisdiction.

(c) Notwithstanding the foregoing, the Tribe agrees that:

i) the following documents and information may be released by a State entity to the public: the gaming ordinance and regulations of the Tribe or Tribal Gaming Agency; official rulings of the Tribal Gaming Agency in matters not subject to a confidentiality order imposed by the Agency; other information and documents of the Tribal Gaming Agency or the Gaming Enterprise ordinarily available to the public; quarterly Net Win and Adjusted Net Win figures used as the basis for computation of the Tribe’s revenue sharing payment under the provisions of Section 11 of this Compact; information that exists as a result of the requirements in Section 4(B)(16); and

correspondence between the Tribe or a tribal entity and a State entity, unless such correspondence is specifically labeled "Confidential;"

ii) a State entity may release to the public aggregate figures compiled by totaling comparable figures from the annual financial statements of all of the New Mexico gaming tribes; and

iii) the report of the annual audit of the Gaming Enterprise that is provided by the Tribe to the State Gaming Representative shall be available to the public to the same extent that similar information that is required to be provided to the State by non-Indian gaming entities is available to the public, pursuant to the provisions of applicable law and the policies and regulations of the Gaming Control Board, at the time the request for the report of the annual audit is made.

5. Records and Annual Meeting.

(a) Information to be Provided by Tribe.

i) The Tribal Gaming Agency will provide true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within the earlier of: (i) thirty (30) days after the Effective Date of this Compact, or (ii) thirty (30) days after the Tribe's first day of operation of a Gaming Facility, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment or approval, if any.

ii) Regardless of whether the State exercises the option set forth in Section 4(B)(13), the Tribe shall make wager and payout data available to the State Gaming Representative on a monthly basis, by secure transmission through encrypted email communications, file transfer protocol, or other secure means provided for by the State Gaming Representative. The method of secure transmission must meet industry standards for security sufficient to minimize the possibility of any third party intercepting data transmitted to the State Gaming Representative. Such reports shall be generated to reflect monthly, quarterly, and annual activity, and shall identify, at a minimum:

i. coin-in;

ii. coin-out;

iii. Free Play and Point Play;

iv. Net Win;

v. theoretical net win (including Free Play and Point Play);

vi. actual floor hold percentage; and

vii. theoretical floor hold percentage. Within ninety (90) days of the Effective Date of this Compact, the State Gaming Representative, the Tribal Gaming Agency, and the Gaming Enterprise shall meet and in good faith coordinate and determine the contents of such reports and method of secure transmission to comply with this Section. For a Tribe that does not have any Gaming Facility in operation ("Non-Operational Tribe"), the State Gaming Representative, the Tribal Gaming Agency, and the Gaming Enterprise shall meet and in good faith coordinate and determine the contents of such reports and method of secure transmission to comply with this Section within fifteen (15) days before the Tribe's first day of operation of its Gaming Facility.

(b) Access to State Records. To the fullest extent allowed by State law, the Tribe shall have the right to inspect and copy State records concerning all Class III Gaming conducted by the Tribe with the Tribe bearing the reasonable cost of copying.

(c) Annual Meeting. At least annually, appropriate representatives of the Tribe and one or more representatives of the Office of the Governor appointed by the Governor, one or more members of the House of Representatives appointed by the Speaker of the New Mexico House of Representatives, and one or more members of the Senate appointed by the President Pro Tempore of the New Mexico Senate, shall meet to discuss matters of mutual interest arising under the terms of this Compact and concerning Indian gaming in New Mexico. Such meeting shall be coordinated so as to involve the representatives of as many New Mexico gaming tribes as possible, and shall be conducted in the context of the government-to-government relationship between the State and the Tribe.

6. Reimbursement for Regulatory Costs. The Tribe shall reimburse the State for the costs the State incurs in carrying out any functions authorized by the terms of this Compact. The Tribe and the State agree that to require the State to keep track of and account to the Tribe for all such costs would be unreasonably burdensome and that the amounts set forth in this Section represent a fair estimate of the State's cost of such activity. The Tribe and the State further agree that there is an increase in costs associated with the State's regulatory responsibilities based upon the number and size of the Tribe's Gaming Facilities and that the levels of regulatory cost reimbursement based upon the Adjusted Net Win of the Tribe as set forth in this Section represents a fair estimate the State's costs of regulation. In addition, Section 4(B)(10) and Section 4(B)(19) will increase the State's regulatory burden and the associated costs. The Tribe and State further agree that the State's cost of carrying out the terms of this Compact will increase over time. The Tribe therefore agrees to reimburse the State as set forth in the chart and provision below:

The Tribe shall reimburse the State based on the amount of its annual Adjusted Net Win as follows:	Annual Amount of Regulatory Payment to the State:
Under $40 million	$75,000.00
$40 million – under $80 million	$150,000.00

$80 million and over	$182,500.00

The above amounts shall increase by five percent (5%) as of July 1 of 2017, and as of July 1 of every fifth year thereafter as long as this Compact remains in effect, such sum to be paid in quarterly payments of one-fourth of the annual amount due, in advance. For a Non-Operational Tribe, quarterly payments shall be due at the next quarter following the Tribe's first day of operation of the Gaming Facility and shall be prorated during that first quarter based on the number of days the Gaming Facility was open to the public.

7. Regulatory Requirements. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact. Failure to abide by the procedures set forth in Section 7 or failure to comply with an arbitrator's final decision with respect to the parties' obligations constitutes a breach of this Compact.

F. Problem Gambling.

1. Signage. The Gaming Enterprise shall post at all public entrances and exits of each Gaming Facility, signs in both English and Spanish, stating that help is available if a person has a problem with gambling and, at a minimum, provide an appropriate toll-free crisis hotline telephone number and information on the availability of a statewide self-exclusion program with the State Gaming Representative.

2. Self-Exclusion Program. Within six (6) months of the Effective Date of this Compact or for a Non-Operational Tribe, within thirty (30) days after the date of the Tribe's first day of operation of its Gaming Facility, the State Gaming Representative and the Tribal Gaming Agency shall comply with the following procedures to allow problem gamblers to voluntarily exclude themselves from Gaming Facilities statewide; however, nothing in this Section shall preclude the Tribal Gaming Agency from operating its own self-exclusion program in addition to these procedures:

(a) The State Gaming Representative shall:

i) establish a list of persons who voluntarily seek to exclude themselves from Gaming Facilities statewide;

ii) create an application to compile identifying information concerning the self-excluded person;

iii) establish procedures for placement on and removal from the list; and

iv) provide the compiled information to the Tribal Gaming Agency on a monthly basis.

(b) The Tribal Gaming Agency shall:

i) require the Gaming Enterprise to train appropriate gaming personnel for the identification of self-excluded persons who enter or attempt to enter the Gaming Facility and take reasonable steps to identify the self-excluded person and to promptly escort the self-excluded person from the Gaming Facility;

ii) require the Gaming Enterprise to remove self-excluded persons from mailing lists for advertisements or promotions and any players' club or other similar membership-type promotions, and return the cashable value, if any, of the self-excluded person's membership in the players' club or other similar membership-type promotions;

iii) require that the self-excluded person forfeit all winnings (whether cash, property, or in any other form), credits, tokens or vouchers received from the Gaming Facility while excluded, and that all money or other property forfeited shall be used by the Gaming Enterprise to fund or support programs for the treatment and assistance of compulsive gamblers pursuant to Section 4(B)(16) of this Compact (this amount is in addition to the percentage of Adjusted Net Win already required under Section 4(B)(16) of this Compact); and

iv) require that, for jackpots requiring the patron to complete, prior to the pay-out of the jackpot, paperwork required by the Internal Revenue Service, the Gaming Enterprise shall verify that the patron is not on the self-exclusion list and such certification shall be recorded in the appropriate documentation. In the event the patron is listed on the self-exclusion list, the Gaming Enterprise shall comply with Section 4(F)(2)(b)(iii) above regarding forfeiture of all winnings.

(c) If a self-excluded person is removed from a Gaming Facility, the Tribal Gaming Agency shall report to the State Gaming Representative, at a minimum, the name of the self-excluded person, security staff involved, date of removal, amount of money forfeited, if any, and any other action taken. This written report shall be provided to the State Gaming Representative.

(d) Removal From Self-Exclusion List. If a self-excluded person is removed from the self-exclusion list by the State Gaming Representative, the State Gaming Representative shall provide written notice to the Tribal Gaming Agency of the self-excluded person's removal from the self-exclusion list.

(e) The self-exclusion list is not open to public inspection, and the Tribal Gaming Agency and State Gaming Representative shall ensure that it remains confidential except for use by:

i) appropriate law enforcement agencies, if needed in the conduct of an official investigation or ordered by a court of competent jurisdiction; or

ii) persons designated by either the Tribal Gaming Agency or the State Gaming Representative for the purposes of administrating and implementing the self-exclusion program.

(f) Notwithstanding Section 8(D) of this Compact, the Tribe, the Gaming Enterprise, or the Tribal Gaming Agency shall not be deemed to have waived its sovereign immunity and will not be liable with respect to any self-excluded person for harm, monetary or otherwise, which may arise as a result of:

i) its efforts to exclude a person identified on the self-exclusion list;

ii) the failure of the Gaming Enterprise or the Tribal Gaming Agency to withhold or restore gaming privileges from or to a self-excluded person;

iii) the permitting of a self-excluded person to engage in gaming activities or enter into a Gaming Facility; or

iv) the disclosure or publication in any manner, other than a willful and unauthorized disclosure or publication, of the identity of any self-excluded person or persons.

SECTION 5. Licensing Requirements.

A. License Required. The Gaming Facility operator (but not including the Tribe) including its principals, Primary Management Officials, and Key Employees; the Management Contractor and its principals, Primary Management Officials, and Key Employees (if the Tribe hires a Management Contractor); any person, corporation, or other entity that has supplied or proposes to supply any gaming device to the Tribe, the Gaming Enterprise or the Management Contractor; and any person, corporation or other entity providing gaming services within or without a Gaming Facility, shall apply for and receive a license from the Tribal Gaming Agency before participating in any way in the operation or conduct of any Class III Gaming on Indian Lands. The Tribal Gaming Agency shall comply fully with the requirements of this Section and of the IGRA, especially at 25 U.S.C. §§ 2710-2711, and the regulations issued thereunder at 25 C.F.R. Parts 550-559, as well as the requirements of the Tribe's gaming ordinance and any regulations issued thereunder or any regulations promulgated by the Tribal Gaming Agency, in processing license applications and issuing licenses.

B. License Application. Each applicant for a license shall file with the Tribal Gaming Agency a written application in the form prescribed by the Tribal Gaming Agency, along with the applicant's fingerprints, current photograph and the fee required by the Tribal Gaming Agency.

C. Background Investigations. Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted, at

its own expense, a background investigation to ensure that the applicant is qualified for licensing.

D. Provision of Information to State Gaming Representative. Whenever the Tribal Gaming Agency is required by federal or tribal law or regulations to provide to the National Indian Gaming Commission ("the Commission") any information, document or notice relating to the licensing of any Key Employee or Primary Management Official of the Gaming Enterprise, such information, document or notice shall be made available for inspection by the State Gaming Representative. The State Gaming Representative shall be entitled to the same right to request additional information concerning an applicant licensee, to comment on the proposed licensing of any applicant licensee, and to supply the Tribal Gaming Agency with additional information concerning any applicant licensee, as is enjoyed by the Commission.

SECTION 6. Providers of Class III Gaming Equipment or Devices or Supplies.

A. Within thirty (30) days after the Effective Date of this Compact, if it has not already done so, the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies to be used in any Gaming Facility, which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices or supplies within the State of Nevada. Any and all Class III Gaming equipment, devices or supplies used by the Tribe shall meet or exceed the standards thereby adopted.

B. Prior to entering into any future lease or purchase agreement for Class III Gaming equipment, devices or supplies, the Tribe shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribe to license those persons in accordance with applicable federal and tribal law.

C. The seller, lessor, manufacturer or distributor shall provide, assemble and install all Class III Gaming equipment, devices or supplies in a manner approved and licensed by the Tribe.

SECTION 7. Dispute Resolution.

A. In the event either party believes that the other party has failed to comply with or has otherwise breached any provision of this Compact, such party may invoke the following procedure within two (2) years from the date any alleged violation of this Compact is discovered or reasonably should have been discovered; or, if the State believes that, prior to the Effective Date of this Compact, the Tribe has failed to comply with or has otherwise breached any provision of a Predecessor Agreement affecting payment, the State may invoke the following procedure within two (2) years of the Effective Date of this Compact, as permitted in Section 9(B) of this Compact:

1. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific Compact provision believed to have been violated and shall specify the factual and legal basis for the allegation of noncompliance. The notice shall specifically identify the date, time and nature of the alleged noncompliance.

2. In the event an allegation by the complaining party is not resolved to the satisfaction of such party within twenty (20) days after service of the notice set forth in Paragraph A(1) of this Section, the complaining party may serve upon the other party a notice to cease conduct of the particular game(s) or activities alleged by the complaining party to be in noncompliance. Upon receipt of such notice, the responding party may elect to stop the game(s) or activities specified in the notice or invoke arbitration and continue the game(s) or activities pending the results of arbitration. The responding party shall act upon one of the foregoing options within ten (10) days of receipt of notice from the complaining party, unless the State and the Tribe (hereinafter the "parties") agree to a longer period, but if the responding party takes neither action within such period the complaining party may invoke arbitration by written notice to the responding party within ten (10) days of the end of such period.

3. Unless the parties agree in writing to the appointment of a single arbitrator, or as otherwise provided below, the arbitration shall be conducted before a panel of three (3) arbitrators. The arbitrators shall be attorneys who are licensed members in good standing of the State Bar of New Mexico or of the bar of another state. The State will select one arbitrator, the Tribe will select a second arbitrator, and the two so chosen shall select a third arbitrator. The party that served the written notice of noncompliance shall select its arbitrator within thirty (30) days after the party has invoked arbitration and the responding party shall select its arbitrator within thirty (30) days of the selection of the first arbitrator. If the responding party fails to select an arbitrator within the thirty (30) days provided, the parties shall proceed to arbitration with the single arbitrator selected by the party that served the written notice of noncompliance. If the responding party selects an arbitrator within the specified time period, the two arbitrators shall select a third arbitrator within thirty (30) days of the responding party’s selection. If the third arbitrator is not chosen within thirty (30) days after the second arbitrator is selected, the third arbitrator will be chosen by the American Arbitration Association. The arbitrators thereby selected shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the matters at issue. The arbitrators shall determine, after hearing from each party, whether the arbitration proceeding or any portions thereof shall be closed to the public, but in the absence of such determination the proceedings shall be open to the public. The arbitrators shall make determinations as to each issue presented by the parties, but the arbitrators shall have no authority to determine any question as to the validity or effectiveness of this Compact or of any provision hereof. All parties shall bear their own costs of arbitration and attorneys’ fees.

4. The results of arbitration shall be final and binding, and shall be enforceable by an action for injunctive or mandatory injunctive relief against the State

and the Tribe in any court of competent jurisdiction. For purposes of any such action, the State and the Tribe acknowledge that any action or failure to act on the part of any agent or employee of the State or the Tribe, contrary to a decision of the arbitrators in an arbitration proceeding conducted under the provisions of this Section, occurring after such decision, shall be wholly unauthorized and ultra vires acts, not protected by the sovereign immunity of the State or the Tribe.

B. Nothing in Subsection 7(A) shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nothing in this Section shall be deemed a waiver of the Tribe's sovereign immunity. Nothing in this Section shall be deemed a waiver of the State's sovereign immunity.

SECTION 8. Protection of Visitors.

A. Policy Concerning Protection of Visitors. The safety and protection of visitors to a Gaming Facility is a priority of the Tribe, and it is the purpose of this Section to assure that any such persons who suffer bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise have an effective remedy for obtaining fair and just compensation. To that end, in this Section, and subject to its terms, the Tribe agrees to carry insurance that covers such injury or loss, agrees to a limited waiver of its immunity from suit, and agrees to proceed either in binding arbitration proceedings or in Tribal, State, or other court of competent jurisdiction, at the visitor's election, with respect to claims for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise. For purposes of this Section, any such claim may be brought in state district court, including claims arising on tribal land, unless it is finally determined by a state or federal court that the IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court.

B. Insurance Coverage for Claims Required. The Gaming Enterprise shall maintain in effect policies of liability insurance insuring the Tribe, Gaming Enterprise, its agents and employees against claims, demands or liability for bodily injury and property damages by a visitor arising from an occurrence described in Paragraph A of this Section. The policies shall provide bodily injury and property damage coverage in an amount of at least ten million dollars ($10,000,000) per occurrence and ten million dollars ($10,000,000) annual aggregate. The Tribe shall provide the State Gaming Representative annually a certificate of insurance showing that the Tribe, its agents and employees are insured to the required extent and in the circumstances described in this Section.

C. Limitation on Time to Bring Claim. Claims brought pursuant to the provisions of this Section must be commenced by filing an action in Tribal, State, or other court of competent jurisdiction or a demand for arbitration within three (3) years of the date the claim accrues.

D. Specific Waiver of Immunity and Choice of Law. The Tribe, by entering into this Compact and agreeing to the provisions of this Section, waives its defense of sovereign immunity in connection with any claims for compensatory damages for bodily injury or property damage up to the amount of ten million dollars ($10,000,000) per occurrence, asserted as provided in this Section. This is a limited waiver and does not waive the Tribe's immunity from suit for any other purpose. The Tribe shall ensure that a policy of insurance that it acquires to fulfill the requirements of this Section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured, up to the limits of liability set forth in this Paragraph. The Tribe and the State agree that in any claim brought under the provisions of this Section, New Mexico law shall govern if the claimant pursues the claim in State Court, and the tribal law of the forum shall apply if the claim is brought in Tribal Court.

E. Election by Visitor. A visitor having a claim described in this Section may pursue that claim in binding arbitration, or Tribal, State, or other court of competent jurisdiction. The visitor shall make a written election that is final and binding upon the visitor.

F. Tribal Court. The Tribe shall establish written procedures and substantive law for the disposition of tort claims arising from bodily injury or property damage alleged to have been suffered by visitors and shall enact such tribal law as is necessary to implement these procedures. The procedures shall include all time limits applicable to the disposition of the tort claim and a provision that, upon request, the visitor, or the visitor's designated representative, shall be provided with a copy of the procedures as well as the name, address and telephone number of the Gaming Enterprise and the mailing address and telephone number of the clerk of the tribal court.

G. Arbitration. Arbitration pursuant to an election by a visitor as provided in Subsection E of this Section shall be conducted as follows:

1. The visitor shall submit a written demand for arbitration to the Gaming Enterprise, by certified mail, return receipt requested;

2. Unless the parties agree, in writing, to the appointment of a single arbitrator, the visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of receipt of the demand, and the two arbitrators shall select a third arbitrator, but in the event that either party fails to designate an arbitrator within thirty (30) days, or the two arbitrators designated by the parties cannot agree on the selection of the third arbitrator within thirty (30) days of their appointment, the existing arbitrator(s) shall apply to the American Arbitration Association to appoint the remaining arbitrator(s);

3. The arbitration panel shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the claim; and

4. The award of the arbitration panel shall be final and binding, and may be enforced in a court of competent jurisdiction.

H. Increase in Liability Limits. As of the fifth anniversary of this Compact, and at five-year intervals thereafter, the liability insurance coverage requirements set forth in Paragraph B of this Section, and the limit on the Tribe's waiver of sovereign immunity set forth in Paragraph D of this Section, shall be increased by a percentage equal to the percentage increase in the CPI-U published by the Bureau of Labor Statistics of the United States Department of Labor, for the same period, rounded to the nearest one hundred thousand dollars ($100,000).

I. Public Health and Safety. The Tribe shall establish for its Gaming Facility health, safety and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code and the Uniform Plumbing Code, and any and all construction and maintenance of the Gaming Facility shall comply with such standards. Inspections shall be conducted with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the State Gaming Representative may be present during such inspection. The Tribe agrees to correct any deficiencies noted in such inspections within a time agreed upon between the State and Tribe. The Tribal Gaming Agency will provide copies of such inspection reports to the State Gaming Representative, if requested to do so in writing.

SECTION 9. Execution; Effective Date; Claims under Predecessor Agreement.

A. This Compact shall take effect upon publication of notice in the Federal Register of its approval by the Secretary of the Interior, or of the Secretary's failure to act on it within forty-five (45) days from the date on which it was submitted to him (the "Effective Date"). Upon such publication, the terms and provisions of this Compact shall go into full force and effect, fully supplanting and replacing any Predecessor Agreement.

B. Notwithstanding Paragraph A, the terms of any Predecessor Agreement (including, without limitation, any limited waiver of sovereign immunity and jurisdictional waivers and consents set forth therein) shall survive to permit the resolution of payment disputes. Such disputes shall be resolved through the procedures set forth in Section 7 of this Compact. Failure to abide by the procedures set forth in Section 7 or failure to comply with an arbitrator's final decision with respect to the parties' obligations under a Predecessor Agreement constitutes a breach of this Compact. This survival provision is intended to provide for the reasonable resolution of past disputes without hindering a Tribe's ability to obtain a new compact.

SECTION 10. Criminal Jurisdiction.

A. The Tribe and the State acknowledge that under the provisions of § 23 of Pub. L. No. 100-497, 102 Stat. 2467 (1988), which enacted the IGRA, especially that portion codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that Section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.

B. The Tribe and the State hereby agree that consistent with the Indian Civil Rights Act, 25 U.S.C. § 1301(2), in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof that occurs on the premises of the Gaming Facility that is committed by any non-Indian, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to prosecute such person, under its laws and in its courts. For purposes of clarity, if the Tribe qualifies for jurisdiction under the Violence Against Women Act Reauthorization of 2013 (which expanded tribal authority over domestic violence committed by non-Indians against Indian women in Indian country), Pub. L. No. 113-4, 127 Stat. 54 (2013) ("VAWA"), then, for crimes committed in the Gaming Facility, the Tribe shall have and may exercise jurisdiction over such persons, under its laws and in its courts to the extent authorized by VAWA.

C. Immediately upon becoming aware of any such suspected crime by a non-Indian, the Gaming Enterprise or the Tribal Gaming Agency shall notify the State attorney general and the district attorney for the district in which the alleged crime occurred, supplying all particulars available to the tribal entity at the time. The Tribe agrees that its law enforcement and gaming agencies shall perform such additional investigation or take such other steps in furtherance of the investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State; provided, however, that in the event of emergency circumstances involving a possible violation, the Tribe and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property. The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.

D. The State agrees that no less frequently than annually it will provide the Tribal Gaming Agency with a written report of the status and disposition of each matter referred to it under the provisions of this Section since the last report or that was still pending at the time of the last report. In the event the district attorney to whom a matter is referred under the provisions of this Section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal Gaming Agency of such decision in writing. The Tribal Gaming Agency may in that event ask the attorney general of the State to pursue the matter.

E. The district attorney for a district in which the Tribe conducts Class III Gaming may decline to accept referrals of cases under the provisions of this Section unless and until the Tribe has entered into a memorandum of understanding with the office of the district attorney, to which memorandum of understanding the United States Attorney for the District of New Mexico may also be a party. The memorandum of understanding may address such matters as the specific procedures by which cases are to be referred,

participation of the Tribal Gaming Agency and tribal law enforcement personnel in the investigation and prosecution of any such case, and related matters.

SECTION 11. Revenue Sharing.

A. Consideration. The Tribe shall pay to the State a portion of its Class III Gaming revenues identified in and under procedures of this Section, in return for which the State agrees that the Tribe has the exclusive right within the State to conduct all types of Class III Gaming described in this Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and for veterans' and fraternal organizations as such organizations are described in NMSA 1978, § 60-2E-3(GG), as amended through 2014. The Tribe agrees to pay this portion of its revenue in acknowledgment of the fact that the State is forgoing significant revenue that it would otherwise receive from non-tribal gaming enterprises. The Tribe acknowledges that it has received meaningful concessions and significant benefits for the limitations set forth in Section 11(D).

B. Revenue to State. The parties agree that, after the Effective Date hereof or after July 1, 2015, whichever is later, the Tribe shall make the quarterly payments provided for in Paragraph C of this Section. For a Non-Operational Tribe, quarterly payments shall be due at the next quarter following the Tribe's first day of operation of the Gaming Facility. Each payment shall be made to the State Treasurer for deposit into the General Fund of the State.

C. Calculation of Payment Amounts.

1. "Adjusted Net Win" means the combined Net Win from all Class III Gaming Machines in the Gaming Facilities on the Tribe's Indian Lands, with the following adjustments:

(a) Subtract the amount paid to the State by the Tribe under the provisions of Section 4(E)(6) of this Compact;

(b) Subtract the sum of four hundred sixteen thousand dollars ($416,000) per year as the amount representing tribal regulatory costs, which amount shall increase by five percent (5%) as of July 1 of 2017, and as of July 1 of every fifth year thereafter as long as this Compact remains in effect; and

(c) Account for the amounts paid for wide-area progressive Class III Gaming Machines as set forth in the attached Appendix.

2. The Tribe shall pay the State a percentage of its Adjusted Net Win, determined in accordance with this chart:

Annual Adjusted Net Win	July 1, 2015 – June 30, 2018	July 1, 2018 – June 30, 2030	July 1, 2030 – June 30, 2037

Under $20 million:	2% of the first $6 million, and 8.50% on the rest	2% of the first $6 million, and 8.75% on the rest	2% of the first $6 million, and 9.50% on the rest
$20-$40 million:	8.50%	8.75%	9.50%
$40-$80 million:	9.00%	9.50%	10.25%
More than $80 million:	9.00%	10.00%	10.75%

3. Payments due pursuant to Section 11(C) shall be paid quarterly, no later than twenty-five (25) days after the last day of each calendar quarter, and shall be based upon the Adjusted Net Win during the preceding quarter; provided, however, that for any Tribe for whom this Compact becomes effective prior to July 1, 2015, the applicable revenue sharing rate from any Predecessor Agreement shall apply until the quarter beginning on July 1, 2015. The Tribe shall ascertain the applicable revenue sharing percentage in Section 11(C)(2) above and shall base its quarterly payments on the following factors: (1) the prior year's total Adjusted Net Win amount and the applicable revenue sharing percentage; and (2) its best good faith estimate of its annual Adjusted Net Win for the July 1 – June 30 period. In the event its total Adjusted Net Win for any such period varies from such estimate, such that the amount due the State for the first three quarters as set forth in Section 11(C)(2), above, is different from the amount paid, the payment due for the fourth quarter shall include any additional amounts due for the first three quarters, or shall reflect a credit for any overpayment. Any payment or any portion thereof that is not made within ten (10) days of the due date shall accrue interest at the rate of ten percent (10%) per annum, from the original due date until paid. The Tribe shall accompany any payment to the State with a detailed breakdown of the particular obligation to which such payment applies, and the basis for the calculation of such payment on a form provided by the State Gaming Representative, and shall provide a copy of such documentation to the State Gaming Representative.

D. Limitations.

1. The Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section shall apply and continue only so long as this Compact remains in effect; and provided that that obligation shall terminate altogether in the event the State:

(a) passes, amends, or repeals any law, or takes any other action, that would directly or indirectly attempt to restrict, or has the effect of restricting, the scope or extent of Indian gaming;

(b) licenses, permits or otherwise allows any person or entity other than six licensed horse racetracks and veterans and fraternal organizations as described in NMSA 1978, § 60-2E-3(GG) to operate Gaming Machines;

(c) permits any licensed horse racetrack to operate a larger number of Gaming Machines, or to operate any Gaming Machines for longer hours, than is set forth in Subsection (D)(2)(e), below, or to operate any Gaming Machines outside of its licensed premises, or to operate any Table Game; or

(d) licenses, permits or otherwise allows any non-Indian person or entity to engage in any other form of Class III gaming other than a state-sponsored lottery, pari-mutuel betting on horse racing and bicycle racing, operation of Gaming Machines, and limited fundraising by non-profit organizations, as set forth in Subsection (D)(2), below.

2. The parties agree that the State's allowance of the following forms of Class III Gaming, subject to the limitations expressly set forth herein, shall not be considered an expansion of non-tribal Class III gaming for purposes of this agreement, and shall have no effect on the Tribe's obligation to make the payments provided for in Paragraphs B and C of this Section:

(a) the operation of a State lottery;

(b) the operation of Gaming Machines by any fraternal or veterans organization as described in NMSA 1978, § 60-2E-3(GG), but only for the benefit of such organization's members;

(c) limited fundraising activities conducted by nonprofit tax-exempt organizations;

(d) the conduct by licensed horse racetracks and bicycle tracks of pari-mutuel betting on races at such tracks, and on simulcast races at other tracks elsewhere in the country; and

(e) the operation by a licensed horse racetrack of Gaming Machines on days on which live or simulcast horse racing occurs, provided that such operation is limited to no more than eighteen (18) hours in any one day, and to no more than a total of one hundred twelve (112) hours in any calendar week, and provided further that no licensed horse racetrack shall have more than six hundred (600) licensed Gaming Machines, nor be authorized to operate more than seven hundred and fifty (750) Gaming Machines.

3. The limitations set forth in this Section shall not prohibit a horse racetrack from relocating, selling, transferring or assigning its operations in accordance with applicable procedures and authorizations set forth in New Mexico law.

4. Prior to granting the approval of an application for a racing license for a horse racetrack other than the five horse racetracks holding such licenses as of January 1, 2015, or the approval of an application by a licensed horse racetrack to move its racing and gaming facilities to a new location after January 1, 2015, the State Racing Commission shall adopt, put into effect, and shall have substantially complied with

regulations requiring the Commission to solicit and consider the Tribe's views on the application.

E. Third-Party Beneficiaries. The provisions of this Section are not intended to create any third-party beneficiaries and are entered into solely for the benefit of the Tribe and the State.

SECTION 12. Duration; Termination for Non-Payment.

A. This Compact shall have a term commencing on the date on which it goes into full force and effect as provided in Section 9, and ending at midnight on June 30, 2037.

B. Notwithstanding the provisions of Paragraph A of this Section, if the Tribe fails to comply with any of its payment obligations to the State under Sections 4(E)(6), 9(B) or 11 of this Compact, and persists in such failure for a period of thirty (30) days after receipt, by certified mail, of a "Notice of Noncompliance and Termination for Non-Payment" sent by the State Gaming Representative to the Tribal Gaming Agency, which Notice shall specify the amount due and the provision of the Compact under which such payment is required, this Compact, and the conduct of all Class III Gaming by the Tribe hereunder, shall terminate automatically as of the end of the thirty (30)-day period, unless within such thirty (30)-day period the Tribe shall have either cured the non-payment to the satisfaction of the State Gaming Representative or invoked arbitration on a matter of fact as provided in Section 7(A)(2) of this Compact, and simultaneously shall have placed into escrow, in an institution that is unaffiliated with either the Tribe or the State, a sum of money equal to the amount claimed due by the State, with instructions to the escrow agent specifying that such sum shall not be released except by direction of the arbitrator or arbitration panel or pursuant to a settlement agreement of the parties. The Tribe shall give written notice to the State of the deposit of the amount in dispute into escrow, and of the escrow instructions. At the conclusion of the arbitration proceeding, or, in the event the parties reach a settlement, immediately after execution of the settlement agreement, the escrow agent shall disburse the sum deposited by the Tribe in accordance with the settlement agreement or arbitration award, as applicable. In the event the Tribe invokes arbitration, this Compact and the Tribe's right to conduct Class III gaming shall terminate automatically at the end of the thirtieth (30th) day after the entry of a final, non-appealable decision by the arbitrators or by a court having jurisdiction of the dispute, unless the full amount determined by the arbitrators or by such court to be due the State, if any, has been paid by such date. The Tribe shall not be entitled to avoid any pre-existing contractual obligations accruing to third parties under this Compact solely by virtue of the termination of the Compact.

SECTION 13. Notice to Parties.

A. Within (10) days of the Effective Date of this Compact, or for a Non-Operational Tribe, prior to the Tribe's first day of operation of its Gaming Facility, the State Gaming Representative and the Tribal Gaming Agency shall provide to the other the address at

which notices under this Section may be received. Any change in address by the Tribe or the State shall be communicated in writing to the other party.

B. Unless otherwise indicated, all notices, payments, requests, reports, information or demand that any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered, sent by first-class mail or another reliable courier service, or sent by electronic mail (with confirmation of receipt of transmission) at the address provided in writing by the other party. Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt or, if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of address shall be effective only upon receipt by the party to whom said notice is addressed.

SECTION 14. Entire Agreement. This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged or terminated orally, but only by an instrument, in writing, signed by the Tribe and the State and approved by the Secretary of the Interior. This Compact shall not be amended without the express approval of the Tribe, the Governor of the State and the State Legislature, as provided in the Compact Negotiation Act.

SECTION 15. Filing of Compact with State Records Center. Upon the Effective Date of this Compact, a copy shall be filed by the Governor with the New Mexico Records Center. Any subsequent amendment or modification of this Compact shall be filed with the New Mexico Records Center.

SECTION 16. Counterparts. This Compact may be executed by the parties in any number of separate counterparts with the same effect as if the signatures were upon the same instrument. All such counterparts shall together constitute one and the same document.

SECTION 17. Internet Gaming. In the event that internet gaming is authorized within the State, the State and the Tribe agree that they will reopen good faith negotiations to evaluate the impact, if any, of internet gaming and consider adjustments to the Compact. The parties understand and agree that it is not possible to determine at this time what, if any, adjustments to the Compact would be necessary.

SECTION 18. Applicability. The Tribe has informed the State that it does not intend to conduct Class III Gaming on Indian Lands which are eligible for gaming pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii). The Tribe acknowledges and agrees that there are unique circumstances and conditions that are often implicated by such lands and that it has not asked the State to consider those issues during these negotiations. With that understanding, the Tribe has agreed that it will not conduct Class III Gaming on such lands pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii) under the terms of this Compact and will negotiate a separate Compact

in the future if it desires to conduct Class III Gaming on Indian Lands that are eligible for gaming pursuant to 25 U.S.C. §§ 2719 (a)(2)(B), (b)(1)(A), (b)(1)(B)(ii) or (b)(1)(B)(iii).

SECTION 19. Severability. Should any provision of this Compact be found to be invalid or unenforceable by any court, such determination shall have no effect upon the validity or enforceability of any other portion of this Compact, and all such other portions shall continue in full force and effect, except that this provision shall not apply to Sections 3, 4, 5, 6, 9, 11, and 12 hereof, or to any portions thereof, which the parties agree are non-severable.

Executed this _____ day of _____, 2015.

TRIBE

By: _____
[Authorized Official]

STATE OF NEW MEXICO

By: _____
Governor

APPENDIX to the 2015 Compact Amendments

WHEREAS, the _____ ("Tribe"), a federally recognized Indian tribe, operates a Gaming Enterprise on its land located within the exterior boundaries of the Tribe's Indian Lands;

WHEREAS, the Tribe conducts gaming activities on its Indian Lands pursuant to a compact entered into between the Tribe and the State and approved by the United States Department of Interior;

WHEREAS, the _____ is the Tribal Gaming Agency ("TGA") identified to the State Gaming Representative ("SGR") as the agency responsible for actions of the Tribe set out in the Compact and is the single contact with the State and may be relied upon as such by the State;

WHEREAS, the SGR is the person designated by the New Mexico Gaming Control Board ("NMGCB") pursuant to the Gaming Control Act [NMSA 1978, § 60-2E-1 to -62 (1997, as amended through 2014)] who shall be responsible for the actions of the State set out in the Compact;

WHEREAS, the Tribe and the State have engaged in negotiations leading to this Compact to be submitted for approval by the 2015 Legislature; and

WHEREAS, the Tribe and the State wish to submit for approval certain details concerning aspects of their agreement to be made an integral part of the 2015 Compact, but to be designated as the Appendix to the Compact;

NOW, THEREFORE, the State and the Tribe agree to the following additional terms and conditions:

I. Gaming Machines and Table Games

Section 2(K) and Section 2(W) of the Compact provide definitions for Class III Gaming Machines and Table Games. The definition of a Class III Gaming Machine is intended to encompass the traditional slot machine. The definition of a Table Game is intended to encompass traditional games that use cards such as Pai-gow and blackjack, wheel games such as roulette and the Big Wheel, and dice games such as craps.

However, technology is constantly changing in the area of casino gaming and the once clear line between slot machines and Table Games is becoming less clear. It is the intention of the parties to accommodate and clarify revenue sharing requirements of new games that blur the line between traditional games. Generally, games that are predominantly mechanical, electromechanical or electronic are subject to revenue sharing and games that rely significantly on a casino attendant (a live person) to play the game are not subject to that obligation. Casino attendant involvement ranges from minimal interaction such as initiating the game and taking bets and/or making payout to substantial interaction such as participating in the game as a player (e.g. blackjack) or being involved in nearly every aspect of the game (e.g. craps). The greater the involvement of the casino attendant, the more likely the game is a Table Game. For example, a casino attendant may have some minimal involvement in an electromechanical slot machine game, such as making a pay-out, but that is not a significant enough involvement to exclude it from revenue sharing obligations. Likewise, although roulette has a mechanical aspect, it is not significant enough to make it subject to revenue sharing obligations.

Recognizing the dynamic nature of gaming technology, the parties shall attempt to agree on whether new mechanical, electromechanical or electronic games that utilize traditional components of Table Games, e.g. cards, wheels or dice, are subject to revenue sharing on a case by case basis. In the event the parties are unable to agree, the matter shall be submitted to arbitration pursuant to Section 7.

State Monitoring and Control System. Section 4(B)(13) of the Compact provides that the Tribe shall make available to the SGR, unaltered data from all Gaming Machines. The information shall be downloadable from the Tribe's monitoring and control system. The parties agree that access to such data shall be made available as follows:

A. The SGR or designee shall have access to the Gaming Machine accounting data from the production side of the Tribe's monitoring and control system. The Gaming Machine accounting data consists of the raw, unaltered, data used by the Tribe to calculate Net Win. This information shall not be in an altered, processed or manipulated format. This information shall be accessible by the SGR, as the SGR shall from time to time determine is required, on a per machine and/or aggregate basis based on a full

game day cycle. The purpose of this information is to allow the SGR to verify the Tribe's Net Win calculation. A system for electronic access to the Tribe's Gaming Machine accounting data shall be constructed and installed at the State's cost.

B. The security codes for log-in by the SGR or designee shall be defined collectively by the TGA, the manufacturer of the monitoring and control system, and the SGR.

C. Access to the Gaming Machine accounting data shall be limited to the SGR or designee solely for purposes authorized in the Compact.

D. Any part of the Gaming Machine accounting data obtained herein is designated as confidential under the Compact and shall not be made available for public inspection by the SGR.

E. The information referred to herein shall be transferred over secure telecommunications lines.

F. The TGA shall ensure that the systems and connections necessary to provide access to the Gaming Machine accounting data are in place and operating as required under the Compact.

G. The TGA shall ensure that the SGR or designee is notified promptly either by electronic mail or telephone of any technical problems related to the generation, transfer or access of the Gaming Machine accounting data.

H. The TGA shall ensure that the SGR has access to the Gaming Machine accounting data on a periodic basis as determined from time to time by the SGR, but in no event shall access be more often than once in a 24 hour period and the SGR shall strive to access such information in a reasonable manner and only to the extent necessary to meet his obligations under the Compact.

I. The TGA shall at all times designate a person and an alternate as the daily contact person of the SGR or designee.

II. Audits and Compliance

A. Section 4(E)(2) provides that the TGA will certify annually to the SGR that the TGA has met its obligations under this Compact.

1. The TGA shall annually certify to the SGR that the Tribe is in compliance with the provisions of the Compact by completing and submitting a Compliance Report.

2. The Compliance Report contains a checklist of the applicable sections of the Compact substantially similar to the form outlined as "Form A" provided at the end of this Appendix. The Compliance Report shall serve as an annual attestation to certify

that the Tribe, TGA and the Tribal Gaming Enterprise have met the obligations under the Compact.

3. The TGA shall complete and submit to the SGR its Compliance Report within thirty (30) days of the end of the Tribe's fiscal year.

4. The TGA shall rely upon its records in preparing the Compliance Report. As evidence that the elements or requirements of the Compact have been met, the TGA shall conduct a comprehensive review of their gaming operations, which may include sample testing. The TGA shall determine the sample size to be used and will provide the methodology of the chosen sample size to the SGR. The TGA shall maintain all records relied upon in preparing the Compliance Report. The records shall be made available for review by the SGR or agent as requested.

5. The TGA shall attach a written explanation of the course of action taken to remedy or explain any portions of the audit checklist that are listed as non-compliant or partially compliant. The SGR reserves the right to review the audit checklist and request additional documentation if necessary, including all source documents and data.

6. The SGR reserves the right to inspect and verify pursuant to Section 4(E)(3) of the 2015 Compact.

7. In addition to the Compliance Report, and within thirty (30) days of the end of the Tribe's fiscal year, the TGA shall provide the SGR an annual report accounting for the Tribe's use of the funds identified in Section 4(B)(16) and Section 4(F)(2)(b)(iii) of the Compact, including the organizations or programs funded, the amount of funding provided to each, and demonstrating that the funds were used for the purposes described in Section 4(B)(16) of the Compact.

B. Section 4(E)(3) of the Compact provides authorization for the SGR to inspect a Gaming Facility, Class III gaming activity, individual Gaming Machines and all records relating to Class III Gaming of the Tribe. The parties agree that the protocol for inspection of Gaming Machines shall include the following:

1. The SGR shall have access to inspect individual Gaming Machines upon the terms and conditions set forth in Section 4(E)(3) of the 2015 Compact.

2. The SGR recognizes that the Tribal Gaming Enterprise is a business and will take reasonable steps to not interfere with the normal conduct of the gaming business.

3. The SGR recognizes that the TGA has primary responsibility to administer and enforce the regulatory requirements of the Compact and does so through internal controls, direct control of the gaming media and the security and access of the gaming media in a Gaming Machine.

4. The TGA shall be present at any inspection, upon having been given notice as set out in Section 4(E)(3), and testing of the gaming media shall be conducted by the TGA representative and verified by the SGR.

5. The SGR's inspection of individual Gaming Machines shall be limited to purposes authorized by this Compact.

III. Progressive Games, Participation Fees, Free Play and Point Play, and Players' Clubs and Complimentaries

A. Pro-rata Portion of Wide-Area Progressive System Fees

Similar to the proprietary (in-house) progressive gaming devices, the top jackpots for wide-area progressive gaming devices increment with the level of play. However, in the case of wide-area progressive gaming devices, a third-party vendor operates the system. The system spans multiple casinos. The top jackpots increment as each of the Gaming Machines in the system is played, regardless of the casino in which the gaming machine is located. The third-party vendor administers the system. In return, the casinos make periodic payments to the third-party vendor. The vendor payments provide for the progressive jackpot and a fee to the third-party vendor. The casinos collect the cash or cash equivalents from these Gaming Machines as drop. When a progressive jackpot is won, the third-party vendor pays the jackpot from funds collected from the casinos.

If in calculating Net Win, fees to the third-party vendor in excess of those amounts necessary to fund the progressive jackpots have been applied to reduce Net Win, then for purposes of calculating Adjusted Net Win, the Tribe shall add back those amounts that did not fund the progressive jackpots. The third-party vendor will need to inform the Gaming Enterprise in writing as to the specific amount of the vendor payments that are contributed to the progressive system payouts (jackpots).

B. Participation Fees

Broadly, participation fees are any contractual payments made by casinos that are set at a minimum or maximum amount per day or are tied to the total coin-in, or drop generated by the gaming devices being operated, or other financial measures related to the operation of the gaming devices. An example of participation fees is the periodic payments casinos make to the third-party vendor for the use of a Gaming Machine. Participation fees can also be royalty payments, lease payments, or payments for other contractual arrangements.

The participation fee is an expense and is not deductible for the purposes of revenue sharing and should be treated accordingly.

C. Free Play and Point Play

Under the terms of this Compact, Free Play and Point Play do not increase Net Win, and amounts paid as a result of Free Play or Point Play reduce Net Win for purposes of the revenue sharing calculation in Section 11(C). However, any form of credits with any cash redemption value increase Net Win when wagered on Gaming Machines and amounts paid as a result of such wagers reduce Net Win for purposes of calculating revenue sharing.

D. Promotions, Players' Clubs, Non-Cash Prizes and Complimentaries

Any rewards, awards or prizes, in any form, received by or awarded to a patron under any form of a players' club program (however denominated), or promotion, or as a result of patron-related activities, are not deductible from Net Win. The value of any complimentaries given to patrons in any form, including but not limited to food and lodging as addressed in Section 4(B)(19), is not deductible from Net Win.

If the Tribe chooses to use non-cash prizes in connection with play on a Gaming Machine, Net Win is reduced by the amount of the Gaming Enterprise's actual cost of a non-cash prize awarded as a direct result of a win on a Class III Gaming Machine.

IV. Extension of Credit pursuant to Section 4(B)(10)

A. Intent. The State and Tribe acknowledge that when credit is provided to patrons that do not have sufficient assets or resources to repay the debt, there are negative impacts to the patron, the Gaming Enterprise and the State; however, the credit that is contemplated herein is designed to attract only certain qualified patrons that meet certain criteria and have demonstrated sufficient available funds and assets to repay the debt. Specifically, the extension of credit is designed to allow high income, high volume players more convenient access to their own available funds. In recognition of the fact that granting credit is an important marketing tool for Tribes and may be helpful in attracting certain patrons to the State, the State and Tribe have agreed to allow for short term credit but have agreed to careful regulation and incorporated several safeguards to protect from any unintended consequences.

B. State Requirements. In addition to the provisions set forth herein, the State has requested, and the Tribe has agreed, to comply with the following requirements:

1. Credit extensions shall be no less than ten thousand dollars ($10,000.00).

2. Credit extensions shall be required to be repaid by the patron within thirty (30) days.

3. The Tribe may only extend credit to patrons that have an annual income of at least $200,000 for a single person or $300,000 for a couple and available cash balances that exceed the amount of credit extended to the patron.

4. Approvals of any credit extension shall require that the Gaming Enterprise perform the following verifications:

i. Any patron requesting credit shall be required to verify that the patron has an annual income of at least $200,000 for a single person or $300,000 for a couple. Verification of the patron's annual income shall be satisfied by the patron signing a statement, signed under penalty of perjury, confirming the amount of the patron's annual income; and

ii. Any patron requesting credit shall be required to verify that the patron has available cash balances that exceed the amount of the credit to be extended. Verification of the patron's available cash balances shall be satisfied by the patron signing a statement, signed under penalty of perjury, confirming that the patron has available cash balances that exceed the amount of the credit to be extended. As an additional safeguard, verification of the patron's personal checking account information shall be performed by the Gaming Enterprise directly with the patron's bank or a bank verification service before extending credit to the patron. The verification shall include verifying that: (1) the patron has an existing and active checking account, (2) the checking account is in the patron's name; and (3) the total amount in all of the patron's accounts with that bank is in excess of the amount of credit requested. A bank verification service utilized by a Gaming Enterprise may make use of another bank verification service to make direct communication with the patron's bank. The Gaming Enterprise shall record the source of verification and the method by which each verification was performed in the patron's credit file. The verification may be performed telephonically prior to the credit approval provided the Gaming Enterprise or bank verification service requests written documentation of all information obtained as soon as possible and such written documentation is included in the patron's credit file. All requests for written information shall be maintained in the patron's credit file until such documentation is obtained.

5. Approvals to increase the amount of credit granted shall require a 24-hour "cooling off" period between the time a request for an increase in the credit is received and when the additional credit amount will be made available to the patron.

C. Tribal Minimum Internal Control. The Tribe or TGA shall adopt the minimum internal control standard set forth in 25 C.F.R. § 542.15, as may be amended from time to time (the "Tribal Credit MICS") and shall comply with any and all other applicable federal law. The Tribe or TGA may amend the Tribal Credit MICS and/or may enter into additional minimum internal control standards in order to continue efficient regulation and address future circumstances; provided that: (i) any amendments or additional standards shall be at least as stringent as 25 C.F.R. § 542.15 in its current form as of the Effective Date of the Compact; and (ii) the Tribe provides a copy of the amendments and/or additional standards to the State for review and comment prior to implementation. The Gaming Enterprise shall offer Credit pursuant to written internal policies and procedures. The internal policies and procedures shall implement the minimum internal control standard.

D. Certification. The following shall occur on an annual basis:

1. The TGA shall certify that the Tribal Credit MICS meet or exceed the standards set forth in 25 C.F.R. § 542.15 (as in effect on the Effective Date of this Compact or as it may be amended, provided that any later amendments are at least as stringent as the version in effect on the Effective Date of this Compact).

2. The TGA shall certify that the Gaming Enterprise's written system of internal controls comply with the Tribal Credit MICS.

3. The TGA shall cause internal audits to be conducted in conformance with the Tribal Credit MICS to test the Gaming Enterprise's compliance with the written system of internal controls and require that an Internal Audit Report be prepared, consistent with applicable provisions of the Tribal Credit MICS, a copy of which Internal Audit Report shall be provided to the SGR.

4. The TGA shall investigate any exceptions identified in the Internal Audit Report and require the Gaming Enterprise to correct any substantiated exceptions.

5. The TGA or the Tribe shall engage an independent certified public accountant to conduct agreed-upon procedures consistent with applicable provisions of the Tribal Credit MICS and prepare a report documenting the results of those procedures ("Agreed-Upon Procedures Report"), a copy of which report shall be provided to the SGR. The independent certified public accountant shall be licensed in the State to practice as an independent certified accountant.

6. The TGA shall send a report to the SGR which describes the status of compliance of the Gaming Enterprise with the Tribal Credit MICS. The TGA's annual report to the SGR, shall certify if material compliance with the Tribal Credit MICS has been achieved and shall enclose: (i) the TGA Internal Audit Report; (ii) the Agreed-Upon Procedures Report; and, (iii) any written communications of the independent certified public accountant including management letters regarding weaknesses or deficiencies in internal controls issued in connection with the Agreed-Upon-Procedures Report, including but not limited to documentation related to any financial review/audit of gaming revenue.

7. If, upon review, the SGR reasonably determines that there is substantial evidence of material noncompliance with the requirements of the Tribal Credit MICS, the SGR may request a meeting to consult with the TGA regarding the method and means by which the Tribe determines that the Tribal Credit MICS are properly being enforced. The TGA and SGR shall meet within thirty (30) days of a written meeting request from the SGR. The SGR meeting request shall identify its basis for a determination that there is substantial evidence of material noncompliance with the requirements of the Tribal Credit MICS. During this meeting, the SGR and TGA shall make good faith efforts to address the issues identified in the SGR meeting request.

8. A violation of the Tribal Credit MICS or any other applicable federal law or regulation or any other applicable law shall be considered a breach of the Compact.

E. Compliance and Reporting. The TGA shall audit compliance annually of policies and procedures for credit consistent with the MICS Audit Checklist – Credit promulgated by the National Indian Gaming Commission1, a copy of which shall be provided to the SGR. In addition, on a quarterly basis, the Tribe or TGA shall report the following to the SGR for the previous quarter:

1. the total amount of the credit extended;

2. the number of credit extensions granted;

3. the number of patrons receiving credit and the number of extensions per patron;

4. the amount of each individual credit extension;

5. the city and state of residence for each patron granted credit;

6. the aging report of the Gaming Enterprise reflecting the amounts owed; and

7. the amount of any write-offs and any collection efforts by collection agencies.

F. Consumer Protection. The Gaming Enterprise is obligated to observe the following terms and conditions associated with granting credit:

1. The Gaming Enterprise is prohibited from allowing a patron to directly purchase gaming chips, checks or credits with a credit card. However, nothing herein prevents a patron from making ATM withdrawals using a debit or a credit card.

2. The Gaming Enterprise is prohibited from charging interest or fees for credit extended to patrons.

3. Outstanding balances are payable within thirty (30) days.

4. The Gaming Enterprise reserves the right to require the payoff of outstanding balances from table games winnings or slot jackpots.

5. The Gaming Enterprise is prohibited from selling delinquent account balances to collection specialists for purposes of collecting outstanding amounts owed.

6. The Gaming Enterprise is prohibited from awarding, granting or paying incentives of any kind to Gaming Enterprise employees based on the granting of credit or the amount of credit extended.

7. The Gaming Enterprise is prohibited from awarding, granting or paying incentives of any kind to induce any Gaming Enterprise patron to obtain credit.

8. The Gaming Enterprise shall designate certain employees as credit department representatives or executives with the authority to approve credit for gaming activities. A credit department representative shall not perform any duties incompatible with the assessment of a patron's credit worthiness such as recruitment of or marketing to patrons or prospective patrons.

9. Any patron that applies for a credit shall be provided written notice of the terms and conditions of the credit including the consequences for failure to repay the debt.

10. In assessing whether to increase the credit limit to a patron, the Gaming Enterprise shall consider the patron's player rating based on a continuing evaluation of the amount and frequency of play subsequent to the patron's initial receipt of credit. The patron's player rating shall be readily available to representatives of the Gaming Enterprise's credit department prior to their approving a patron's request for a credit limit increase. Significant deviations in the patron's player rating shall be viewed negatively in determining whether to grant or deny credit to a patron.

11. Judicial collection of debts shall only be pursued in the state court where the patron resides and the law of the state in which the patron resides shall apply.

G. No Reduction in Revenue Sharing. There is no reduction in revenue sharing payments owed by the Gaming Enterprise for uncollectible debt related to credit extensions.

H. Applicability. The requirements of Section IV of this Appendix shall only apply in the event that the Tribe offers credit as permitted in Section 4(B)(10). In the event that a Tribe does not offer credit as permitted in Section 4(B)(10), the requirements of Section IV shall not apply.

V. Discretionary Complimentaries pursuant to Section 4 (B)(19)

A. Tribal Minimum Internal Control Standard. The Tribe or TGA shall adopt the minimum internal control standard set forth in 25 C.F.R. § 542.17, as may be amended from time to time ("Tribal Complimentaries MICS") and shall comply with any and all other applicable federal law. The Tribe or TGA may amend the Tribal Complimentaries MICS and/or may enter into additional minimum internal control standards in order to continue efficient regulation and address future circumstances; provided that: (i) any amendments or additional standards shall be at least as stringent as the 25 C.F.R. § 542.17 in its current form as of the Effective Date of the Compact; and (ii) the Tribe provides a copy of the amendments and/or additional standards to the State for review and comment prior to implementation. The Gaming Enterprise shall offer discretionary Complimentaries pursuant to written internal policies and procedures. The internal policies and procedures shall implement the minimum internal control standard.

B. Calculation of Complimentaries. The "cumulative market value" shall be calculated based on the average daily rate (ADR) for lodging and the menu pricing for food.

C. Compliance and Reporting. The TGA shall audit compliance annually of policies and procedures for discretionary Complimentaries consistent with the MICS Audit Checklist – Complimentary Services and Items promulgated by the National Indian Gaming Commission

http://www.nigc.gov/Laws_Regulations/Commission_Regulations/Minimum_Internal_Control_Standards/25_CFR_Part_542c.aspx11, a copy of which shall be provided to the SGR. In addition, on a quarterly basis, the Tribe or TGA shall report the following to the SGR for the previous quarter: the total amount of the discretionary Complimentaries during the previous quarter (and a cumulative total of the previous quarters for the year) in dollars and as a percentage of Adjusted Net Win for such quarter.

D. Applicability. The requirements of Section V of this Appendix shall only apply in the event that the Tribe offers discretionary Complimentaries as permitted in Section 4(B)(19). In the event that a Tribe does not offer discretionary Complimentaries as permitted in Section 4(B)(19), the requirements of Section V shall not apply.

FORM A

New Mexico Gaming Control Board
COMPACT COMPLIANCE CHECKLIST
Compliance Report
Fiscal Year 20___

Key: X – Compliance (Blank) – Non-Compliance
/ – Partial Compliance NA – Not Applicable

Compliance with Section	Tribal-State Compact	Compliance with Section	Tribal-State Compact	Compliance with Section	Tribal-State Compact
[ ]	Section 3. Authorized Class III Gaming.	[ ]	Section 4.B.(17)	[ ]	Section 8. Protection of Visitors.
		[ ]	Section 4.B.(18)	[ ]	Section 8.A.
		[ ]	Section 4.B.(19)	[ ]	Section 8.B.
[ ]	Section 4. Conduct of Class III Gaming.	[ ]	Section 4.C.	[ ]	Section 8.C.
		[ ]	Section 4.D.	[ ]	Section 8.D.
		[ ]	Section 4.E.(1)	[ ]	Section 8.E.
[ ]	Section 4.A.(1)	[ ]	Section 4.E.(2)	[ ]	Section 8.F.
[ ]	Section 4.A.(2)	[ ]	Section 4.E.(3)	[ ]	Section 8.G.
[ ]	Section			[ ]	Section 8.H.
					Section 8.I.
				[ ]	Section 10.

[ ] 4.A.(3) Section 4.A.(4) Section 4.A.(5) Section 4.A.(6) Section 4.A.(8) Section 4.A.(9) Section 4.B.(1) Section 4.B.(2) Section 4.B.(3) Section 4.B.(4) Section 4.B.(5) Section 4.B.(6) Section 4.B.(7) Section 4.B.(8) Section 4.B.(9) Section 4.B.(10) Section 4.B.(11) Section 4.B.(12) Section 4.B.(13) Section 4.B.(14) Section 4.B.(15) Section 4.B.(16)

[ ] Section 4.E.(4) Section 4.E.(5)

[ ] Section 4.E.(6) Section 4.F.(1) Section 4.F.(2)

Section 5. Licensing Requirements.

Section 5.A.

[ ] Section 5.B.

[ ] Section 5.C.

[ ] Section 5.D.

Section 6. Providers of Class III Gaming Equipment or Devices or Supplies.

Section 6.A.

Section 6.B.

Section 6.C.

[ ] Criminal Jusrisdiction.

[ ] Section 10.C.

[ ] Section 11.

[ ] Revenue Section 11.A.

[ ] Section 11.B.

[ ] Section 11.C.

[ ] Appendix Section II.A.

[ ] Audit

[ ] Section II.B. Inspection

Section III. Progressive Games

Section IV. Credit

Section V. Comps

ARTICLE 13A
Compact Negotiation

11-13A-1. Short title.

This act [11-13A-1 to 11-13A-5 NMSA 1978] may be cited as the "Compact Negotiation Act".

History: Laws 1999, ch. 252, § 1.

11-13A-2. Definitions.

As used in the Compact Negotiation Act:

A. "committee" means the joint legislative committee on compacts;

B. "compact" means a tribal-state class III gaming compact entered into between a tribe and the state pursuant to the federal Indian Gaming Regulatory Act and including any separate agreement ancillary to that compact;

C. "governor" means the governor of New Mexico; and

D. "tribe" means an Indian nation, tribe or pueblo located in whole or in part within the state.

History: Laws 1999, ch. 252, § 2.

ANNOTATIONS

Cross references. — For the federal Indian Gaming Regulatory Act, *see* 25 U.S.C.S. § 2701 et seq.

11-13A-3. Compacts; negotiation; submission to committee by governor.

A. A tribe, pursuant to action of its governing authority, may request the state to negotiate a compact or to negotiate an amendment to an approved and existing compact. The request shall be in writing and shall be submitted to the governor.

B. The legislature by joint resolution or the governor may request a tribe to negotiate a compact or to negotiate an amendment to an approved and existing compact by submitting a written request to the chief executive officer of the tribe or a representative authorized by an existing compact to negotiate modifications to that compact.

C. The governor may designate a representative to negotiate the terms of a compact or an amendment, unless a representative has been identified in the wording of the compact to be amended. The designation shall be written, and a copy of the designation shall be delivered or mailed within three days of the designation to the attorney general, the speaker of the house of representatives and the president pro tempore of the senate. The governor or the governor's designated representative is authorized to negotiate the terms of a compact or amendment on behalf of the state, but neither the representative nor the governor is authorized to execute a compact or amendment on behalf of the state without legislative approval granted pursuant to the provisions of Section 4 [11-13A-4 NMSA 1978] of the Compact Negotiation Act.

D. If a proposed compact or amendment is agreed upon through negotiations between the tribal representative and the governor's representative, it shall be prepared and submitted by the governor to the committee within five days of the conclusion of negotiations. The governor shall include in his submittal document his recommendation for approval of the proposed compact or amendment and comments about or analysis of its provisions.

History: Laws 1999, ch. 252, § 3.

11-13A-4. Submittal to committee; committee action; legislative action.

A. Submittal of a proposed compact or amendment occurs when the compact or amendment and the submittal document are received for the committee by the legislative council service.

B. After its receipt, the committee shall review the proposed compact or amendment in a timely manner but no later than forty-five days from receipt and shall:

(1) recommend approval of the proposed compact or amendment by submitting a joint resolution to approve the compact or amendment to the legislature; or

(2) by written transmittal document, propose specific modifications to the proposed compact or amendment and request the governor to resume negotiations with the tribe.

C. If the committee proposes specific modifications to the proposed compact or amendment, the governor or the governor's designated representative shall resume negotiations with the tribe within twenty days of receipt of the transmittal document unless within that time period either the governor or the tribe refuses to negotiate further, in which case the governor shall notify the committee immediately.

D. If negotiations are resumed pursuant to Subsection C of this section and a modified proposed compact or amendment is agreed to, the governor shall submit the modified proposed compact or amendment together with any additional analysis or

recommendations to the committee. The approval process described in this section for the originally submitted proposed compact or amendment shall be followed for consideration of a proposed modified compact or a proposed modified amendment, except that the committee shall conduct its review in a timely manner but in not more than thirty days.

E. Within thirty days of being notified that further negotiations are refused, the committee shall meet to reconsider the proposed compact or amendment together with any changes agreed upon by the negotiating parties. The committee shall submit to the legislature the proposed compact or amendment and a joint resolution to approve the proposed compact or amendment with the committee's recommendation to approve it or disapprove it, or expressing no recommendation on the action that should be taken by the legislature.

F. The committee may return a proposed compact or amendment with suggested modifications to the governor and the tribe for renegotiation no more than three times. After the third submittal for renegotiation, the committee shall submit to the legislature the proposed compact or amendment and a joint resolution to approve the proposed compact or amendment with the committee's recommendation to approve it or disapprove it, or expressing no recommendation on the action that should be taken by the legislature.

G. If the legislature is in session when the committee makes its decision on the proposed compact or amendment, the committee shall prepare and introduce a joint resolution to approve the proposed compact or amendment without delay after reaching its decision. The joint resolution shall be accompanied by the committee's recommendation to approve or to disapprove or expressing no recommendation. A joint resolution may cover more than one compact or amendment if the terms of the compacts or amendments are identical except for the name of the tribe and the name of the person executing the compact on behalf of the tribe. If a majority in each house votes to adopt the joint resolution, the proposed compact or amendment is approved by the legislature, and the governor shall execute it on behalf of the state.

H. If the legislature is not in session when the recommendation of the committee is submitted, the committee shall proceed pursuant to the provisions of Subsection G of this section by no later than the second day of the next regular or special session of the legislature.

I. The legislature may only amend or modify the joint resolution submitted to it pursuant to the provisions of this section so as to correct technical errors in the text or format. Neither house may refer the joint resolution to a committee other than a committee of the whole in each house.

J. If a request for negotiation of a compact or amendment is made and the proposed compact or amendment is identical to a compact or amendment previously approved by the legislature except for the name of the compacting tribe and the names

of the persons to execute the compact or amendment on behalf of the tribe and on behalf of the state, the governor shall approve and sign the compact or amendment on behalf of the state without submitting the compact for approval pursuant to the provisions of this section; provided that, with respect to a compact or amendment approved by the first session of the forty-eighth legislature, the request shall be received by the governor by no later than two hundred forty days following the date on which the compact or amendment was approved by the legislature, or, in the case of a request by a tribe that has not entered into a compact as of two hundred forty days following the date on which the compact or amendment was approved by the legislature, two hundred forty days following the date the tribe first executes the 2001 tribal gaming compact with the state. A compact or amendment signed by the governor pursuant to this subsection is deemed approved by the legislature.

History: Laws 1999, ch. 252, § 4; 2007, ch. 311, § 1; 2007, ch. 314, § 1.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, limited the time an Indian nation, tribe or pueblo may enter into the 2007 amendments to the 2001 tribal gaming compacts.

Laws 2007, ch. 311, § 1 and Laws 2007, ch. 314, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 314, § 1. *See* 12-1-8 NMSA 1978.

11-13A-5. Joint legislative committee on compacts; creation; membership; authority.

A. The joint legislative "committee on compacts" is created. Once established it shall continue to exist until specific action is taken by the legislature to terminate its existence.

B. The committee shall consider the requirements of the federal Indian Gaming Regulatory Act, provisions of existing state law and the best interests of the tribes and the citizens of the state in considering any compact or amendment submitted to it.

C. The committee shall have sixteen members, eight from the house of representatives and eight from the senate. House members shall be appointed annually by the speaker of the house and senate members shall be appointed annually by the committees' committee or, if the senate appointments are made in the interim, by the president pro tempore after consultation with and agreement of a majority of the members of the committees' committee. Members shall be appointed from each house to give the two major political parties in each house equal representation on the committee. The appointing authorities shall consider appointing to the committee a Native American member or a member who represents a district in which Native Americans constitute a significant percentage of the voting age population.

D. The president pro tempore of the senate shall designate a senate member of the committee to be chairman of the committee in odd-numbered years and the vice chairman in even-numbered years. The speaker of the house of representatives shall designate a house member of the committee to be chairman of the committee in even-numbered years and the vice chairman in odd-numbered years.

E. The committee shall meet at the call of the chairman to consider a compact or amendment submitted to it.

F. The committee may meet during legislative sessions as needed.

G. Staff services for the committee shall be provided by the legislative council service.

History: Laws 1999, ch. 252, § 5.

ANNOTATIONS

Cross references. — For the federal Indian Gaming Regulatory Act, *see* 25 U.S.C. § 2701 et seq.

ARTICLE 14
Multistate Highway Transportation Agreement

11-14-1. Enactment and joinder with other jurisdictions.

The Multistate Highway Transportation Agreement is adopted and entered into with all other jurisdictions legally joining therein in the form substantially set forth in Section 2 [11-14-2 NMSA 1978].

History: Laws 1997, ch. 191, § 1.

11-14-2. Provisions of agreement.

The provisions of this multistate agreement are as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

ARTICLE I. FINDINGS AND PURPOSE

(a) The participating jurisdictions find that:

(1) Highway transportation is the major mode for movement of people and goods in the western states.

(2) Uniform application of state vehicle regulations and laws may result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity.

(b) The purposes of this agreement are to:

(1) Adhere to the principle that each participating jurisdiction has the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(2) Establish a system that would promote more efficient operation of vehicles traveling between two or more participating jurisdictions regarding necessary state government vehicle laws and regulations.

(3) Encourage uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement when the objectives are compatible with the safe operation of the vehicles on each member's highway system, and when these size and weight standards do not have an adverse impact on state and local highway, street or road maintenance programs.

(4) Encourage uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(5) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in paragraph (a) of this article.

(6) Facilitate communication among legislators, state transportation administrators and commercial industry representatives in addressing the emerging highway transportation issues in participating jurisdictions.

ARTICLE II. DEFINITIONS

(a) As used in this agreement:

(1) "Cooperating committee" means a committee composed of the designated representatives from participating jurisdictions.

(2) "Designated representative" means a legislator or other person authorized to represent the jurisdiction.

(3) "Jurisdiction" means a state of the United States or the District of Columbia.

(4) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards and which operates in two or more participating jurisdictions.

ARTICLE III. GENERAL PROVISIONS

(a) Participation in this agreement is open to jurisdictions which subscribe to the findings, purpose and objectives of this agreement and which seek legislation necessary to accomplish these objectives.

(b) The particular jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

(c) Article headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or paragraph hereof.

(d) This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or rules or regulations thereof.

(e) The final decisions regarding the interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions acting through their designated representatives. Results of all such actions shall be in writing.

(f) This agreement may be amended by unanimous joint action of the participating jurisdictions acting through their designated representatives. Any amendments shall be in writing and shall become a part of the agreement.

(g) Any jurisdiction entering this agreement shall provide each of the other participating jurisdictions with a list of any of its restrictions, conditions, or limitations on the general terms of this agreement.

(h) Any jurisdiction may become a member of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV. COOPERATING COMMITTEE

(a) Each participation jurisdiction shall have two designated representatives. Pursuant to paragraph (b) of Article III, the representatives of the participating jurisdictions shall constitute the cooperating committee which shall have the power to:

(1) Collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size, vehicle weight-related matters, highway safety and bridge maintenance problems caused by heavy vehicles.

(2) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(3) Recommend changes in law or policy, including the compatibility of laws and uniformity of rules and regulations which would assist effective governmental action or coordination in the field of vehicle size and weight-related matters.

(4) Recommend improvements in highway operations, in vehicular safety and in state administration of highway transportation laws.

(5) Perform functions necessary to facilitate the purposes of this agreement.

(b) Each designated representative of a participating jurisdiction shall be entitled to one vote only. No action of the committee shall be approved unless a majority of the designated representatives of the participating jurisdictions are in favor thereof.

(c) The committee shall meet at least once annually and shall elect, from among its members, a vice chairman and a secretary.

(d) The committee shall submit annually to the legislature of each participating jurisdiction a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable.

ARTICLE V. OBJECTIVES OF THE PARTICIPATING JURISDICTIONS

The participating jurisdictions hereby declare that:

(a) It is the objective of the participating jurisdictions to obtain safer, more economical transportation by motor vehicles among the participating jurisdictions and to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of twenty thousand pounds, a tandem-axle weight not in excess of thirty-four thousand pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$$W=500 ((LN/(N - 1)) + 12N + 36)$$ where:

W=maximum weight in pounds carried on any group of two or more axles computed to the nearest five hundred pounds; L=distance in feet between the extremes of any group of two or more consecutive axles; and N=number of axles in group under consideration.

(b) It is the further objective of the participating jurisdictions that the operation of a vehicle, or combination of vehicles pursuant in interstate commerce to the objectives stated in paragraph (a) of this article be authorized under special permit

authority by each participating jurisdiction for vehicle combinations in excess of the statutory weight of eighty thousand pounds or statutory lengths.

(c) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle, or combination of vehicles, among the participating jurisdictions. To that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size weight-related matters including, but not limited to, the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; traffic safety and highway maintenance; and such other matters as may be pertinent.

(d) The cooperating committee may recommend that the participating jurisdictions jointly secure congressional approval of this agreement and, specifically, of the vehicle size and weight standards set forth in paragraph (a) of this article.

(e) It is the further objective of the participating jurisdictions to:

(1) Establish transportation laws and regulations to meet regional needs and to promote an efficient, safe and compatible transportation network.

(2) Develop standards that facilitate the most efficient and environmentally sound operation of vehicles on highways, consistent with and in recognition of principles of highway safety.

(3) Establish programs to increase productivity and reduce congestion, fuel consumption and related transportation costs and enhance air quality through the uniform application of state vehicle regulations and laws.

ARTICLE VI. ENTRY INTO FORCE AND WITHDRAWAL

(a) This agreement shall be in force in the State of New Mexico when enacted into law by two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in paragraph (g) of Article III.

(b) Any participating jurisdiction may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all the other participating jurisdictions.

ARTICLE VII. CONSTRUCTION AND SEVERABILITY

(a) This agreement shall be liberally construed so as to effectuate the purposes thereof.

(b) The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE VIII. FILING OF DOCUMENTS

(a) A copy of this agreement, its amendments, and rules and regulations promulgated thereunder and interpretations thereof, shall be filed in the highway department of each participating jurisdiction and shall be made available for review by interested parties.

History: Laws 1997, ch. 191, § 2; 2001, ch. 25, § 1.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, added Subparagraph (b)(6) of Article I, added Item (a)(1) to Article II and renumbered the remaining items accordingly; in Article IV, Paragraph (a), inserted the first sentence, deleted "designated" preceding "representatives" and substituted "the cooperating" for "a" in the second sentence; and added Subparagraphs (4) and (5); in Paragraph (b) inserted "designated representative of a" following "Each", substituted "approved" for "binding" and inserted "designated representatives of the" following "a majority of the"; in Paragraph (d) deleted "not later than November 1" preceding "a report setting forth" and deleted the last sentence, which stated to whom copies of the committee report should be made available; rewrote Article V; and in Paragraph (a) of Article VI, deleted "for a period of three years" following "New Mexico" and deleted the former final sentence which provided for the Secretary of Highway and Transportation's recommendation on whether or not to continue the agreement.

11-14-3. Designated representative to cooperating committee; appointment.

The process for selecting the designated representatives to the cooperating committee shall be established by law pursuant to this section as follows:

A. the persons authorized to represent the state as the designated representatives to the cooperating committee shall be the chair of the standing senate corporations and

transportation committee and the chair of the house transportation committee or a legislator or state agency official that the chair designates; and

B. the chairs designated in Subsection A of this section shall also designate one alternate designated representative who shall also be a legislator or state agency official to serve in the absence of the designated chair.

History: Laws 1997, ch. 191, § 3; 2001, ch. 25, § 2.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, deleted the former provisions of this section, which stated that the designated representative or his alternate be jointly appointed by the speaker of the house of representatives and the president pro tempore of the senate, and inserted the present provisions.

11-14-4. Statutes prescribing weight and size standards and relating to special permits; continuation.

All statutes prescribing weight and size standards and all statutes relating to special permits shall continue in effect until amended or repealed.

History: Laws 1997, ch. 191, § 4.

11-14-5. Cooperation by state agency with cooperating committee.

Any state agency may cooperate with and assist the cooperating committee within the scope of its authority.

History: Laws 1997, ch. 191, § 5.

11-14-6. Cooperating committee report.

A copy of the report submitted to the legislature pursuant to paragraph (d) of Article IV of the Multistate Highway Transportation Agreement shall also be submitted to the state highway and transportation department. All notices required by the cooperating committee bylaws shall be given to the designated representative or his alternate.

History: Laws 1997, ch. 191, § 6.

ARTICLE 15
Emergency Management Assistance Compact (Recompiled.)

11-15-1. Recompiled.

ANNOTATIONS

Recompilation. — Laws 2005, ch. 22, § 4 recompiled former 11-15-1 NMSA 1978 as 12-10-14 NMSA 1978, effective July 1, 2005.

11-15-2. Recompiled.

ANNOTATIONS

Recompilation. — Laws 2005, ch. 22, § 4 recompiled former 11-15-2 NMSA 1978 as 12-10-15 NMSA 1978, effective July 1, 2005.

ARTICLE 16
Wildlife Violator Compact

11-16-1. Short title.

This act [11-16-1 to 11-16-12 NMSA 1978] may be cited as the "Wildlife Violator Compact".

History: Laws 2001, ch. 101, § 1.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-2. Adoption and text of compact.

A. The participating states find that:

(1) wildlife resources are managed in trust by the respective states for the benefit of all of their residents and visitors;

(2) the protection of the wildlife resources of a state is materially affected by the degree of compliance with its statutes, laws, ordinances and administrative rules relating to the management of those resources;

(3) the preservation, protection, management and restoration of wildlife contributes immeasurably to the aesthetic, recreational and economic aspects of the natural resources of a state;

(4) wildlife resources are valuable without regard to political boundaries; therefore, a person should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances and administrative rules of a participating state as a condition precedent to the continuance or issuance of a license to hunt, fish, trap or possess wildlife;

(5) violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property;

(6) the mobility of many wildlife violators necessitates the maintenance of channels of communication among the various states;

(7) usually, a person who is cited for a wildlife violation in a state other than his home state:

(a) is required to post collateral or bond to secure appearance for a trial at a later date;

(b) is taken directly into custody until collateral or bond is posted; or

(c) is taken directly to court for an immediate appearance;

(8) the purpose of the enforcement practices set forth in Paragraph (7) of this subsection is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to continue on his way after receiving the citation, could return to his home state and disregard his duty under the terms of the citation;

(9) in most instances, a person receiving a wildlife citation in his home state is permitted to accept the citation from the wildlife officer at the scene of the violation and immediately continue on his way after agreeing or being instructed to comply with the terms of the citation;

(10) the practices described in Paragraph (7) of this subsection cause unnecessary inconvenience and, at times, hardship for a person who is unable to post collateral, furnish a bond, stand trial or pay a fine at that time and is therefore compelled to remain in custody until some alternative arrangement is made; and

(11) the enforcement practices described in Paragraph (7) of this subsection consume an undue amount of enforcement time.

B. It is the policy of the participating states to:

(1) promote compliance with the statutes, laws, ordinances and administrative rules relating to the management of wildlife resources in the respective states;

(2) recognize the suspension of wildlife license privileges of a person whose license privileges have been suspended by another participating state and treat the suspension as if it had occurred in the home state;

(3) allow a person, except as provided in Subsection B of Section 4 [11-16-4 NMSA 1978] of the Wildlife Violator Compact, to accept a citation and, without delay, proceed on his way, whether or not the person is a resident of the state in which the citation was issued; provided that the person's home state is a participating state in the Wildlife Violator Compact;

(4) report to the appropriate participating state, as provided in the compact manual, a conviction recorded against a person whose home state was not the issuing state;

(5) allow a home state to recognize and treat convictions recorded against its residents, which convictions occurred in another participating state, as though they had occurred in the home state;

(6) cooperate to the fullest extent with other participating states in enforcing compliance with the terms of citations issued by one participating state to residents of another participating state;

(7) maximize effective use of law enforcement personnel and information; and

(8) assist court systems in the efficient disposition of wildlife violations.

History: Laws 2001, ch. 101, § 2.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

"Revocation" and "suspension" construed. — Where the New Mexico department of game and fish (department) denied respondent's application for a New Mexico outfitter's license pursuant to 17-2A-3(C)(2) NMSA 1978, which precludes an individual from working as a registered outfitter if the person has had a guide or outfitter license revoked in another state, and where the district court reversed the decision of the department, finding that the department applied an inapplicable section of 17-2A-3 NMSA 1978 and violated the Interstate Wildlife Violator Compact, 11-16-1 to -12 NMSA 1978, the district court did not err in reversing the department's decision, because the evidence in this case established that the actions of the Arizona commission on which the department relied to deny respondent a license are akin to a suspension, rather than a revocation, and therefore the department erroneously applied 17-2A-3(C)(2) NMSA 1978. An applicant whose license has been taken away for a specified period of time or until the applicant comes into compliance with the requirements established by

game and fish is subject to the provision of 17-2A-3(C)(3) NMSA 1978. *N.M. Dep't of Game & Fish v. Rawlings*, 2019-NMCA-018.

11-16-3. Definitions.

As used in the Wildlife Violator Compact:

A. "citation" means a summons, complaint, summons and complaint, ticket, penalty assessment or other official document issued to a person by a wildlife officer or other peace officer for a wildlife violation, which contains an order requiring the person to respond;

B. "collateral" means cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation;

C. "compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal or through the payment of fines, costs and surcharges;

D. "conviction" means a conviction, including a court conviction, for an offense related to the preservation, protection, management or restoration of wildlife, that is prohibited by state statute, law, ordinance or administrative rule. "Conviction" also includes the forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed the offense, the payment of a penalty assessment, a plea of nolo contendere and the imposition of a deferred or suspended sentence by the court;

E. "court" means a court of law, including a magistrate court;

F. "home state" means the state of primary residence of a person;

G. "issuing state" means the participating state that issues a citation to the violator;

H. "license" means a license, permit or other public document that conveys to a person to whom it was issued the privilege of pursuing, possessing or taking wildlife regulated by statute, law, ordinance or administrative rule of a participating state;

I. "licensing authority" means the department or division within each participating state that is authorized by law to issue or approve licenses or permits to hunt, fish, trap or possess wildlife;

J. "participating state" means a state that enacts legislation to become a member of the Wildlife Violator Compact;

K. "personal recognizance" means an agreement by a person made at the time of issuance of a citation that the person will comply with the terms of the citation;

L. "state" means a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the provinces of Canada and other countries;

M. "suspension" means a revocation, denial or withdrawal of license privileges, including the privilege to apply for, purchase or exercise the benefits conferred by a license;

N. "wildlife" means species of animals, including mammals, birds, fish, reptiles, amphibians, mollusks and crustaceans, which are protected or otherwise regulated by statute, law, ordinance or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of the Wildlife Violator Compact shall be based on local law;

O. "wildlife law" means a statute, law, ordinance or administrative rule developed and enacted for the management and use of wildlife resources;

P. "wildlife officer" means an individual authorized by a participating state to issue a citation; and

Q. "wildlife violation" means a cited violation of a statute, law, ordinance or administrative rule developed and enacted for the management and use of wildlife resources.

History: Laws 2001, ch. 101, § 3.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-4. Procedures for issuing state citations.

A. When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to a person whose home state is another participating state in the same manner as if the person were a resident of the issuing state and shall not require the person to post collateral to secure appearance, subject to the exceptions set forth in Subsection B of this section; provided that the wildlife officer receives the personal recognizance of the person that he will comply with the terms of the citation.

B. Personal recognizance is acceptable:

(1) if not prohibited by local law or the compact manual; and

(2) if the violator provides adequate proof of identification to the wildlife officer.

C. Upon conviction or failure of a person to comply with the terms of a citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the issuing state. The report shall be made in accordance with procedures specified by the issuing state and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

D. Upon receipt of the report of a conviction or noncompliance pursuant to Subsection C of this section, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in the form and with the content as prescribed in the compact manual.

History: Laws 2001, ch. 101, § 4.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-5. Procedure for home state.

A. Upon receipt of a report from the licensing authority of an issuing state reporting the failure of a person to comply with the terms of a citation, the licensing authority of the home state shall:

(1) notify the person;

(2) initiate a suspension action in accordance with the home state's suspension procedures; and

(3) suspend the person's license privileges until satisfactory evidence of compliance with the terms of the citation has been furnished by the issuing state to the home state licensing authority.

B. Due process safeguards shall be accorded to alleged violators.

C. Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter the conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

D. The licensing authority of the home state shall:

(1) maintain a record of actions taken; and

(2) make reports to issuing states as provided in the compact manual.

History: Laws 2001, ch. 101, § 5.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-6. Reciprocal recognition of suspension.

A. A participating state shall recognize the suspension of license privileges of a person by another participating state as though the violation resulting in the suspension:

(1) had occurred in the home state; and

(2) could have been the basis of the suspension of license privileges in the home state.

B. A participating state shall communicate suspension information to other participating states in the form and with the content as contained in the compact manual.

History: Laws 2001, ch. 101, § 6.

ANNOTATIONS

"Revocation" and "suspension" construed. — Where the New Mexico department of game and fish (department) denied respondent's application for a New Mexico outfitter's license pursuant to 17-2A-3(C)(2) NMSA 1978, which precludes an individual from working as a registered outfitter if the person has had a guide or outfitter license revoked in another state, and where the district court reversed the decision of the department, finding that the department applied an inapplicable section of 17-2A-3 NMSA 1978 and violated the Interstate Wildlife Violator Compact, 11-16-1 to -12 NMSA 1978, the district court did not err in reversing the department's decision, because the evidence in this case established that the actions of the Arizona commission on which the department relied to deny respondent a license are akin to a suspension, rather than a revocation, and therefore the department erroneously applied 17-2A-3(C)(2) NMSA 1978. An applicant whose license has been taken away for a specified period of time or until the applicant comes into compliance with the requirements established by game and fish is subject to the provision of 17-2A-3(C)(3) NMSA 1978. *N.M. Dep't of Game & Fish v. Rawlings*, 2019-NMCA-018.

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-7. Applicability of other laws.

Except as expressly required by provisions of the Wildlife Violator Compact, nothing herein shall be construed to affect the right of a participating state to apply its laws relating to license privileges to a person or circumstance or to invalidate or prevent an agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

History: Laws 2001, ch. 101, § 7.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-8. Compact administrator procedures.

A. A board of compact administrators is established to:

(1) administer the provisions of this compact; and

(2) serve as a governing body for the resolution of all matters relating to the operation of the Wildlife Violator Compact.

B. The board shall be composed of one representative, to be known as the "compact administrator", from each of the participating states.

C. A compact administrator shall be appointed by the head of the licensing authority of each participating state and shall serve and be subject to removal in accordance with the laws of the state he represents.

D. A compact administrator may provide for the discharge of his duties and the performance of his functions by an alternate.

E. An alternate shall not be entitled to serve unless written notification of his identity has been given to the board of compact administrators.

F. Each member of the board of compact administrators shall be entitled to one vote.

G. An action of the board of compact administrators shall not be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof.

H. Action by the board of compact administrators shall be taken only at a meeting at which a majority of the participating states are represented.

I. The board of compact administrators shall elect annually from its membership a chairman and vice chairman.

J. The board of compact administrators shall adopt bylaws not inconsistent with the provisions of the Wildlife Violator Compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

K. The board of compact administrators may accept for its purposes and functions under the Wildlife Violator Compact donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or a governmental agency, and may receive, use and dispose of the donations and grants.

L. The board of compact administrators may contract with, or accept services or personnel from, a governmental or intergovernmental agency, individual, firm, corporation or a private nonprofit organization or institution.

M. The board of compact administrators shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of the Wildlife Violator Compact. All procedures and forms adopted pursuant to board action shall be contained in a compact manual.

History: Laws 2001, ch. 101, § 8.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-9. Entry into Wildlife Violator Compact and withdrawal.

A. The Wildlife Violator Compact shall become effective at the time it is adopted in substantially similar form by two or more states.

B. Entry into the Wildlife Violator Compact shall be made by resolution of ratification by the authorized officials of the applying state and submitted to the chairman of the board of compact administrators.

C. The resolution shall substantially be in the form and content as provided in the compact manual and shall include the following:

(1) a citation of the authority from which the state is empowered to become a party to the Wildlife Violator Compact;

(2) an agreement of compliance with the terms and provisions of this compact; and

(3) an agreement that compact entry is with all states participating in the Wildlife Violator Compact and with all additional states that legally become a party to the Wildlife Violator Compact.

D. The effective date of entry shall be specified by the applying state but shall not be less than sixty days after notice has been given to each participating state that the resolution from the applying state has been received:

(1) by the chairman of the board of compact administrators; or

(2) by the secretary of the board of compact administrators.

E. A participating state may withdraw from participation in the Wildlife Violator Compact by official written notice to each participating state, but withdrawal shall not become effective until ninety days after the notice of withdrawal is given. No withdrawal of any state shall affect the validity of the Wildlife Violator Compact as to the remaining participating states.

History: Laws 2001, ch. 101, § 9.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-10. Amendments to the Wildlife Violator Compact.

A. The Wildlife Violator Compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and shall be initiated by one or more participating states.

B. Adoption of an amendment shall require endorsement by all participating states and shall become effective thirty days after the date of the last endorsement.

C. Failure of a participating state to respond to the chairman of the board of compact administrators within one hundred twenty days after receipt of a proposed amendment shall constitute endorsement thereof.

History: Laws 2001, ch. 101, § 10.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-11. Licensing authority; administrator; expenses.

A. The department of game and fish is designated as the licensing authority in New Mexico for the purposes of the Wildlife Violator Compact.

B. The director of the department of game and fish shall furnish to the appropriate authorities of the participating states any information or documents reasonably necessary to facilitate the administration of the Wildlife Violator Compact.

C. The compact administrator shall not be entitled to any additional compensation for his service as the compact administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as compact administrator in the same manner as for expenses incurred in connection with other duties or responsibilities of his office or employment.

History: Laws 2001, ch. 101, § 11.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

11-16-12. Construction and severability.

A. The Wildlife Violator Compact shall be liberally construed so as to effectuate the purposes stated herein.

B. The provisions of the Wildlife Violator Compact shall be severable and if a phrase, clause, sentence or provision of that compact is declared to be contrary to the constitution of a participating state or of the United States, or the applicability thereof to a government, agency, individual or circumstance is held invalid, the validity of the remainder of the compact shall not be affected thereby.

C. If the Wildlife Violator Compact is held contrary to the constitution of a participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the participating state affected regarding all severable matters.

History: Laws 2001, ch. 101, § 12.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 101, § 13 made the Wildlife Violator Compact effective July 1, 2001.

ARTICLE 17
Rights of Way Agreements with Navajo Nation

11-17-1. Legislative findings.

The legislature finds that:

A. due to the United States supreme court decision in *Strate v. A-1 Contractors*, there is uncertainty in the allocation of jurisdiction between the state and a tribe within rights of way granted to the state by a tribe, and all future road projects through tribal land are put in jeopardy of being postponed, delayed or left unresolved;

B. New Mexico has entered into agreements with the Navajo Nation through the state police and various counties to resolve issues of jurisdiction in law enforcement as well as many other areas;

C. New Mexico has traditionally negotiated right-of-way agreements for either a definite term or for the life of the highway;

D. the state land office has negotiated regarding easements permitted through state land, and the terms of those agreements are either for the life of the highway or for a fixed term that is not permitted to exceed thirty-five years;

E. the state highway and transportation department has negotiated and agreed to pay Indian nations for easements through Indian lands in the past;

F. New Mexico wants to foster and develop improved government-to-government relations between the Navajo Nation and the state; and

G. New Mexico desires to resolve the uncertainty presented by the *Strate* decision regarding jurisdiction within grants of rights of way by the Navajo Nation and to reconcile questions regarding the granting of rights of way through negotiation with the Navajo Nation.

History: Laws 2001, ch. 210, § 1.

ANNOTATIONS

Compiler's notes. — *Strate v. A-1 Contractors*, referred to in Subsections A and G, appears as 520 U.S. 438, 117 S. Ct. 1404, 137 L. Ed2d 661 (1997).

11-17-2. Agreements relating to jurisdiction on highways and rights of way through Navajo Nation tribal land.

The agencies of the state that are involved in constructing highways, providing law enforcement or providing emergency services along the state highways that cross over Navajo Nation land shall initiate negotiations with the Navajo Nation for the purpose of entering into cooperative agreements, if none exist, to provide for:

A. the coordination of law enforcement and emergency services required to ensure the health and safety of travelers on the state highways on rights of way granted to the state highway and transportation department by the Navajo Nation; and

B. the areas of shared jurisdiction between the various state agencies and the Navajo Nation, the areas of jurisdiction that are the sole responsibility of the state agency and the areas of jurisdiction that are the sole responsibility of the Navajo Nation regarding the provision of services in the rights of way granted to the state highway and transportation department by the Navajo Nation.

History: Laws 2001, ch. 210, § 2.

ANNOTATIONS

Cross references. — For state-financed Navajo Nation capital projects, *see* 6-28-1 to 6-28-8 NMSA 1978.

For the Tribal Infrastructure Act, *see* 6-29-1 to 6-29-9 NMSA 1978.

ARTICLE 18
State-Tribal Collaboration Act

11-18-1. Short title.

This act may be cited as the "State-Tribal Collaboration Act".

History: Laws 2009, ch. 15, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2009, ch. 15, § 7 contained an emergency clause and was approved March 19, 2009.

Severability. — Laws 2009, ch. 15, § 6 provided for the severability of the act if any part or application thereof is held invalid.

11-18-2. Definitions.

As used in the State-Tribal Collaboration Act:

A. "American Indian or Alaska Native" means:

(1) individuals who are members of any federally recognized Indian tribe, nation or pueblo;

(2) individuals who would meet the definition of "Indian" pursuant to 18 USC 1153; or

(3) individuals who have been deemed eligible for services and programs provided to American Indians and Alaska Natives by the United States public health service, the bureau of Indian affairs or other federal programs;

B. "Indian nation, tribe or pueblo" means any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico; and

C. "state agency" means an agency, department or office of the state of New Mexico that is cabinet-level.

History: Laws 2009, ch. 15, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2009, ch. 15, § 7 contained an emergency clause and was approved March 19, 2009.

Severability. — Laws 2009, ch. 15, § 6 provided for the severability of the act if any part or application thereof is held invalid.

11-18-3. Collaboration with Indian nations, tribes or pueblos.

A. By December 31, 2009, every state agency shall develop and implement a policy that:

(1) promotes effective communication and collaboration between the state agency and Indian nations, tribes or pueblos;

(2) promotes positive government-to-government relations between the state and Indian nations, tribes or pueblos;

(3) promotes cultural competency in providing effective services to American Indians or Alaska Natives; and

(4) establishes a method for notifying employees of the state agency of the provisions of the State-Tribal Collaboration Act and the policy that the state agency adopts pursuant to this section.

B. In the process of developing the policy set forth in Subsection A of this section, state agencies shall consult with representatives designated by the Indian nations, tribes or pueblos.

C. A state agency shall make a reasonable effort to collaborate with Indian nations, tribes or pueblos in the development and implementation of policies, agreements and programs of the state agency that directly affect American Indians or Alaska Natives.

D. The Indian affairs department shall maintain for public reference an updated list of the names and contact information for the chief executives of the Indian nations, tribes or pueblos and for the state agency tribal liaisons.

E. Every state agency shall designate a tribal liaison, who reports directly to the office of the head of the state agency, to:

(1) assist the head of the state agency with developing and ensuring the implementation of the policy as set forth in Subsection A of this section;

(2) serve as a contact person who shall maintain ongoing communication between the state agency and affected Indian nations, tribes or pueblos; and

(3) ensure that training is provided to the staff of the state agency as set forth in Subsection B of Section 4 [11-18-4 NMSA 1978] of the State-Tribal Collaboration Act. Nothing in this subsection shall preclude tribal liaisons from providing or facilitating additional training.

History: Laws 2009, ch. 15, § 3.

ANNOTATIONS

Emergency clauses. — Laws 2009, ch. 15, § 7 contained an emergency clause and was approved March 19, 2009.

Severability. — Laws 2009, ch. 15, § 6 provided for the severability of the act if any part or application thereof is held invalid.

11-18-4. Annual summit; training of state employees; annual reports.

A. At least once a year, during the third quarter of the state's fiscal year, the governor shall meet with the leaders of Indian nations, tribes and pueblos in a state-tribal summit to address issues of mutual concern.

B. All state agency managers and employees who have ongoing communication with Indian nations, tribes or pueblos shall complete a training provided by the state personnel office with assistance from the Indian affairs department, which training supports:

(1) the promotion of effective communication and collaboration between state agencies and Indian nations, tribes or pueblos;

(2) the development of positive state-tribal government-to-government relations; and

(3) cultural competency in providing effective services to American Indians or Alaska Natives.

C. No later than July 31 of every year, a state agency shall submit a report to the Indian affairs department on the activities of the state agency pursuant to the State-Tribal Collaboration Act, and the Indian affairs department shall compile all such reports for submittal to the governor and to the legislature. The report shall include:

(1) the policy the state agency adopted pursuant to the State-Tribal Collaboration Act;

(2) the names of and contact information for the individuals in the state agency who are responsible for developing and implementing programs of the state agency that directly affect American Indians or Alaska Natives;

(3) the current and planned efforts of the state agency to implement the policy set forth in Subsection A of Section 3 [11-18-3 NMSA 1978] of the State-Tribal Collaboration Act;

(4) a certification by the state personnel office of the number of managers and employees of each state agency who have completed the training required by Subsection B of this section;

(5) a description of current and planned programs and services provided to or directly affecting American Indians or Alaska Natives and the amount of funding for each program; and

(6) the method the state agency established for notifying employees of the state agency of the provisions of the State-Tribal Collaboration Act.

History: Laws 2009, ch. 15, § 4.

ANNOTATIONS

Emergency clauses. — Laws 2009, ch. 15, § 7 contained an emergency clause and was approved March 19, 2009.

Severability. — Laws 2009, ch. 15, § 6 provided for the severability of the act if any part or application thereof is held invalid.

11-18-5. Right of action.

Nothing in the State-Tribal Collaboration Act creates a right of action against a state agency or a right of review of an action of a state agency.

History: Laws 2009, ch. 15, § 5.

ANNOTATIONS

Emergency clauses. — Laws 2009, ch. 15, § 7 contained an emergency clause and was approved March 19, 2009.

Severability. — Laws 2009, ch. 15, § 6 provided for the severability of the act if any part or application thereof is held invalid.

ARTICLE 19
Interstate Insurance Product Regulation Compact

11-19-1. Compact enacted and entered into.

The "Interstate Insurance Product Regulation Compact" is enacted into law and entered into on behalf of New Mexico with any and all other states legally joining therein in a form substantially as follows:

"INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Article I. Purposes.

The purposes of this compact, through means of joint and cooperative action among the compacting states, are to:

1. promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

2. develop uniform standards for insurance products covered under the compact;

3. establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, related advertisements submitted by insurers authorized to do business in one or more compacting states;

4. give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

5. improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

6. create the interstate insurance product regulation commission; and

7. perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II. Definitions.

For purposes of this compact:

1. "advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the rules and operating procedures of the commission;

2. "bylaws" means those bylaws established by the commission for its governance or for directing or controlling the commission's actions or conduct;

3. "compacting state" means any state that has enacted this compact and that has not withdrawn pursuant to Section 1 of Article XIV of this compact or been terminated pursuant to Section 2 of Article XIV of this compact;

4. "commission" means the "interstate insurance product regulation commission" established by this compact;

5. "commissioner" means the chief insurance regulatory official of a state, including but not limited to commissioner, superintendent, director or administrator;

6. "domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry;

7. "insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact;

8. "member" means the person chosen by a compacting state as its representative to the commission, or the person's designee;

9. "non-compacting state" means any state that is not at the time a compacting state;

10. "operating procedures" means procedures promulgated by the commission implementing a rule, uniform standard or provision of this compact;

11. "product" means the form of a policy or contract, including any application, endorsement or related form that is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity,

life insurance, disability income or long-term care insurance product that an insurer is authorized to issue;

12. "rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to Article VII of this compact, designed to implement, interpret or prescribe law or policy or describe the organization, procedure or practice requirements of the commission, which shall have the force and effect of law in the compacting states;

13. "state" means any state, district or territory of the United States of America;

14. "third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer; and

15. "uniform standard" means a standard adopted by the commission for a product line pursuant to Article VII of this compact and shall include all of the product requirements in aggregate; provided that a uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable or against public policy as determined by the commission.

Article III. Establishment of the Commission and Venue.

1. The compacting states hereby create and establish a joint public agency known as the "interstate insurance product regulation commission". Pursuant to Article IV of this compact, the commission shall have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith and give approval to those product filings satisfying applicable uniform standards; provided that it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing in this compact shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the state where filed.

2. The commission is a body corporate and politic and an instrumentality of the compacting states.

3. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

4. Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

Article IV. Powers of the Commission.

The commission shall have the power to:

1. promulgate rules, pursuant to Article VII of this compact, that shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

2. exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, that shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission; provided that a compacting state shall have the right to opt out of a uniform standard pursuant to Article VII of this compact, to the extent and in the manner provided in this compact; and provided further that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products;

3. receive and review in an expeditious manner products filed with the commission and rate filings for disability income and long-term care insurance products and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;

4. receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

5. exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission;

6. promulgate operating procedures, pursuant to Article VII of this compact, that shall be binding in the compacting states to the extent and in the manner provided in this compact;

7. bring and prosecute legal proceedings or actions in its name as the commission; provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

8. issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

9. establish and maintain offices;

10. purchase and maintain insurance and bonds;

11. borrow, accept or contract for services of personnel, including, but not limited to, employees of a compacting state;

12. hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

13. accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety;

14. lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;

15. sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

16. remit filing fees to compacting states as may be set forth in the bylaws, rules or operating procedures;

17. enforce compliance by compacting states with rules, uniform standards, operating procedures and bylaws;

18. provide for dispute resolution among compacting states;

19. advise compacting states on issues relating to insurers domiciled or doing business in non-compacting jurisdictions, consistent with the purposes of this compact;

20. provide advice and training to those personnel in state insurance departments responsible for product review and be a resource for state insurance departments;

21. establish a budget and make expenditures;

22. borrow money;

23. appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives and other interested persons as may be designated in the bylaws;

24. provide information to, receive information from and cooperate with law enforcement agencies;

25. adopt and use a corporate seal; and

26. perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

Article V. Organization of the Commission.

Membership, Voting and Bylaws.

1. (a) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including:

(i) establishing the fiscal year of the commission;

(ii) providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;

(iii) providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the commission;

(iv) providing reasonable procedures for calling and conducting meetings of the commission that consists of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission must make public: (i) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and (ii) votes taken during such meeting;

(v) establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

(vi) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(vii) promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(viii) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

Management Committee, Officers and Personnel.

2. (a) A management committee, comprising no more than fourteen members, shall be established as follows:

(i) one member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income and long-term

care insurance products, determined from the records of the national association of insurance commissioners for the prior year;

(ii) four members from those compacting states with at least two percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(iii) four members from those compacting states with less than two percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(i) managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(ii) establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing and the review of elections made by a compacting state to opt out of a uniform standard; provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;

(iii) overseeing the offices of the commission; and

(iv) planning, implementing and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

Legislative and Advisory Committees.

3. (a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

Corporate Records of the Commission.

4. The commission shall maintain its corporate books and records in accordance with the bylaws.

Qualified Immunity, Defense and Indemnification.

5. (a) The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment, obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties

or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI. Meetings and Acts of the Commission.

1. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

2. Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

Article VII. Rules and Operating Procedures: Rulemaking Functions of the Commission and Opting Out of Uniform Standards.

Rulemaking Authority.

1. The commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

Rulemaking Procedure.

2. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

Effective Date and Opt-Out of a Uniform Standard.

3. A uniform standard shall become effective ninety days after its promulgation by the commission or such later date as the commission may determine; provided,

however, that a compacting state may opt out of a uniform standard as provided in this article. "Opt out" shall be defined as any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure or amendment.

Opt-Out Procedure.

4. A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must:

(a) give written notice to the commission no later than ten business days after the uniform standard is promulgated, or at the time the state becomes a compacting state; and

(b) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state.

The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact; and (ii) the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product. Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt-out in the enacted compact, and such an opt-out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt-out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

Effect of Opt-Out.

5. If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt-out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt-out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt-out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt-out shall have the same prospective effect as provided under Article XIV of this compact for withdrawals.

Stay of Uniform Standard.

6. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt-out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt-out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively extended by the commission; provided that a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

7. Not later than thirty days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure; provided that the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

Article VIII. Commission Records and Enforcement.

1. The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state

commissioner of the duty to disclose any relevant records, data or information to the commission; provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided that except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

3. The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in Article XIV of this compact.

4. The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) with respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission; and

(b) before a commissioner may bring an action for violation of any provision, standard or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing or disclosure of requests for authorization or records of the commission's action on such requests.

Article IX. Dispute Resolution.

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and non-compacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

Article X. Product Filing and Approval.

1. Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this compact shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

2. The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision herein to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

3. Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

Article XI. Review of Commission Decisions Regarding Filings.

1. Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Section 4 of Article III of this compact.

2. The commission shall have authority to monitor, review and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 of this article.

Article XII. Finance.

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

2. The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

3. The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this compact.

4. The commission shall be exempt from all taxation in and by the compacting states.

5. The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

6. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential, and such materials may be shared with the commissioner of any compacting state upon request; provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

7. No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

Article XIII. Compacting States, Effective Date and Amendment.

1. Any state is eligible to become a compacting state.

2. The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states; provided that the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it

shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

Article XIV. Withdrawal, Default and Termination.

Withdrawal.

1. (a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in Paragraph (e) of this section.

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.

(e) The withdrawing state is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

Default.

2. (a) If the commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to Section 1 of this article.

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

Dissolution of Compact.

3. (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

Article XV. Severability and Construction.

1. The provisions of this compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

2. The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XVI. Binding Effect of Compact and Other Laws.

Other Laws.

1. (a) Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in Paragraph (b) of this section.

(b) For any product approved or certified to the commission, the rules, uniform standards and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard or other requirement of the commission that governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:

(i) the access of any person to state courts;

(ii) remedies available under state law related to breach of contract, tort or other laws not specifically directed to the content of the product;

(iii) state law relating to the construction of insurance contracts; or

(iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states shall be subject to the laws of those states.

Binding Effect of this Compact.

2. (a) All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency

thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

History: Laws 2009, ch. 188, § 2.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

ARTICLE 20
Interstate Mining Compact

11-20-1. Short title.

This act [11-20-1 to 11-20-4 NMSA 1978] may be cited as the "Interstate Mining Compact Act".

History: Laws 2016, ch. 74, § 1.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 74 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

11-20-2. Membership.

A. The governor is authorized to participate in the Interstate Mining Compact as a member of the Interstate Mining Compact commission.

B. The governor may designate the secretary of energy, minerals and natural resources or the director of the mining and minerals division of the energy, minerals and natural resources department as the governor's alternate to the Interstate Mining Compact commission.

History: Laws 2016, ch. 74, § 2.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 74 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

11-20-3. Limitations.

A. No provisions of the Interstate Mining Compact Act or any policies of the Interstate Mining Compact commission shall be construed to limit, repeal or supersede any law of the state of New Mexico.

B. The governor and the legislature or their designated agents shall have the right to inspect the books and accounts of the Interstate Mining Compact commission at any reasonable time while the state of New Mexico is a member.

C. The secretary of energy, minerals and natural resources shall file with the state records administrator a copy of the bylaws of the Interstate Mining Compact commission and any other compact documents required by Section 14-3-20 NMSA 1978.

History: Laws 2016, ch. 74, § 3.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 74 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

11-20-4. Expenses.

The secretary of energy, minerals and natural resources may pay annual membership dues to the Interstate Mining Compact commission out of fees collected under the Surface Mining Act [Chapter 69, Article 25A NMSA 1978] or from funds granted to the state by the federal office of surface mining reclamation and enforcement of the department of the interior.

History: Laws 2016, ch. 74, § 4.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 74 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.