

# CHAPTER 67

## Highways

### ARTICLE 1

#### Highway Department Organization

##### 67-1-1. Short title.

This act [67-1-1 to 67-1-3 NMSA 1978] may be cited as the "Highway Department Organization Act."

**History:** Laws 1977, ch. 251, § 1.

#### ANNOTATIONS

**Highway Department Organization Act.** — Highway Department Organization Act refers to Laws 1977, ch. 251, the provisions of which are presently compiled as 67-1-1, 67-1-3, 67-2-4, 67-3-7, 67-3-8 and 67-3-23 NMSA 1978.

##### 67-1-2. Repealed.

#### ANNOTATIONS

**Repeals.** — Laws 1983, ch. 100, § 1, repeals 67-1-2 NMSA 1978, relating to the termination of the highway department.

Laws 1983, ch. 100, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

##### 67-1-3. Effective date.

The effective date of the provisions of the Highway Department Organization Act [67-1-1 NMSA 1978] is March 31, 1978.

**History:** Laws 1977, ch. 251, § 7.

#### ANNOTATIONS

**Highway Department Organization Act.** — See 67-1-1 NMSA 1978 and notes thereto.

### ARTICLE 2

#### General Provisions

## **67-2-1. [Public highways; definition.]**

All roads and highways, except private roads, established in pursuance of any law of New Mexico, and roads dedicated to public use, that have not been vacated or abandoned, and such other roads as are recognized and maintained by the corporate authorities of any county in New Mexico, are hereby declared to be public highways.

**History:** Laws 1905, ch. 124, § 1; Code 1915, § 2626; C.S. 1929, § 64-101; 1941 Comp., § 58-101; 1953 Comp., § 55-1-1.

### **ANNOTATIONS**

**Cross references.** — For post roads and mail roads declared public roads, see 67-2-3 NMSA 1978.

**Prior acts in conflict to be repealed.** — This act (Laws 1905, ch. 124) is comprehensive in its scope and repeals all prior acts in conflict therewith. *State Hwy. Comm'n v. Sargent*, 20 N.M. 577, 151 P. 232 (1915).

**Scope of public highways.** — Roads declared to be public highways are not confined to roads established by the laws of the territory or state, but extend to all roads dedicated to the public use for a long period of years and which have not been abandoned. 1919-20 Op. Att'y Gen. 62.

**Subdivision Act**, ch. 47, art. 6 NMSA 1978, deals with the subject of subdivision roads and county road maintenance in a much more detailed way than this section and 67-2-2 NMSA 1978; therefore, the Subdivision Act controls over the more general statutes. *McGarry v. Scott*, 2003-NMSC-016, 134 N.M. 32, 72 P.3d 608.

**Fort Sumner-Las Vegas road**, which was opened, recognized and maintained by Guadalupe county and the United States, is a public road, and obstructions placed thereon should be removed. 1917-18 Op. Att'y Gen. 76.

**Dedication and acceptance may be established by use alone.** — In New Mexico a highway may be established by dedication and acceptance which may be established by use along and 10-year statute of limitations is not applicable in fixing the time of user necessary to constitute an acceptance. *Lovelace v. Hightower*, 50 N.M. 50, 68 P.2d 864 (1946).

**Long-continued use** of a road by the public is sufficient to constitute it a public highway. 1925-26 Op. Att'y Gen. 25.

**Recognition of "public roads" created by prescription.** — This section states that two classes of roads are public roads, but this does not prohibit other sorts of roads from being found to be "public roads" as this state has in fact recognized the principle

that public roads may be created by prescription. *Dutton v. Slayton*, 92 N.M. 668, 593 P.2d 1071 (1979).

**Error in categorizing road as public.** — Since record showed that road in question had belonged to plaintiffs for over 45 years, that road had been categorized as a county road without apparent authority, that objections had been made by plaintiffs to blading operations by county machinery, and that other uses were with permission of the plaintiffs, such use was insufficient to satisfy this section as having been recognized and maintained by the corporate authorities of the county and trial court erred in categorizing the road as public. *Norero v. Board of County Comm'rs*, 82 N.M. 300, 481 P.2d 88 (1971).

**Mandamus dismissed where no acceptance or maintenance.** — Mandamus to compel board of county commissioners to remove obstructions from land purportedly part of public highway is to be dismissed in absence of proof of acceptance of dedication or at least of partial maintenance with public funds. *State ex rel. Shelton v. Board of Comm'rs*, 49 N.M. 218, 161 P.2d 212 (1945).

**Special benefit not to condemn purpose.** — The fact that a public highway will be of especial benefit to one citizen does not condemn its purpose. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).

**Ban on passing not applicable where private road.** — Where roadway is shown not to be a public road, then the statutory ban on passing other vehicles within 100 feet of an intersection of two roads does not apply. *Moore v. Armstrong*, 67 N.M. 350, 355 P.2d 284 (1960).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 1, 2, 4 to 8, 11.

39A C.J.S. Highways § 1.

## **67-2-2. [Maintenance and repair by counties.]**

All public highways, except such as are owned and operated by private corporations, and highways within the corporate limits of any incorporated city or town, shall be maintained and kept in repair by the respective counties in which they are located.

**History:** Laws 1905, ch. 124, § 2; Code 1915, § 2627; C.S. 1929, § 64-102; 1941 Comp., § 58-102; 1953 Comp., § 55-1-2.

### **ANNOTATIONS**

**Cross references.** — For county highways in general, see Chapter 67, Article 4 NMSA 1978.

**Subdivision Act**, ch. 47, art. 6 NMSA 1978, deals with the subject of subdivision roads and county road maintenance in a much more detailed way than this section and 67-2-2 NMSA 1978; therefore, the Subdivision Act controls over the more general statutes. *McGarry v. Scott*, 2003-NMSC-016, 134 N.M. 32, 72 P.3d 608.

**Mandamus dismissed when no acceptance or maintenance.** — Mandamus to compel board of county commissioners to remove obstructions from land purportedly part of public highway must be dismissed in absence of proof of acceptance of dedication or at least of partial maintenance with public funds. *State ex rel. Shelton v. Board of Comm'rs*, 49 N.M. 218, 161 P.2d 212 (1945).

**No county liability for damages from defects.** — Although by this section the duty is imposed on counties to keep county highways in repair, counties are not liable for damages for injuries received from defects. *Murray v. Board of Comm'rs*, 28 N.M. 309, 210 P. 1067 (1922).

**Damage for public use.** — Where design, construction or maintenance of public highway caused damage to private property, this constituted damage for a public use for which adequate compensation was guaranteed to the owner under N.M. Const., art. II, § 20, and for which the county was subject to suit under former 42-1-23 NMSA 1978. *Wheeler v. Board of County Comm'rs*, 74 N.M. 165, 391 P.2d 664 (1964).

**Duty to maintain and keep public highways in repair** is that of the respective counties in which the highways are located, except for highways and streets in municipalities and state highways. *Sanchez v. Board of County Comm'rs*, 81 N.M. 644, 471 P.2d 678 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970).

**Public meeting to educate residents as to roads to be repaired.** — While the board of county commissioners need not hold a hearing when it closes a county road or highway for repair and maintenance, former 67-4-9 NMSA 1978 required a public meeting that educates county residents about roads on which the county will work in the following year. 1988 Op. Att'y Gen. No. 88-62.

**Incorporated city can neither levy nor collect a road tax**, but the inhabitants are subject to the county road tax, the collection of which is in the county road board. 1914 Op. Att'y Gen. 130.

**Expenditure of county road funds within municipality.** — County road funds may legally be expended within boundaries of a municipality in connection with bridges, but not for improvement of the streets. 1945-46 Op. Att'y Gen. No. 4728.

**Municipality may purchase county services.** — A municipality may enter into a contract with a county to purchase services of county road department. 1969 Op. Att'y Gen. No. 69-103.

**Incorporated village may purchase services.** — An incorporated village may enter into a contract to purchase services of county road department as to both construction and maintenance. 1975 Op. Att'y Gen. No. 75-4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 71, 104, 345, 346.

State or local governmental unit's liability for injury to private highway construction worker based on its own negligence, 29 A.L.R.4th 1188.

40 C.J.S. Highways § 179.

### **67-2-3. Post roads and mail routes declared to be public roads.**

Where as the congress of the United States has declared all post roads over which the mails of the United States are carried to be public roads. It is likewise declared by this section that all such roads are public roads; provided, however, that discontinuance of mail service, and nonuser [nonuse] by the public for three years shall constitute abandonment and vacation of such roads for such roads for such public purpose.

**History:** Laws 1903, ch. 58, § 1; Code 1915, § 2628; C.S. 1929, § 64-103; 1941 Comp., § 58-103; Laws 1945, ch. 31, § 1; 1953 Comp., § 55-1-3.

## **ANNOTATIONS**

**Cross references.** — For definition of public highways, see 67-2-1 NMSA 1978.

**Implied dedication.** — The law of implied dedication gives the public greater rights than the legislature has provided under this section. *Luevano v. Maestas*, 117 N.M. 580, 874 P.2d 788 (Ct. App. 1994).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 43.

39A C.J.S. Highways § 1.

### **67-2-4. Definitions.**

As used in Chapter 67 NMSA 1978:

- A. "state highway" shall include any highway declared to be a state highway by an act of the legislature or designated as such by the state highway engineer;
- B. "department" means the department of transportation; and
- C. "secretary" means the secretary of transportation.

**History:** Laws 1929, ch. 77, § 1; C.S. 1929, § 64-1901; 1941 Comp., § 58-104; 1953 Comp., § 55-1-4; Laws 1977, ch. 251, § 2; 1987, ch. 268, § 34; 2003, ch. 142, § 25.

## ANNOTATIONS

**The 1977 amendment** rewrote this section which formerly defined state highway.

**The 1987 amendment**, effective July 1, 1987, in Subsection B, substituted "or the 'chief highway administrator' means the secretary" for "means the 'chief highway administrator'"; added Subsections C and D; and updated the statutory reference.

**The 2003 amendment**, effective July 1, 2003, deleted Subsection B, defining "state highway engineer" or "chief highway administrator", and redesignated the remaining subsections accordingly; and deleted "highway and" preceding "transportation" in Subsection C.

**Consent of county commissioners unnecessary.** — The commission can acquire a right-of-way or lay out and establish a state highway in a county without the consent of the county commissioners. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).

**When underpass not to be designated state highway.** — The commission is not authorized by this section, 67-3-15, 67-3-16 or 67-3-41 NMSA 1978 to designate as a state highway, an underpass not connected with or intended to be a part of a state highway. *Springer Transf. Co. v. City of Albuquerque*, 44 N.M. 407, 103 P.2d 129 (1940).

**On abandonment of portion of public highway**, the adjoining landowner is revested with the fee without any limitation. 1945-46 Op. Att'y Gen. No. 4644.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 1, 2.

39A C.J.S. Highways § 1.

### **67-2-5. [Rights-of-way vest in state after use as highway for a year.]**

When any state highway in the state of New Mexico, is continuously used by, or open for use to the public, as such, for a period of one year from and after the time this act [67-2-4, 67-2-5 NMSA 1978] goes into effect, or for a period of one year at any time thereafter, and the same has not been so used or occupied under any lease, contract or agreement recognizing the ownership of the right-of-way thereof in any person, firm or corporation, other than the state, such right-of-way shall be and become the property of and fee thereto shall vest in the state of New Mexico for such highway purposes, and the title thereto shall not thereafter be divested by adverse possession or in any other manner except with the consent of the state of New Mexico, so long as such right-of-way is so used for highway purposes.

**History:** Laws 1929, ch. 77, § 2; C.S. 1929, § 64-1902; 1941 Comp., § 58-105; 1953 Comp., § 55-1-5.

## ANNOTATIONS

**On abandonment of portion of public highway,** the adjoining landowner is revested with the fee without any limitation. 1945-46 Op. Att'y Gen. No. 4644.

**Title to be conditional fee for public purposes only.** — A public highway, even though acquired only by virtue of the one-year limitation statute, should be used only for public purposes. The state is only authorized to take private property for such purposes and even though the statute purports to place the fee thereof in the state of New Mexico, such title would appear to be a conditional fee for public purposes only. 1953-54 Op. Att'y Gen. No. 5884.

**Erection of telephone line on public right-of-way.** — If a telephone line is strictly a private one, then neither the county nor the state could consent to its erection on a public right-of-way. If, however, it is also devoted to a public use and the county authorized its erection, the commission might grant it a permit. 1953-54 Op. Att'y Gen. No. 5884.

**Standing to appeal annexation proceeding.** — The state's interest in highway property granted by this section satisfied the requirement for standing of the department to appeal an annexation proceeding under 67-2-5C NMSA 1978. *State ex rel. State Highway & Transp. Dep't v. City of Sunland Park*, 1999-NMCA-143, 128 N.M. 371, 993 P.2d 85.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 192 to 194.

39A C.J.S. Highways § 136.

### **67-2-6. Abandonment, vacation and reverter of public roads, streets and highways.**

Property or property rights acquired by purchase or condemnation by the state or any commission, department, bureau, agency or political subdivision of the state for public road, street or highway purposes shall not revert until such property or property rights are vacated or abandoned by formal written declaration of vacation or abandonment which has been duly declared by the state or any commission, department, institution, bureau, agency or political subdivision of the state in whom the property or property right has vested. The right to abandon and vacate shall exist regardless of whether the public road, street or highway was created by the legislature or otherwise.

**History:** 1953 Comp., § 55-1-6, enacted by Laws 1959, ch. 192, § 1; 1975, ch. 192, § 1.

## ANNOTATIONS

**County commissioners proper body to vacate or abandon roads.** — Sections 67-2-4, 67-2-6 and 67-2-7 NMSA 1978 all relate to the vacation or abandonment of public highways, streets or roads by formal declaration, determination or order of the state or the appropriate commission, department, institution, bureau or political subdivision thereof. Being in pari materia, these statutes should be construed so as to give effect to every provision. They evince an intent on the part of the legislature to provide a formal procedure for the abandonment or vacation of public roads, streets and highways; and the district courts are not vested with this power. The county commission is the proper body to abandon or vacate roads in suit to quiet title. *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974).

**Subject-matter jurisdiction not conferred by consent.** — Although the county entered an appearance in the quiet title suit and participated in the proceedings therein conducted by the district court, this did not confer jurisdiction or power in the district court over the subject matter of the suit, insofar as the subject matter of the suit was concerned with the quieting of title in the roads as subject-matter jurisdiction cannot be conferred by consent of the parties. *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974).

**"Duly declared".** — While this section simply requires a "duly declared" written abandonment, the section is silent regarding what constitutes a "duly declared" abandonment. *State ex rel. Madrid v. UU Bar Ranch*, 2005-NMCA-079, 137 N.M. 719, 114 P.3d 399, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

**Board of finance approval.** — State board of finance approval is required if abandoned public road is valued at more than \$2,500. *State ex rel. Madrid v. UU Bar Ranch*, 2005-NMCA-079, 137 N.M. 719, 114 P.3d 399, cert. denied, 2005-NMCERT-006, 137 N.M. 766, 115 P.3d 229.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 137 to 156, 184, 185.

39A C.J.S. Highways §§ 130 to 135.

### **67-2-7. Petition for determination of abandonment or vacation.**

Any owner of lands abutting any highway, street or road, his heirs or assigns may petition the state or any commission, department, bureau, agency or political subdivision thereof, who believes a section of any public road, street or highway is not [no] longer needed for public purposes, [and] may petition the state or any commission, department, bureau, agency or political subdivision thereof for a formal determination of abandonment or vacation.

**History:** 1953 Comp., § 55-1-7, enacted by Laws 1959, ch. 192, § 2.



## ANNOTATIONS

**Bracketed material.** — The bracketed material in this section was inserted by the compiler for purposes of clarity; it was not enacted by the legislature and is not a part of the law.

**County commissioners proper body to vacate or abandon roads.** — Sections 67-2-4, 67-2-6 and 67-2-7 NMSA 1978 all relate to the vacation or abandonment of public highways, streets or roads by formal declaration, determination or order of the state or the appropriate commission, department, institution, bureau or political subdivision thereof. Being in pari materia, these statutes should be construed so as to give effect to every provision. They evince an intent on the part of the legislature to provide a formal procedure for the abandonment or vacation of public roads, streets and highways; and the district courts are not vested with this power. The county commission is the proper body to abandon or vacate roads in suit to quiet title. *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974).

**Subject-matter jurisdiction not conferred by consent.** — Although the county entered an appearance in the quiet title suit and participated in the proceedings therein conducted by the district court, this did not confer jurisdiction or power in the district court over the subject matter of the suit, insofar as the subject matter of the suit was concerned with the quieting of title in the roads as subject-matter jurisdiction cannot be conferred by consent of the parties. *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 148.

39A C.J.S. Highways §§ 130 to 135.

## ARTICLE 3 State Transportation Commission

### 67-3-1. Reimbursement of state transportation commissioners.

The members of the state transportation commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1935, ch. 44, § 1; 1941 Comp., § 58-201; 1953 Comp., § 55-2-1; Laws 1961, ch. 178, § 1; 1963, ch. 43, § 5; 2003, ch. 142, § 26.

## ANNOTATIONS

**Cross references.** — For creation of state transportation commission, see N.M. Const., art. V, § 14.

For removal of highway commissioners, jurisdiction, see N.M. Const., art. V, § 14.

**The 2003 amendment**, effective July 1, 2003, substituted "transportation commissioners" for "highway commissioners" in the section heading and the section.

**Drawing of per diem allowance prohibited.** — State highway commissioners, as unsalaried state officers, may not draw the statutory per diem allowance while engaged in official state business at their residence or personal business premises. 1977 Op. Att'y Gen. No. 77-20.

**Membership in retirement association.** — Members of the state highway commission [state transportation commission] are not eligible for membership in the public employees retirement association. 1965 Op. Att'y Gen. No. 65-29.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 58.

## **67-3-2. State transportation commissioners; number; appointment; powers; term of office; bond.**

A. The state transportation commission shall consist of six members to be appointed by the governor with the advice and consent of the senate.

B. State transportation commissioners shall be appointed for staggered terms of six years each commencing on January 1 so that the terms of not more than two commissioners expire on December 31 of each even-numbered year. Any vacancy shall be filled by appointment by the governor with the approval of the senate for the remainder of the unexpired term.

C. Each of the members, in order to qualify as such, shall take the usual oath and execute in favor of the state a surety company bond in a form approved by the attorney general in the amount of twenty-five thousand dollars (\$25,000) conditioned upon the faithful performance of his duties. No more than four of the appointed commissioners shall belong to the same political party.

D. The state transportation commission shall have the power to determine all matters of policy for the department.

**History:** 1953 Comp., § 55-2-1.1, enacted by Laws 1967, ch. 266, § 1; 1983, ch. 305, § 1; 1989, ch. 67, § 1; 2003, ch. 142, § 27.

## **ANNOTATIONS**

**Cross references.** — For creation of state transportation commission, see N.M. Const., art. V, § 14.

**The 1983 amendment** substituted "six" for "five" in Subsection A and substituted "four" for "three" in the last sentence of Subsection C.

**The 1989 amendment**, effective June 16, 1989, added "for the department" at the end of Subsection D.

**The 2003 amendment**, effective July 1, 2003, substituted "transportation commissioners" for "highway commissioners" in the section heading; substituted "transportation commission" for "highway commission" in Subsections A and D; and substituted "State transportation commissioners" for "The highway commissioners holding office on the effective date of this act shall serve out the remainder of their unexpired terms and" in Subsection B.

**Effective dates.** — Laws 1983, ch. 305, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 13 to 21, 34, 207.

39A C.J.S. Highways §§ 56, 164.

### **67-3-3. State transportation commission districts; one member appointed from each district; residence requirements.**

A. There are created six state transportation commission districts as follows:

(1) district 1, which shall be composed of the counties of Socorro, Grant, Sierra, Dona Ana, Luna and Hidalgo;

(2) district 2, which shall be composed of the counties of Lea, Eddy, Chaves, Roosevelt, Curry, DeBaca, Lincoln and Otero;

(3) district 3, which shall be composed of the counties of Bernalillo and Valencia and, in Sandoval county, all of townships twelve and thirteen north, ranges one, two, three, four, five and six east and all of townships fourteen, fifteen and sixteen north, ranges four, five and six east;

(4) district 4, which shall be composed of the counties of Colfax, Union, Mora, Harding, San Miguel, Quay and Guadalupe;

(5) district 5, which shall be composed of the counties of San Juan, Rio Arriba, Taos, Santa Fe, Torrance and Los Alamos; and

(6) district 6, which shall be composed of the counties of Catron, Cibola, McKinley and all of Sandoval county excluding all of townships twelve and thirteen north, ranges one, two, three, four, five and six east and all of townships fourteen, fifteen and sixteen north, ranges four, five and six east.

B. The legislature, in the event of the creation of any new county, shall attach the new county to any of the above districts to which the new county may be contiguous.

C. One member of the state transportation commission shall be appointed from each of the six state transportation commission districts, and the member shall reside in the district from which he is appointed. Change of residence of a state transportation commissioner to a place outside the highway district from which he was appointed shall automatically terminate the term of that commissioner.

**History:** 1953 Comp., § 55-2-1.2, enacted by Laws 1967, ch. 266, § 2; 1968, ch. 39, § 1; 1983, ch. 305, § 2; 1991, ch. 115, § 1; 2003, ch. 142, § 28.

## ANNOTATIONS

**Cross references.** — For creation of state transportation commission, see N.M. Const., art. V, § 14.

**The 1983 amendment** substituted "six" for "five" in the introductory language of Subsection A and in the first sentence of Subsection C, deleted "Catron," preceding "Socorro" near the middle of Subsection A(1), substituted "county of Bernalillo" for "counties of Bernalillo, McKinley, Valencia and Sandoval" at the end of Subsection A(3), added Subsection A(6), deleted "state" preceding "legislature" in Subsection B, substituted "is" for "shall be" in the first sentence of Subsection C, and substituted "that" for "such" in the last sentence of Subsection C.

**The 1991 amendment,** effective June 14, 1991, in Subsection A(3), substituted "counties" for "county" and added the language beginning "and Valencia and", in Subsection A(6), deleted "Valencia," preceding "McKinley", inserted the first occurrence of "all of", and added the language beginning "county excluding all".

**The 2003 amendment,** effective July 1, 2003, substituted "state transportation commission" for "highway commission" in the section heading and the section; and inserted "state transportation" preceding "commissioner" in Subsection C.

**Effective dates.** — Laws 1983, ch. 305, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 14, 15.

39A C.J.S. Highways § 56.

### **67-3-4. Method and time of appointment of commissioners.**

A. The governor shall submit the names of the commissioners to be appointed to the state senate for confirmation not later than the thirtieth day of each regular session of the legislature. A three-fifths vote of the senate shall be required for confirmation. The appointment of such commissioners shall become effective on the day of confirmation by the senate. No commissioner shall be appointed without confirmation by the senate except that, in the case of a vacancy, the governor may appoint a commissioner to fill a vacancy until the next regular session of the legislature, at which time an appointment shall be made for the balance of the unexpired term.

B. In the event the governor should refuse or fail to submit the names of the highway commissioners to the senate for confirmation in the manner above provided, the senate shall appoint and confirm the highway commissioners.

**History:** 1953 Comp., § 55-2-1.3, enacted by Laws 1967, ch. 266, § 3.

#### **ANNOTATIONS**

**Cross references.** — For creation of state transportation commission, see N.M. Const., art. V, § 14.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 13.

39A C.J.S. Highways § 56.

### **67-3-5. Removal of commissioners.**

The state transportation commission, appointed by the governor and confirmed by the senate, shall serve at the pleasure of the governor. Transportation commissioners, appointed and confirmed by the senate pursuant to Subsection B of Section 67-3-4 NMSA 1978, shall not be removed without prior approval of the senate.

**History:** 1953 Comp., § 55-2-1.4, enacted by Laws 1967, ch. 266, § 4; 1978, ch. 1, § 1; 2003, ch. 55, § 1.

#### **ANNOTATIONS**

**Cross references.** — For creation of state transportation commission, see N.M. Const., art. V, § 14.

For removal of commissioners, see N.M. Const., art. V, § 14.

**The 1978 amendment** deleted "supreme court jurisdiction" at the end of the catchline, substituted "prior approval of the senate" for "notice of hearing and an opportunity to be

heard having first been given such commissioner" at the end of the second sentence and deleted the former last sentence which read: "The supreme court of New Mexico is hereby given exclusive original jurisdiction over proceedings to remove highway commissioners under such rules as it may promulgate and its decision in connection with such matters shall be final."

**The 2003 amendment**, effective June 20, 2003, rewrote this section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 38.

39A C.J.S. Highways § 165.

### **67-3-6. Creation of department of transportation.**

A department of government within the executive branch to be known as the "department of transportation" is established. Except for the powers expressly granted to the state transportation commissioners in Chapter 67, Article 3 NMSA 1978, the department shall exercise all the power, authority and duty granted to the state transportation commission in Chapter 67 NMSA 1978. All references contained in the NMSA 1978, as amended, and which refer to the "state transportation commission" or "commissioners" shall, wherever appropriate, be construed to refer to or to mean the department as designated in this section.

**History:** 1953 Comp., § 55-2-1.5, enacted by Laws 1967, ch. 266, § 5; 1987, ch. 268, § 35; 2003, ch. 142, § 29.

### **ANNOTATIONS**

**Cross references.** — For creation of state transportation commission, see N.M. Const., art. V, § 14.

For radio communication property, ownership transferred to communications division, see 15-2-5 NMSA 1978.

**The 1987 amendment**, effective July 1, 1987, substituted "state highway and transportation department" for "state highway department" in three places; in the second sentence substituted "in Chapter 67, Article 3 NMSA 1978" for "herein"; updated two statutory references; and made minor changes in language and punctuation throughout the section.

**The 2003 amendment**, effective July 1, 2003, substituted "department of transportation" for "state highway and transportation" in the section heading and the section; substituted "state transportation commission" for "state highway commission" twice; and deleted "state highway and transportation" preceding "department" three times in the section.

**Temporary provisions.** — Laws 1997, ch. 52, § 8, effective July 1, 1997, provides that all personnel, appropriations, money of the state transportation authority shall be transferred to the state highway and transportation department [department of transportation] and all contracts, agreements and obligations of the state transportation authority shall be binding and effective on the state highway and transportation department [department of transportation].

Laws 2006, ch. 34, § 1, effective March 2, 2006, enacts a temporary provision that authorized the continued development of real property for the building or buildings designed and constructed to serve as the general office headquarters of the department in Santa Fe, including parking and related facilities and a multi-modal facility developed to accommodate train, bus and other forms of transportation as determined by the department provided the facilities not cost more than \$90,000,000.

Laws 2006, ch. 34, § 2, effective March 2, 2006, enacts a temporary provision that authorizes continued development of real property at the district 5 location for district 5 facilities, a central materials laboratory, a vehicle maintenance facility, a vehicle fueling facility, a vehicle storage facility, a vehicle car wash, a signal laboratory, a sign shop and related facilities at the new district 5 site.

**Appropriations.** — Laws 1995, ch. 222, § 27, effective April 7, 1995, appropriates \$2,031,000 from the general fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1995 through 1999 for various purposes.

Laws 1995, ch. 222, § 48, effective April 7, 1995, appropriates \$416,700 from the state road fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1996 and 1997 for the improvement of the Roswell and Milan district offices.

Laws 1996 (1st S.S.), ch. 4, § 34, effective April 1, 1997, appropriates \$1,713,000 from the general fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1997 and 1998 for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 39, effective March 21, 1996, appropriates \$1,000,000 from the state road fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1997 through 2000 for the purpose of completing the Santa Teresa border station in Dona Ana county.

Laws 1996 (1st S.S.), ch. 4, § 40, effective March 21, 1996, appropriates \$478,700 from the state road fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1997 through 2000 for the purpose of installing salt storage domes at patrol yards in the cities of Taos, Chama and Santa Fe.

Laws 1996, ch. 22, § 3 provides that the balance of the appropriation from the general fund to the state highway and transportation department [department of transportation]

in § 27T of Chapter 222 of Laws 1995 is reauthorized and appropriated to the department of environment to repair and renovate the Golden Acres well in the village of Milan in Cibola county.

Laws 1998, ch. 7, § 31, effective February 17, 1998, appropriates \$733,800 from the state road fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1998 through 2002 to acquire land, plan, design, construct and equip a maintenance patrol yard near Eagle Nest in Colfax county. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the state road fund.

Laws 1998, ch. 7, § 44, effective February 17, 1998, provides that the balance of the appropriation from the state road fund to the state highway and transportation department [department of transportation] for the purpose of installing salt storage domes at patrol yards in Taos located in Taos county, in Chama located in Rio Arriba county and in Santa Fe located in Santa Fe county pursuant to Laws 1996 (1st S.S.), ch. 4, § 40, shall not be expended for its original purpose but is appropriated to the state highway and transportation department [department of transportation] to purchase and install chemical de-icer storage units throughout the state.

Laws 1998, ch. 7, § 49, effective February 17, 1998, provides that the balance of the appropriation from the state road fund pursuant to Laws 1994, ch. 148, § 48B, to design and construct a highway from state road 117 to the observatory site in Cibola county shall not be expended for its original purpose but is appropriated to the state highway and transportation department [department of transportation] for infrastructure, construction and equipping an astronomy science center at Enchanted Skies park in Cibola county. The period of time in which this appropriation may be expended shall be extended through fiscal year 2002. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the state road fund.

Laws 1998, ch. 7, § 53, effective February 17, 1998, provides that the balance of the general fund appropriation made to the state highway and transportation department [department of transportation] pursuant to Laws 1996 (1st S.S.), ch. 4, § 34L, for the purpose of planning and designing archaeological, environmental and ethnographic assessments and preliminary design specifications for the Nenahnezad chapter school bus route improvements located in San Juan county shall not be expended for its original purpose but is appropriated to the state agency on aging to purchase a van for and equip and furnish the senior citizen center at Nenahnezad chapter in San Juan county.

Laws 2000 (2nd S.S.), ch. 23, § 32 appropriates \$2,238,000 from the state road fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 2000 to 2004 for various projects. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the state road fund.



Laws 2000 (2nd S.S.), ch. 23, § 41, as amended by Laws 2003, ch. 429, §§ 58, 141, 149, appropriates various sums to the state highway and transportation department [department of transportation] for expenditure in fiscal years 2000 through 2005, for various projects. Any unexpended balance remaining at the end of fiscal year 2005 or other specified expenditure period shall revert to the general fund.

Laws 2000 (2nd S.S.), ch. 23, § 97 amends the purpose of the appropriations made by Laws 1996 (1st S.S.), ch. 4, § 34E and P so that those funds shall be used to make improvements to the south Florida street from Panorama to Desert Lake road in Otero county. The period of time in which this appropriation may be expended shall be extended through fiscal year 2004. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

Laws 2001, ch. 198, § 3, effective April 3, 2001, appropriates \$400,000 from the general fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 2001 and 2002 by the aviation division to carry out the provisions of this act for an air service assistance program. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

Laws 2003, ch. 385, § 10, effective April 8, 2003, appropriates \$975, 500 from the general fund to the state highway and transportation department for various road improvements.

Laws 2006, ch. 111, 60, effective March 8, 2006, appropriates general funds to the department of transportation for expenditure in fiscal years 2006 through 2010 for specific projects throughout the state.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 32, 34.

39A C.J.S. Highways §§ 55 to 63.

### **67-3-7. Secretary of transportation; appointment; qualifications; bond.**

A. The department shall be under the control of an executive officer to be known as the "secretary". The secretary shall have all powers necessary for the efficient management of the department. Except for the powers expressly granted to the state transportation commission by Sections 67-3-5, 67-3-7 and 67-3-23 NMSA 1978 and by Section 67-3-2 NMSA 1978, the secretary shall have all powers granted by law to the state transportation commission or the state transportation commissioners.

B. The secretary shall devote his entire time to his duties and shall receive an annual salary set by the commission. A secretary, during his period of service, shall not hold any other office under the laws of this state or of the United States.

**History:** 1953 Comp., § 55-2-1.6, enacted by Laws 1967, ch. 266, § 6; 1977, ch. 251, § 3; 1978, ch. 1, § 2; 2003, ch. 142, § 30.

## ANNOTATIONS

**The 1977 amendment** substituted the specific statutory reference for "Section 1" in the second sentence of Subsection A, added "with the consent of the governor" at the end of Subsection B and in Subsection C, deleted the former first sentence which read "The state highway engineer shall be a professional engineer" and substituted "the state highway engineer" for "he" in the present first sentence.

**The 1978 amendment,** in the last sentence of Subsection A, capitalized the word "Except," inserted "by this 1978 act and" preceding the statutory reference and substituted "the state highway engineer" for "and he"; deleted former Subsection B which read: "The state highway engineer shall be appointed by the highway commission with the consent of the governor"; redesignated former Subsection C as present Subsection B and deleted former Subsection D which read: "The state highway engineer shall execute a bond in the penal sum set by the state board of finance, conditioned for the faithful performance of his duties, which bond shall be approved by the commission. The cost of the bond shall be paid by the highway department as part of the operating cost of the department and it shall be filed with the secretary of state."

**The 2003 amendment,** effective July 1, 2003, substituted "Secretary of Transportation" for "State Highway Engineer" in the section heading; substituted "secretary" for "state highway engineer" in Subsections A and B; in Subsection A, substituted "state transportation commission" for "state highway commission"; and substituted "Sections 67-3-5, 67-3-7 and 67-3-23 NMSA 1978 and by Section 67-3-2 NMSA 1978" for "this 1978 act and by Section 55-2-1.1 NMSA 1953".

**State highway engineer (now secretary of transportation) is not subject to transfer** provisions of 10-7-1 NMSA 1978. State ex rel. Bird v. Apodaca, 91 N.M. 279, 573 P.2d 213 (1977).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 162.

### **67-3-8. Powers and duties of secretary.**

The secretary shall:

A. serve as the chief staff officer of the state transportation commission and shall be responsible to the commission for the operations and management of the work of the department;

B. organize the department in such a manner as to properly conduct the work of the department;

C. establish six highway construction districts with the approval of the state transportation commission. The secretary shall designate a district engineer in each construction district to supervise and manage the operations of the district. The district engineer shall be a professional engineer. The authority and responsibility for the actual construction for all construction projects within the district shall be delegated to the district engineer. District engineers shall attend state transportation commission meetings;

D. in accordance with the provisions of the Personnel Act [10-9-1 NMSA 1978], employ such assistants and employees as may be required for the efficient operation of the department, each of whom shall possess all the qualifications that may be prescribed for such position; provided that, notwithstanding the provisions of the Personnel Act, no more than five division directors shall be covered by and subject to the Personnel Act;

E. observe, administer and enforce the provisions of law now existing or hereafter enacted that pertain to the state highways, the state transportation commission or the department; and

F. ensure that any behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

History: 1953 Comp., § 55-2-1.7, enacted by Laws 1967, ch. 266, § 7; 1977, ch. 251, § 4; 1983, ch. 305, § 3; 1987, ch. 344, § 1; 1987, ch. 345, § 1; 2003, ch. 142, § 31; 2004, ch. 46, § 14.

## ANNOTATIONS

**The 1977 amendment** inserted "of the work" in Subsection A, substituted "with the approval of the commission" for "which shall be coextensive with the highway commission districts" in the first sentence of Subsection C and deleted "State" preceding "Personnel Act" in Subsection D.

**The 1983 amendment** inserted "state highway" preceding "commission" in Subsection A and in the first sentence of Subsection C, inserted "state highway" preceding "department" in Subsection A, in Subsection B, and in Subsection D; and substituted "six" for "five" in the first sentence of Subsection C.

**The 1987 amendments.** — Laws 1987, ch. 344, § 1, effective June 19, 1987, deleting the former last sentence of Subsection C which read "District engineers shall attend state highway commission meetings", was approved April 10, 1987. However, Laws 1987, ch. 345, § 1, effective April 10, 1987, inserting the proviso clause in Subsection D, but not including the deletion made in Laws 1987, ch. 344, § 1, was approved later on April 10, 1987. The section was set out as amended by Laws 1987, ch. 345, § 1. See 12-1-8 NMSA 1978.

**The 2003 amendment**, effective July 1, 2003, substituted "secretary" for "engineer" in the section heading; substituted "secretary" for "state highway engineer" and "state transportation commission" for "state highway commission" throughout the section; and deleted "state highway" preceding "department" in Subsections A, B, D and E.

**The 2004 amendment**, effective May 19, 2004, added new Subsection F.

**Effective dates.** — Laws 1983, ch. 305, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983.

**Personnel Act.** — See 10-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 162.

### **67-3-8.1. Secretary; authority to enter into intergovernmental agreement; gasoline tax sharing agreement; qualified tribe.**

A. The secretary may enter into an intergovernmental agreement that may be referred to as a "gasoline tax sharing agreement" with a qualified tribe to receive forty percent of the gasoline tax revenue paid on two million five hundred thousand gallons of gasoline each month in exchange for the qualified tribe's agreement that the qualified tribe or a registered Indian tribal distributor owned by the qualified tribe shall not:

(1) distribute gasoline for resale outside of the boundaries of that registered Indian tribal distributor's Indian reservation, pueblo grant or trust land located in New Mexico; and

(2) claim all or part of the deduction authorized in Subsection F of Section 7-13-4 NMSA 1978.

B. The term of a gasoline tax sharing agreement entered into pursuant to this section shall be for a period of up to ten years.

C. A gasoline tax sharing agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between the state and any other tribe.

D. Nothing in this section or in a gasoline tax sharing agreement entered into pursuant to this section shall be construed as creating rights in a third party.

E. Copies of gasoline tax sharing agreements shall be promptly transmitted to the secretary upon signing by the representatives of the governments that are parties to the agreement.

F. As used in this section:

(1) "qualified tribe" means the Pueblo of Nambe or the Pueblo of Santo Domingo, as long as it owns one hundred percent of a registered Indian tribal distributor pursuant to the Gasoline Tax Act [7-13-1 NMSA 1978], that qualifies for a deduction pursuant to Subsection F of Section 7-13-4 NMSA 1978; and

(2) "tribe" means an Indian nation, tribe or pueblo located in New Mexico.

History: 1978 Comp., § 67-3-8.1, enacted by Laws 2003, ch. 150, § 3; 2004, ch. 109, § 3.

## ANNOTATIONS

**The 2004 amendment**, effective July 1, 2004, amended Paragraph (1) of Subsection F to add "or the Pueblo of Santo Domingo".

**Effective dates.** — Laws 2003, ch. 150, § 4 makes the act effective July 1, 2003.

### **67-3-8.2. Secretary; authority to sell or otherwise dispose of property or property interest.**

A. In the event the department acquires by condemnation or other means property or a property interest, including water, mineral and oil and gas rights in excess of the dimensions or amount necessary for public use, as determined by the department if the determination occurs within five years of the date of the acquisition, the prior owner from whom the property or property interest was acquired or the prior owner's personal representative or heirs shall have the option to purchase the property or property interest determined to be in excess. The persons may purchase the property or property interest at a price equal to the price paid for the excess property or property interest by the department to the prior owner at the time of acquisition, plus interest at the rate of six percent per year, for the period beginning with the date the prior owner received final payment for the property or property interest taken and ending when the notice of intent to dispose is mailed, less the amount of any liens attached against the property or property interest while it was held by the department.

B. The notice of intent to dispose shall be mailed to the last known address of the prior owner by certified mail with a return receipt requested. The notice shall notify the prior owner of the prior owner's right to purchase, specify which portion of the property or property interest of the prior owner is available for purchase by the prior owner, the amount of money, both the principal and interest, required to repurchase it and the amount of any liens that may be deducted from the purchase price. If within thirty days after mailing the notice of intent to dispose, the prior owner or the prior owner's personal representative or heirs elect to exercise the option to purchase, the department shall enter into an agreement prepared and approved by the appropriate legal officer for the sale of the excess property or property interest to the prior owner or the prior owner's personal representative or heirs.

C. If the prior owner or the prior owner's personal representative or heirs have not elected to exercise the option within thirty days from the date of mailing the notice of intent to dispose, the department may sell the property or the property interest on the open market in a commercially reasonable manner. The proceeds from the sale of the property or property interest shall be deposited in the state road fund.

History: Laws 2004, ch. 77, § 1.

## ANNOTATIONS

**Emergency clauses.** — Laws 2004, ch. 77, § 2 makes the act effective immediately. Approved March 4, 2004.

### **67-3-9. [Office.]**

That the said state highway commission and the state highway engineer shall be provided with suitable offices in the state capitol by the superintendent of public buildings and property, which offices shall be under the charge of the said state highway engineer and shall be kept open at such times as the business of the commission and the convenience of the public shall require. Such offices shall be conveniently and properly furnished and shall be the repository for all records of the commission.

**History:** Laws 1917, ch. 38, § 4; C.S. 1929, § 64-305; 1941 Comp., § 58-204; 1953 Comp., § 55-2-4.

## ANNOTATIONS

**Superintendent of public buildings and property.** — For present provisions regarding the control, care and custody of the building in which the legislature sits by the legislative council, see 2-3-4 and 2-3-5 NMSA 1978.

### **67-3-10. Meetings; oaths; seal; policy.**

It is the duty of the state transportation commission to hold meetings at such times and for such periods as it deems essential to the proper carrying out of the provisions of Chapter 67 NMSA 1978. The members shall have power to administer oaths, and the commission shall have a common seal. It is the duty of the commission to consider and determine at its meetings all questions relating to the general policy of the commission and the conduct of the work in general; to receive and consider, at such times as it may elect, the annual report of the secretary; and to act in all matters relating to the recommendations, reports and such other matters as it finds advisable to submit to the governor or to the legislature; provided, however, that any reports or information shall be furnished to the governor by the commission upon his request.

**History:** Laws 1917, ch. 38, § 6; C.S. 1929, § 64-307; 1941 Comp., § 58-205; 1953 Comp., § 55-2-5; 2003, ch. 142, § 32.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003 added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "secretary" for "state highway engineer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways §§ 56, 59.

### **67-3-11. Rule-making power.**

The state transportation commission is hereby authorized to make all rules and regulations as may be necessary to carry out the provisions of Chapter 67 NMSA 1978.

**History:** Laws 1917, ch. 38, § 20; C.S. 1929, § 64-321; 1941 Comp., § 58-206; 1953 Comp., § 55-2-6; 2003, ch. 142, § 33.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 209, 210.

39A C.J.S. Highways § 157.

### **67-3-12. Powers and duties.**

In addition to the powers now conferred upon it by law, the state transportation commission:

A. may declare abandoned and close to public traffic all grade crossings of railroads by state highways in cases where grade separations or other adequate crossings are substituted therefor or where such grade crossings become unnecessary to the public convenience by reason of changes in highway locations;

B. may offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction of offenders in cases of theft, defacement or destruction of markers or highway signs, lights or other warning devices placed upon or along highways of this state under the supervision of the state transportation commission and for information leading to the arrest and conviction of offenders or for the return of property in case of theft or unlawful damaging of property under the control of the commission. All such rewards when paid shall be paid from the state road fund upon voucher drawn by the secretary or other authorized officer or agent of the department;

C. shall prescribe by rule the conditions under which pipelines, telephone, telegraph and electric transmission lines and ditches may be placed along, across, over or under public highways in this state and shall forcibly remove or cause to be removed pipelines, telephone, telegraph or electric transmission lines or ditches that may be placed along, across, over or under such public highways in violation of such rules and regulations;

D. shall employ an attorney to assist and advise the state transportation commission and the department in the discharge of their duties and to appear and represent the interests of the commission or department in any case before any court or tribunal in which the official duties, powers, rights or privileges of the commission or department may be involved or affected and to pay that attorney the reasonable value of the attorney's services out of the state road fund;

E. shall bring and maintain in the name of the state actions and proceedings deemed necessary by the state transportation commission for the condemnation of rights of way for public highways or for the removal or condemnation of buildings or other improvements that encroach in whole or part upon the rights of way of public highways or for the condemnation of gravel pits or other deposits of materials or supplies suitable for the construction of public highways. The attorney general of New Mexico shall appear in and prosecute all such cases on behalf of the state upon request of the state transportation commission. All such proceedings shall be conducted in the same manner as other cases for the condemnation of real property. The damages assessed in proceedings brought under the provisions of this section shall be paid out of the state road fund from money furnished for that purpose by cooperative agreement between the state, federal government and the county within which the condemned property is situate or any such governmental bodies or out of money furnished for the construction of the highway in connection with which the condemnation is had, by the county in which the condemned property is situate; provided, however, that if no such money is available, the damages shall be advanced on behalf of said counties out of their money in the state road fund and the state treasurer shall thereafter reimburse the state road fund for the money advanced out of the next installment of money from motor vehicle license fees accruing to the road fund of the county for which such funds were so advanced;

F. shall designate in its discretion one of its employees as acting secretary to act at all times when the secretary is absent from the state capital. The acting secretary, when designated, has the right and is hereby given authority at all times when the secretary is absent from the state capital to sign all federal project statements, federal project agreements and federal vouchers with the same force and effect as if signed by the secretary in person, and the certificate of the acting secretary attached to any federal project statement, federal project agreement or federal voucher to the effect that the secretary was absent from the state capital at the time that the same was so signed by the acting secretary shall be conclusive evidence of the truth of such fact. The acting secretary may also be vested by the state transportation commission with power and



authority to act for the secretary in such other matters as the state transportation commission may determine;

G. subject to the provisions of Subsection H of this section, may conduct, permit or authorize commercial enterprises or activities on department- or commission-owned land or land leased to or from the department for the purpose of providing goods and services to the users of the property or facilities on the land, including commercial enterprises or activities, other than commercial enterprises or activities on a controlled-access facility conducted, permitted or authorized pursuant to Section 67-11-9 NMSA 1978. In furtherance of these commercial enterprises or activities, the commission may:

(1) authorize the lease of department- or commission-owned land as it deems necessary, in which case consideration for the lease shall be payments in cash or cash equivalent that shall be deposited into the state road fund; or

(2) authorize the sale or exchange or lease with in-lieu value consideration of department- or commission-owned land; provided that the sale or exchange or lease with in-lieu value shall be subject to the ratification and approval by joint resolution of the state legislature prior to the sale or exchange or lease with in-lieu value becoming effective; and

H. for the purposes of Subsection G of this section shall:

(1) adopt rules necessary to carry out the provisions of Subsection G of this section;

(2) prior to initiating any action to conduct, permit or authorize commercial enterprises or activities, adopt a rule providing a procedure to involve residents of the municipality or county in which the commercial enterprises or activities are proposed to occur in the department's planning and decision-making process for the sole purpose of advising the commission and department on the feasibility and suitability of the proposed commercial enterprises or activities;

(3) comply with the Procurement Code in the acquisition process whenever commercial enterprises or activities result in the commission or department acquiring construction, services or tangible personal property, as those terms are defined in the Procurement Code;

(4) if the commercial enterprises or activities are to be developed or operated by a private entity, direct that private entity to:

(a) create its plans to be not necessarily in compliance but generally compatible with local zoning and land use policies, including affordable housing and historic and architectural standards, if any, and, to the extent the private entity will obtain water or other services from a local authority, negotiate an agreement between

relevant parties for those services, the terms and conditions of which shall be no more stringent than the local authority's then current laws, rules and policies; and

(b) submit its plans to the local zoning and land use authority for comment. The local authority shall communicate its recommendations and comments in writing to the department and private entity within thirty days of receiving the plans. The department, commission and private entity shall take no action on the project in reliance on those plans until they have received the local authority's recommendations and comments or until the thirty-day comment period has expired, whichever comes first; provided that the local authority's approval is not required under this section, and this section does not delegate to the local authority power that it does not otherwise have; and

(5) not use the power of eminent domain to acquire land to be developed or operated by a private entity.

**History:** Laws 1929, ch. 110, § 1; C.S. 1929, § 64-303; Laws 1933, ch. 21, § 8; 1941 Comp., § 58-207; 1953 Comp., § 55-2-7; 2003, ch. 142, § 34; 2005, ch. 122, § 1 ; 2006, ch. 34, § 3.

## ANNOTATIONS

**Cross references.** — For powers of commission not derogated by Scenic Highway Zoning Act, see 67-13-16 NMSA 1978.

For eminent domain, see 42A-1-1 NMSA 1978 et seq.

For forms for application for use of highways for oil and gas pipelines, see 70-3-9 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "secretary" for "state highway engineer".

**The 2005 amendment,** effective June 17, 2005, adds Subsection G to permit commercial enterprises or activities on property of the department of transportation for the purpose of providing goods and services to users of the property, to permit the sale, exchange or lease of department property to further the activities and to provide that proceeds from the activities be deposited into the state road fund.

**The 2006 amendment,** effective July 1, 2006, provides in Subsection G that subject to the provisions of Subsection H, the commission may conduct or authorize commercial enterprises or activities on department- or commission-owned land other than commercial enterprises or activities on a controlled-access facility conducted, permitted or authorized pursuant to Section 67-11-9 NMSA 1978; adds Paragraph (2) of Subsection G to provide that the commission may authorize the sale, exchange or lease

with in-lieu value consideration of department- or commission-owned land if the transaction is ratified by the legislature; adds Paragraphs (2) through (5) of Subsection H to require the commission to involve the residents of the municipality or county in which the commercial enterprise will occur, comply with the Procurement Code in purchasing goods or services for the commercial enterprise, direct a private entity that will develop or operate a commercial enterprise to develop plans compatible with local zoning and land use policies, to negotiate for water and other local governmental services and to submit plans to local zoning and land use authorities for comment, and prohibit the use of the power of eminent domain to acquire property to be developed or operated by a private entity.

**Compiler's notes.** — Laws 1933, ch. 21, § 2, repealed Subsection D of this section. But see N.M. Const., art. IV, § 18, which provides that no law be revised, amended or extended by reference to title only and that each section as revised, amended or extended be set out in full.

**Use of highway easements for utility services is within general purpose** for which highways are designed, in addition to their use for transportation of movable vehicles. State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

**Declaratory judgment proper for sand and gravel removal cost.** — The commission can properly bring an action for declaratory judgment to determine the amount to be paid for sand and gravel removed for public highway purposes. The determination of price is an actual controversy as contemplated by the declaratory judgment law, and declaratory judgment is a proper means of resolving the questions. 1961-62 Op. Att'y Gen. No. 61-12.

**Commission is not subject to suit except by consent** of the state, since it is a state agency not vested with corporate powers. Dougherty v. Vidal, 37 N.M. 256, 21 P.2d 90 (1933) (decided under former law).

**Counterclaim of municipality** arising out of same transaction or occurrence that is the subject matter of main action brought by state is a suit against the state which is immune; however, damages claimed by municipality can be urged by way of defense to recoup. State ex rel. State Hwy. Comm'n v. Town of Grants, 69 N.M. 145, 364 P.2d 853 (1961).

**Control of public highways within municipality.** — If exclusive control of all streets within the city limits was given to the city under 3-49-1 NMSA 1978, it was revoked by this section with respect to public highways located within the limits of the municipality. State ex rel. State Hwy. Comm'n v. Ford, 74 N.M. 18, 389 P.2d 865 (1964).

**City not indispensable party.** — When an action concerns encroachments upon the state highway system within a city, the state has been given express jurisdiction, and the city is not an indispensable party. State ex rel. State Hwy. Comm'n v. Ford, 74 N.M. 18, 389 P.2d 865 (1964).

**Removal of encroachments from right-of-way.** — Petition by commission for injunctive relief to compel the removal of encroachments from a highway right-of-way, alleging a dedication of city street and that such street is a part of the state highway system, stated a cause of action under the provisions of 67-3-12 NMSA 1978. State ex rel. State Hwy. Comm'n v. Ford, 74 N.M. 18, 389 P.2d 865 (1964).

**Off-street parking.** — While commission may acquire lands and build and maintain state highways within municipal boundaries, it is not authorized to finance, construct or maintain off-street parking facilities within such boundaries because these are not part of the state highway system. 1943-44 Op. Att'y Gen. No. 4519.

**Relocation of sewer and water lines by municipality.** — A municipality owes a duty to relocate its municipally owned sewer and water lines which are in a public highway at its own expense when it is necessary to provide a safe and adequate highway. State ex rel. State Hwy. Comm'n v. Town of Grants, 66 N.M. 355, 348 P.2d 274 (1960), rev'd in part, 69 N.M. 145, 364 P.2d 853 (1961).

**Removal of public utility poles and lines.** — When creation of highway for public use results in removal of poles and lines of a public utility, no obligation falls on the highway department to reimburse the utility. 1949-50 Op. Att'y Gen. No. 5222.

**Erection of private telephone line within right-of-way.** — Neither a board of county commissioners nor the commission could consent to erection of a private telephone line within the right-of-way of a county road. 1953-54 Op. Att'y Gen. No. 5884.

**Granting of easement over state highway by county commissioners.** — County commissioners have no right to grant any easement to a public utility over a state highway, the right-of-way of which came under the control of the commission after 1917. 1973 Op. Att'y Gen. No. 73-26; 1933-34 Op. Att'y Gen. 89.

**Allowance of pipeline on highway easement.** — Construction of private company's pipeline underneath a highway, built on an easement granted by a landholder for the highway as allowed by the state highway department as easement-holder under Subsection C, represents a permissible use to be made of a public highway easement and does not constitute an additional burden on the servient estate owned by the landowner. Amerada Hess Corp. v. Adeo, 106 N.M. 422, 744 P.2d 550 (Ct. App. 1987).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 209, 210.

Liability for injury on highway or bridge at town, municipal or county line, 8 A.L.R. 1274.

Power to accept and administer trust for repairing and improving highway, 10 A.L.R. 1383.

Duty to make highway safe for children, by providing proper barriers, 36 A.L.R. 309.

Mandamus to compel improvement or repair of highway as affected by its abandonment, 46 A.L.R. 266.

Duty and liability as to conditions beyond limits of highway which affect safety or comfort of travel, 53 A.L.R. 764.

Personal liability of public official for personal injury on highway, 57 A.L.R. 1037.

Personal liability of highway officers for negligence of subordinates or employees, 61 A.L.R. 300.

Duty to blockade abandoned highway, 71 A.L.R. 1207.

Duty toward travelers as regards condition of street or highway left as result of accident, 81 A.L.R. 1004.

Power of highway officers with respect to billboards or other conditions on adjoining property which are deemed dangerous to travel or offensive aesthetically to travelers, 81 A.L.R. 1547.

Right of owner or occupant of property to damages for obstruction of, or interference with, access incident to building operations on other private property, 86 A.L.R. 101.

Liability for injury due to improper plan for, or defect in, original construction of street or highway, 90 A.L.R. 1502.

Liability for injury or damage by slide or fall of object from embankment at side of highway, 107 A.L.R. 596.

Regulation of use of highways by private motor vehicle for hire, 109 A.L.R. 550, 175 A.L.R. 1333.

Prohibition to control administrative officers in matters relating to highways, 115 A.L.R. 3, 159 A.L.R. 627.

Liability of municipality or other governmental body to pedestrian for injury in closed or partially closed street during construction or repairs, 119 A.L.R. 841.

Failure of municipality properly to maintain traffic signal devices as ground for liability for damage to property or person, 151 A.L.R. 1404.

Municipal liability for injury on ice formed by flushing or sprinkling streets, as affected by governmental or private nature of corporation, 156 A.L.R. 701.

Alteration or relocation of street or highway as discontinuance of parts not included, 158 A.L.R. 543.

Right to recover for injuries consequent upon defect on the highway as affected by failure to comply with regulation as to registration of automobile or motorcycle or licensing of operator, 163 A.L.R. 1375.

Duty as regards barriers for protection of automobile travel, 173 A.L.R. 626.

Attracting people in such numbers as to obstruct access to the neighboring premises, is nuisance, 2 A.L.R.2d 437.

Injury to traveler from collision with privately owned pole standing within boundaries of highway, 3 A.L.R.2d 6.

Liability of municipality for damage caused by fall of tree or limb, 14 A.L.R.2d 186.

Duty of highway construction contractor to provide temporary way or detour around obstruction, 29 A.L.R.2d 876.

Liability of state, municipality or public agency for vehicle accident occurring because of accumulation of water on street or highway, 61 A.L.R.2d 425.

Liability, in negligence action, of state highway or turnpike authority, 62 A.L.R.2d 1222.

Regulations as to adjustment or removal of wires of public service corporation to permit moving buildings, 83 A.L.R.2d 464.

Authorization, prohibition, regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose, 14 A.L.R.3d 896.

Damaging highway or bridge by nature or weight of vehicles or loads transported over it, 53 A.L.R.3d 1035, 31 A.L.R.5th 171.

39A C.J.S. Highways § 157.

### **67-3-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 117, § 3A repeals 67-3-13 NMSA 1978, as enacted by Laws 1909, ch. 42, § 3, relating to general charge and supervision of highways, effective March 28, 1989. For provisions of former section, see Original Pamphlet. For present comparable provisions, see 67-3-14 NMSA 1978.

### **67-3-14. State transportation commission; powers and duties; road funds.**

A. The state transportation commission has charge of all policy matters pertaining to the expenditure of the state road fund in the construction, improvement and maintenance of state highways and bridges in the state.

B. The state transportation commission may also make rules and regulations governing the method of construction, improvement and maintenance of state highways and bridges and compel compliance with the laws, rules and regulations relating to state highways and bridges. The commission shall have no duty to maintain or supervise the maintenance of roads that are not designated state highways or bridges.

C. The secretary shall have authority to expend state road funds and use state forces and equipment in an amount not to exceed ten thousand dollars (\$10,000) for the purpose of restoring and preserving the public safety and welfare in any emergency involving a threat of injury to lives or property within areas under the control of the state or local governmental bodies.

**History:** Laws 1912, ch. 54, § 2; Code 1915, § 2632; C.S. 1929, § 64-326; 1941 Comp., § 58-209; 1953 Comp., § 55-2-9; 1981, ch. 359, § 1; 1989, ch. 117, § 1; 2003, ch. 142, § 35.

## ANNOTATIONS

**Cross references.** — For creation of state highway department, see 67-3-6 NMSA 1978.

**The 1981 amendment** added the catchline, designated the formerly undesignated two paragraphs as Subsections A and B, added Subsection C and, in Subsection B, substituted "employees" for "employes" twice in the first sentence and in the second sentence and "The" for "Said" in the third sentence and deleted "and" preceding "compel" and following "effect;" in the third sentence. Laws 1981, ch. 359, contains no effective date provision but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

**The 1989 amendment**, effective March 28, 1989, in Subsection A substituted the present language for the former first sentence, which read: "The commission shall have charge of all matters pertaining to the expenditure of the state road fund in the construction, improvement and maintenance of public roads and bridges in the state and shall do all things necessary and expedient in the exercise of such supervision" and deleted the former second and third sentences, relating to employment of personnel; in Subsection B rewrote the first sentence and added the second sentence; and in Subsection C substituted "secretary of highway and transportation" for "chief highway administrator" and made minor stylistic changes.

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission" in the section heading and in Subsections

A and B; and deleted "of highway and transportation" following "secretary" in Subsection B.

**Temporary provisions.** — Laws 2003, ch. 142, § 97, effective July 1, 2003, provides that all references in law to the state highway commission shall be deemed to be references to the state transportation commission. All references in law to the state highway and transportation department shall be deemed to be references to the department of transportation. All references in law to the secretary of highway and transportation shall be deemed to be references to the secretary of transportation.

**Compiler's notes.** — Some of the following annotations are taken from cases decided prior to the 1981 and 1989 amendments.

**Pre-1989 responsibilities.** — The greater supervisory responsibilities contemplated by this section prior to the 1989 amendment included more than issuing regulations. Those responsibilities could have included supervising a county's actual day-to-day maintenance of a roadway. *Romero v. State*, 112 N.M. 332, 815 P.2d 628 (1991).

**County roads constructed with aid of state moneys.** — The department has the responsibility for maintenance of state highways. The counties have responsibility for maintenance of purely county roads. For the intermediate case - county roads which are constructed or maintained in whole or in part by the aid of state moneys - maintenance is a county responsibility, but under the general charge and supervision of the department, which may promulgate rules and regulations for that purpose. *Romero v. State*, 112 N.M. 291, 814 P.2d 1019 (Ct. App. 1991).

**Commission control over state road fund, generally.** — The commission may order all or any part of the state road fund to be drawn from the state treasury to be disposed of as it directs in the construction, improvement and maintenance of public roads and bridges. *State Hwy. Comm'n v. Sargent*, 20 N.M. 577, 151 P. 232 (1915).

**Commission, not counties, to expend bond proceeds.** — The commission has full authority to establish a system of state highways, and the proceeds of state highway bonds must be expended by the commission [state transportation commission] and not by counties. 1912-13 Op. Att'y Gen. 133.

**Effect of county laws on commission road creation powers.** — The exercise of power given to the territorial roads commission by Laws 1909, ch. 42, with regard to the creation of new roads, is in no way dependent upon, or governed by, the provisions of Laws 1905, ch. 124, for laying out of new roads by board of county commissioners. 1909-12 Op. Att'y Gen. 195.

**General policy of legislation has been to centralize control** of the state highways in the commission, leaving control of purely local county roads with the board of county commissioners. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).



**When designation of city underpass as state highway not permitted.** — The commission may not designate as a state highway an underpass in a city, not connected with, or intended to be, a part of a state highway. *Springer Transf. Co. v. City of Albuquerque*, 44 N.M. 407, 103 P.2d 129 (1940).

**Removal of road signs.** — A private citizen has no such interest in the maintenance of a highway and the route signs placed thereon by the commission as to enable him to maintain suit to enjoin their removal. *Tomlin v. Town of Las Cruces*, 38 N.M. 247, 31 P.2d 258 (1934).

**State transportation commission has power to employ special counsel** to advise and assist it in the performance of its duties. *State v. Davidson*, 33 N.M. 664, 275 P. 373 (1929).

**Power to improve road.** — Until the commission certifies back to the county or municipality a section of road it has been using as part of the state highway system and for which an alternative route has been adopted, it has the power to improve such section under 67-3-14, 67-3-16, 67-3-26, 67-3-31 and 67-3-40 NMSA 1978. 1933-34, Op. Att'y Gen. 150.

**Purchasing of real estate for departmental division offices.** — The department has statutory power to purchase real estate to be used for offices of a departmental division under the provisions of this section. 1951-52 Op. Att'y Gen. No. 5555.

**Commission to determine necessity for construction of road.** — Whether the construction of a Y road is necessary to connect two main trunk highways is to be determined by the commission and not the courts. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).

**Cannot determine geographic course.** — The territorial roads commission was directed to cooperate with the various boards of county commissioners in the construction of highways, but the commissioners were not vested with power to regulate the geographic course of such highways. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).

**Posting of signs.** — On a road over which the commission has exclusive jurisdiction without regard whatsoever to obligations incurred to another governmental agency, the commission can grant or refuse permission to post signs. On such highways, the state soil conservation committee (now soil and water conservation committee) can make application subject to the discretion of the commission. 1957-58 Op. Att'y Gen. No. 58-99.

**Permits to place signs of boundaries on rights-of-way.** — The commission has the authority within its own discretion to grant or refuse permits to place signs of boundaries on highway rights-of-way. 1957-58 Op. Att'y Gen. No. 58-99.

**Commission insurance requirements evidence desire to provide compensation** for bodily injury and property damage, the contractor's employees are compensated by workmen's compensation, and members of the public in general are compensated by the public liability insurance. The policy of the commission is not to indemnify employees under *Hockett v. Chapman*, 69 N.M. 324, 366 P.2d 850 (1961), interpretation of the workmen's compensation law permitting actions against coemployees. *Chavez v. Pino*, 86 N.M. 464, 525 P.2d 391 (Ct. App. 1974).

**Mandamus dismissed since no evidence of acceptance or maintenance.** — Mandamus to compel board of county commissioners to remove obstructions from land purportedly part of public highway system must be dismissed in absence of proof of acceptance of dedication or at least a partial maintenance by public funds. *State ex rel. Shelton v. Board of Comm'rs*, 49 N.M. 218, 161 P.2d 212 (1945).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 122.

39A C.J.S. Highways § 157.

### **67-3-15. [Duty to advise towns, villages and counties; highway system for state.]**

The commission shall, when requested, advise towns, villages and counties with regard to the construction and maintenance of any road or bridge, and shall select, lay out and construct a system of prospective state highways.

**History:** Laws 1912, ch. 54, § 3; Code 1915, § 2633; C.S. 1929, § 64-327; 1941 Comp., § 58-210; 1953 Comp., § 55-2-10.

### **ANNOTATIONS**

**Cross references.** — For establishment of department of transportation, see 67-3-6 NMSA 1978.

**No authority to designate city underpass as state highway.** — The commission is not authorized by this section, 67-2-4, 67-3-16 or 67-3-41 NMSA 1978 to designate as a state highway an underpass in a city not part of or intended to be part of a state highway. *Springer Transf. Co. v. City of Albuquerque*, 44 N.M. 407, 103 P.2d 129 (1940).

### **67-3-16. [General duty to construct, repair and maintain highways.]**

It shall be the duty of such commission to construct, repair and maintain, at the expense of the state either wholly or in part, such public roads and highways, within the state, as in their judgment will best subserve the interest of the general public, looking to the construction and maintenance of a complete system of highways in the state.

**History:** Laws 1909, ch. 42, § 4; Code 1915, § 2638; C.S. 1929, § 64-331; 1941 Comp., § 58-211; 1953 Comp., § 55-2-11.

## ANNOTATIONS

**Cross references.** — For establishment of department of transportation, see 67-3-6 NMSA 1978.

**Purpose of commission.** — The paramount purpose of the creation of the commission was to subserve the public interest, in construction and maintenance of a complete system of highways in the state. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).

**Public necessity of right-of-way not obviated by donation.** — Merely because an individual gratuitously gave to the state a right-of-way does not negative the public necessity thereof. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).

**Commission, not courts, to determine highway necessity.** — Need or requirement for construction of a particular piece of highway is a matter to be determined by the commission and not by the courts. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).

**Power to improve road.** — Until the commission certifies back to a county or municipality a section of road it has been using as part of the state highway system, and for which an alternative route has been adopted, it has the power to improve such section under 67-3-14, 67-3-16, 67-3-26, 67-3-31 and 67-3-40 NMSA 1978. 1933-34 Op. Att'y Gen. 150.

**No authority to designate city underpass as state highway.** — The commission is not authorized by this section, 67-2-4, 67-3-15 or 67-3-41 NMSA 1978 to designate an underpass in a city as a state highway. *Springer Transf. Co. v. City of Albuquerque*, 44 N.M. 407, 103 P.2d 129 (1940).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 64 to 69.

Liability, in motor vehicle-related cases, of governmental entity for injury, death, or property damage resulting from defect or obstruction in shoulder of street or highway, 19 A.L.R.4th 532.

Governmental liability for compensation or damages to advertiser arising from obstruction of public view of sign or billboard on account of growth of vegetation in public way, 21 A.L.R.4th 1309.

Liability of governmental entity for damage to motor vehicle or injury to person riding therein resulting from collision between vehicle and domestic animal at large in street or highway, 52 A.L.R.4th 1200.

Highways: governmental duty to provide curve warnings or markings, 57 A.L.R.4th 342.

Governmental tort liability as to highway median barriers, 58 A.L.R.4th 559.

Governmental tort liability for detour accidents, 1 A.L.R.5th 163.

40 C.J.S. Highways § 179.

### **67-3-17. Snow removal from designated skiing area parking facilities.**

The state transportation commission is hereby authorized and empowered to remove any snow that it deems to be an obstacle to the parking of motor vehicles at any parking area that serves a skiing area. If the parking area is on lands owned by or leased from the state, municipal, county or federal government, the cost of snow removal shall be borne by the state as in the case of road maintenance. If the parking facilities are on private lands, the person in control of the skiing area shall be liable for the payment of such sum, not less than actual cost, as the state transportation commission decides to be the reasonable value of such snow removal. For the purposes of this section, the phrase "skiing area" shall mean any lands or areas used for the sport of skiing and recognized by the tourism department as a tourist attraction.

**History:** 1953 Comp., § 55-2-11.1, enacted by Laws 1967, ch. 20, § 2; 2003, ch. 142, § 36.

#### **ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, substituted "state transportation commission" for "state highway commission"; and substituted "tourism department" for "department of development".

**Compiler's notes.** — Laws 1967, ch. 20, § 2, and Laws 1967, ch. 165, § 1, each enacted a new 55-2-11.1, 1953 Comp. However, since Laws 1967, ch. 20, also contained a Section 3, Laws 1967, ch. 20, §§ 2 and 3, have been compiled as 55-2-11.1 and 55-2-11.2, 1953 Comp. (67-3-17 and 67-3-18 NMSA 1978), and Laws 1967, ch. 165, § 1, has been compiled as 55-2-11.3, 1953 Comp. (67-3-19 NMSA 1978).

**Authority of county to clear private road.** — This section does not confer any authority upon a county department, so a county may not use its equipment to clear or blade a snow packed private road even if it charges a fee for such service. 1975 Op. Att'y Gen. No. 75-2.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 79, 112.

Duty to remove ice and snow from highway, 27 A.L.R. 1104.

### **67-3-18. [Skiing area with parking facilities; rejection of snow removal services.]**

The person in control of the skiing area, with parking facilities on private land, shall have the right to reject this service.

**History:** 1953 Comp., § 55-2-11.2, enacted by Laws 1967, ch. 20, § 3.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 1967, ch. 20, § 2, and Laws 1967, ch. 165, § 1, each enacted a new 55-2-11.1, 1953 Comp. However, since Laws 1967, ch. 20, also contained a Section 3, Laws 1967, ch. 20, §§ 2 and 3, have been compiled as 55-2-11.1 and 55-2-11.2, 1953 Comp. (67-3-17 and 67-3-18 NMSA 1978), and Laws 1967, ch. 165, § 1, has been compiled as 55-2-11.3, 1953 Comp. (67-3-19 NMSA 1978).

### **67-3-19. Duty to repair and maintain state park roads, bridges and parking areas.**

It is the duty of the state transportation commission to repair and maintain the public roads and highways that provide access to state park and recreation areas and to repair and maintain all roads, bridges and parking areas within the boundaries of the state park and recreation areas that will best serve the needs of the general public.

**History:** 1953 Comp., § 55-2-11.3, enacted by Laws 1967, ch. 165, § 1; 2003, ch. 142, § 37.

#### **ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Compiler's notes.** — Laws 1967, ch. 20, § 2, and Laws 1967, ch. 165, § 1, each enacted a new 55-2-11.1, 1953 Comp. However, since Laws 1967, ch. 20, also contained a Section 3, Laws 1967, ch. 20, §§ 2 and 3, have been compiled as 55-2-11.1 and 55-2-11.2, 1953 Comp. (67-3-17 and 67-3-18 NMSA 1978), and Laws 1967, ch. 165, § 1, has been compiled as 55-2-11.3, 1953 Comp. (67-3-19 NMSA 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 200.

39A C.J.S. Highways § 32.

### **67-3-20. El Camino Real; supervision and control.**

The system of highways established by Sections 67-9-2 through 67-9-5 NMSA 1978 shall be under the supervision and control of the state transportation commission, and it shall carry out the provisions at such time as in its judgment is proper.

**History:** Laws 1909, ch. 42, § 5; Code 1915, § 2639; C.S. 1929, § 64-332; 1941 Comp., § 58-212; 1953 Comp., § 55-2-12; 2003, ch. 142, § 38.

#### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "Sections 67-9-2 through 67-9-5 NMSA 1978" for "Sections 2707 to 2715 inclusive".

#### **67-3-21. [Investigations and experiments; reports; cooperation of state educational institutions; costs; publications.]**

The commission shall conduct such investigations and experiments as in its judgment may tend to the benefit of highway construction in the state, and make reports thereof to the governor, and may cooperate with state or national organizations in experiments and work for the advancement of highway construction. It shall cause investigations and tests of road materials to be made within the various counties of the state until a sufficient knowledge is obtained of the location and availability of all materials suitable for road building, and in such investigations and tests may call upon and utilize any of the officers, employes, equipment or resources of any of the state educational institutions. Provided, however, that the actual cost of such tests or investigations made by any institution shall be borne by the state and paid from the state road fund. The commission may issue and circulate such bulletins, pamphlets and literature as it may deem necessary.

**History:** Laws 1912, ch. 54, § 4; Code 1915, § 2634; C.S. 1929, § 64-328; 1941 Comp., § 58-213; 1953 Comp., § 55-2-13.

#### **ANNOTATIONS**

**Right of commissioners to discuss issues in open meetings.** — Although the power to make investigations and report thereon to the governor is unquestioned, under the broad and general authority of N.M. Const., art. V, § 14, there is no restriction on the right of the commission to discuss any of its responsibilities or problems in open meeting, and, inasmuch as under the democratic system it is important that the public be informed concerning the conduct of official business generally, an immunity otherwise enjoyed is not altered by the fact that a meeting was open and newspaper representatives were in attendance. *Adams v. Tatsch*, 68 N.M. 446, 362 P.2d 984 (1961).

**Funding of investigation legal.** — Commission of the state of New Mexico may legally set aside highway funds to be spent at the discretion of the legislative finance

committee to pay for an investigation of the operations of the New Mexico highway department. 1959-60 Op. Att'y Gen. No. 59-171.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways §§ 59, 62.

### **67-3-22. State transportation commission; annual report.**

The state transportation commission shall, on or before the first day of January of each year, make a report to the governor of all business transacted by the commission up to and including the thirtieth day of November, showing an itemized statement of money received and disbursed.

**History:** Laws 1909, ch. 42, § 9; Code 1915, § 2643; C.S. 1929, § 64-337; 1941 Comp., § 58-214; 1953 Comp., § 55-2-14; 2003, ch. 142, § 39.

#### **ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

**Compiler's notes.** — The 1915 Code compilers substituted the words "state highway commission" for "territorial road commission" apparently to comply with Laws 1912, ch. 54, § 1 which provided for such change of name.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 62.

### **67-3-23. Secretary of transportation; appointment.**

The governor shall appoint a secretary of transportation, with the approval of the state transportation commission and subject to the advice and consent of the senate. The secretary shall be in general charge of the work of the commission and be its active executive representative and shall serve as the representative of the department on the executive cabinet as provided for in the Executive Reorganization Act [9-1-1 NMSA 1978]. The secretary shall take the usual oath and execute in favor of the state a bond in the sum of fifty thousand dollars (\$50,000), of like character, with like sureties and for like purposes, to be approved and filed as prescribed in the Surety Bond Act [10-2-13 NMSA 1978]. The premium of the bond shall be paid out of the state road fund.

**History:** 1953 Comp., § 55-2-15, enacted by Laws 1977, ch. 251, § 5; 1978, ch. 1, § 3; 1987, ch. 268, § 36; 2003, ch. 142, § 40.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1977, ch. 251, § 5, repeals 55-2-15, 1953 Comp., relating to the appointment, duties, qualifications, etc., of the state highway engineer and enacts the above section.

**The 1978 amendment** substituted "governor" for "commission" and "the approval of the commission and subject to the advice and consent of the senate" for "the consent of the governor" in the first sentence, substituted "The chief highway administrator" for "who" at the beginning of the second sentence and deleted the former third sentence which read: "He shall receive an annual salary to be fixed by the commission and shall give his entire time and energy to the duties of his office, save as hereinafter provided."

**The 1987 amendment**, effective July 1, 1987, in the first sentence substituted "secretary of highway and transportation" for "chief highway administrator" and inserted "state highway" preceding "commission" in the second sentence substituted "secretary" for "chief highway administrator" at the beginning and near the end substituted "state highway and transportation department" for "highway department," in the third sentence substituted "the Surety Bond Act" for "Section 51-1-1 NMSA 1953", and made minor changes in language and punctuation throughout the section.

**The 2003 amendment**, effective July 1, 2003, rewrote the section heading; and substituted "state transportation commission" for "state highway commission".

**When salary increases lawful.** — When the salary increases granted are pursuant to the commission's personnel plan, such increases are lawful and the Personnel Act (10-9-1 to 10-9-25 NMSA 1978) is not applicable until commission employees are specifically included under the act. 1957-58 Op. Att'y Gen. No. 58-52 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 13.

39A C.J.S. Highways § 56.

## **67-3-24. Employees; appointment; compensation.**

The secretary, with the consent and approval of the state transportation commission, may appoint and fix the compensation of assistant engineers and clerks and employ such other help as may be necessary to the proper conduct of the work of the commission under the provisions of Chapter 67 NMSA 1978. All appointees on entering upon their duties shall first take the prescribed oath of office if so required by the commission.

**History:** Laws 1917, ch. 38, § 5; C.S. 1929, § 64-306; 1941 Comp., § 58-216; 1953 Comp., § 55-2-16; 2003, ch. 142, § 41.

### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "secretary" for "state highway engineer".



**Special counsel authorized.** — This statute authorized the commission to employ special counsel to advise it in the performance of its duties. *State v. Davidson*, 33 N.M. 664, 275 P. 373 (1929).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 13.

39A C.J.S. Highways § 58.

## **67-3-25. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1978, ch. 166, § 17, repeals 55-2-17, 1953 Comp. (67-3-25 NMSA 1978), relating to payment of premiums for required workmen's compensation insurance, effective March 31, 1978.

## **67-3-26. Duties of secretary; disbursement of state road fund.**

The secretary shall have charge of all records of the state transportation commission; shall keep a record of all proceedings and orders pertaining to the business of his office and of the state transportation commission; and shall keep on file copies of all plans, specifications and estimates prepared by his office. He shall cause to be made and kept in his office a general highway plan of the state. He shall prepare or cause to be prepared or call upon the county surveyor or the county highway superintendent to furnish a map showing all of the main highways of the several counties of the state and shall, under the direction of the state transportation commission, select and designate the highways that should comprise a system of state roads, which shall, as nearly as practicable, be such as will best serve the traffic needs and develop the resources of the state. Upon its adoption by the state transportation commission, the system of state roads so designated shall be improved as soon thereafter as practicable under the provisions of Chapter 67 NMSA 1978 and such other provisions as the legislature may enact therefor. The system of state roads so designated may be changed or added to from time to time by the secretary subject to the approval of the state transportation commission. The secretary shall collect information with reference to the mileage, character and condition of the highways and bridges in the several counties of the state and shall investigate and determine the methods of road construction and maintenance best adapted to the various sections of the state, having due regard to topography, natural conditions, the availability of road building materials, the prevailing traffic conditions and the ability of the counties to meet the cost of building and maintaining roads and bridges therein. He may, at all reasonable times, be consulted by county and other officials having authority over highways and bridges relative to any question affecting such highways and bridges, and he may in like manner call on county road officials and county surveyors for any information or maps relative to the location, character and condition of the highways and bridges within their jurisdiction or control. Any such official who fails to supply such

information when so called upon is guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100). He shall determine the character of and have supervision over the construction, repair and maintenance of all state roads and bridges improved under the provisions of Chapter 67 NMSA 1978 and shall prepare or approve all plans and specifications and estimates therefor. He shall report the proceedings of his office annually to the state transportation commission at such time as it may designate. All money in the state road fund shall be expended only upon itemized vouchers approved by the secretary, filed with the department of finance and administration, and warrants drawn by the secretary of finance and administration upon the state treasurer.

**History:** Laws 1917, ch. 38, § 7; C.S. 1929, § 64-308; 1941 Comp., § 58-218; 1953 Comp., § 55-2-18; Laws 1977, ch. 247, § 164; 2003, ch. 142, § 42.

## ANNOTATIONS

**The 1977 amendment** deleted "as soon as practicable after the taking effect of this act" preceding "prepare" in the second sentence, inserted "\$10.00" and "\$100" near the end of the sixth sentence and substituted "department of finance and administration" for "state auditor" and "secretary of finance and administration" for "state auditor" in the last sentence.

**The 2003 amendment**, effective July 1, 2003, substituted "secretary" for "state highway engineer" in the section heading and the section; and substituted "state transportation commission" for "state highway commission".

**Control over state roads to be exclusive.** — Laws 1917, ch. 38, gave the commission exclusive control over any and all road or roads comprised in the system of state roads. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).

**Generally, as to duty to maintain highways.** — The duty to maintain and keep public highways in repair is that of the respective counties in which the highways are located, except for highways and streets in municipalities and state highways. *Sanchez v. Board of County Comm'rs*, 81 N.M. 644, 471 P.2d 678 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970).

**Power to improve road.** — Until the commission certifies back to a county or municipality a section of road it has been using as part of the state highway system, and for which an alternative route has been adopted, it has the power to improve such section under 67-3-14, 67-3-16, 67-3-26, 67-3-31 and 67-3-40 NMSA 1978. 1933-34 Op. Att'y Gen. 150.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 122 to 129.

39A C.J.S. Highways § 170.

## **67-3-27. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 117, § 3B repeals 67-3-27 NMSA 1978, as enacted by Laws 1909, ch. 42, § 6, relating to investigation as to need for public roads and cooperation with counties in construction, effective March 28, 1989. For provisions of former section, see Original Pamphlet.

## **67-3-28. Cooperation with the state, municipalities, counties, school districts, adjoining states and federal agencies.**

The department may enter into cooperative agreements with any branch, agency, department, board, instrumentality or institution of the state or United States government; with the respective municipalities, school districts and counties in this state; or with any adjoining state for the construction or improvement of public highways and streets within the control of a branch, agency, department, board, instrumentality or institution of the state or United States government or within a municipality, county, school district or adjoining state for the division between the department and the branch, agency, department, board, instrumentality or institution of the state or United States government, county, school district, municipality or adjoining state of the expense of the project development, construction, reconstruction, improvement, maintenance or repair of public highways, streets and public school parking lots, or for the acquisition of rights-of-way therefor or for materials for the construction or improvement thereof. The department shall bear all costs of the acquisition of rights-of-way for federal-aid interstate roads, both rural and urban.

**History:** Laws 1929, ch. 100, § 1; C.S. 1929, § 64-601; Laws 1935, ch. 13, § 1; 1937, ch. 164, § 1; 1941 Comp., § 58-220; 1953 Comp., § 55-2-20; Laws 1955, ch. 278, § 1; 1957, ch. 244, § 1; 1971, ch. 193, § 1; 1983, ch. 68, § 1; 1986, ch. 20, § 127; 1993, ch. 277, § 1.

### **ANNOTATIONS**

**Cross references.** — For contracts with counties for maintenance of highways, see 67-3-41 NMSA 1978.

**The 1983 amendment** inserted "the state" in the section catchline, inserted "with any branch, agency, department, board, instrumentality or institution of the state or United States government" in the first sentence, inserted "or" preceding "with any adjoining state" near the beginning of the first sentence, deleted "or with any department or bureau or agency of the United States government" preceding "for the construction" near the middle of the first sentence, deleted "school" preceding "parking areas" near the middle of the first sentence, inserted "within the control of a branch, agency, department, board, instrumentality or institution of the state or United States government or" near the middle of the first sentence, substituted "a municipality, county,

school district or adjoining state" for "such municipality or within such counties or school districts or such adjoining state" near the middle of the first sentence, substituted the language beginning with "the state highway department" and ending with "or public school grounds" for "this state and such county or school district or municipality, or such adjoining state or such department or bureau or agency of the United States government of the expense of the construction or improvement of public highways within this state or within such municipalities or school districts or counties or such adjoining state" following "the division between" near the end of the first sentence, and substituted "department" for "commission" following "state highway" in the last sentence.

**The 1986 amendment** substituted "and streets" for "public parking areas and public school grounds" in two places in the first sentence.

**The 1993 amendment**, effective June 18, 1993, substituted "department" for "state highway commission" near the beginning of the first sentence and "project development, construction, reconstruction, improvement, maintenance or repair of public highways, streets and public school parking lots" for "construction or improvements of public highways and streets" near the end of that sentence, and deleted "state highway" before "department" near the middle of the first sentence and in the second sentence.

**Effective dates.** — Laws 1983, ch. 68, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983.

Laws 1986, ch. 20 contains no effective date as concerns the amendment of this section by that act, but, pursuant to N.M. Const., art. IV, § 23, the amendment of this section by that act takes effect May 21, 1986.

**Connection of highways under cooperative arrangement.** — Since under cooperative arrangement between the commission and the board of county commissioners the board of county commissioners acquired a highway right-of-way, the state may construct a Y connecting it with other highways without obtaining consent of the commissioners. *Gallegos v. Conroy*, 38 N.M. 154, 29 P.2d 334 (1934).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 202 to 204.

39A C.J.S. Highways § 157.

### **67-3-28.1. Repealed.**

## **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 63, § 1 repeals 67-3-28.1 NMSA 1978, as enacted by Laws 1983, ch. 305, § 6, relating to equitable division of funds between highway construction

districts, effective June 16, 1989. For provisions of former section, see 1988 Cumulative Supplement.

### **67-3-28.2. Local governments road fund created; uses.**

A. There is created in the state treasury the "local governments road fund" to be administered by the department. All income received from investment of the fund shall be credited to the fund. No money in the fund shall be used by the department to administer any program, and no entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to this section to meet the match required.

B. No more than five hundred thousand dollars (\$500,000) annually from the local governments road fund shall be used by the department to purchase at fair market value, for municipalities and counties that can demonstrate financial hardship as determined by the department, automotive, major road and miscellaneous equipment that would otherwise be sold at auction by the department as unusable for department purposes. The department shall adopt rules setting the procedure to carry out the purposes of this subsection.

C. Except for the amount in Subsection B of this section, money in the local governments road fund shall be distributed in the following amounts for the specified purposes:

(1) forty-two percent for the cooperative agreements program, to be used solely for the cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978; provided, however, that distribution amounts made pursuant to this paragraph in each year shall be based on the following allocations:

- (a) thirty-three percent for agreements entered into with counties;
- (b) forty-nine percent for agreements entered into with municipalities;
- (c) fourteen percent for agreements entered into with school districts; and
- (d) four percent for agreements entered into with other entities;

(2) sixteen percent for the municipal arterial program, to be used solely for the necessary project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for those streets that are principal extensions of rural state highways and of other streets not on the state highway system but that qualify under the designated criteria established by the department. In entering into agreements with municipalities to provide funds for any project qualifying for the municipal arterial program, the department shall give

preference to municipalities that contribute an amount equal to at least twenty-five percent of the project cost;

(3) sixteen percent for school bus routes, to be used solely for cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978 for acquiring rights of way and constructing, maintaining, repairing, improving and paving school bus routes and public school parking lots; and

(4) twenty-six percent for the county arterial program, to be used for project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for county roads for which individual counties have prioritized road projects. Prior to entering into any agreements for projects with the counties for the following fiscal year, in June of each year the department shall determine and certify the amount to which each county is entitled pursuant to the following schedule:

Road Mileage Category Based on  
Number of Miles Maintained

By a County:

Entitlement to County:

400 miles or under

\$250 for each mile

401 to 800 miles

\$100,000 plus \$200 for each mile over 400 miles

801 to 1,200 miles

\$180,000 plus \$150 for each mile over 800 miles

1,201 to 1,600 miles

\$240,000 plus \$100 for each mile over 1,200 miles

Over 1,600 miles

\$300,000 plus \$50 for each mile over 1,600 miles

If in any year there is an insufficient amount in the fund of the county arterial program to certify the total amount to which all counties are entitled, the department shall decrease the entitlement amount due to each county in the same proportion as the insufficiency is to the total entitlements to all counties. Distribution of an entitlement amount and an agreement entered into with a county for any of the purposes for which the money may be spent requires an amount from the county equal to at least twenty-five percent of the entitlement. Any uncommitted or unencumbered balance remaining in the county arterial program fund at the end of a fiscal year shall be transferred to the cooperative agreement program specified in Paragraph (1) of this subsection for additional funding of that program in the next fiscal year.

D. The department may transfer funds from the state road fund to the local governments road fund to facilitate cash flow for the funding of these local governments road projects. The administrator of the local governments road fund shall reimburse the state road fund in a timely manner for any such transfers.

**History:** Laws 1986, ch. 20, § 125; 1989, ch. 117, § 2; 1993, ch. 277, § 2; 1993, ch. 312, § 1; 1995, ch. 6, § 14.

## ANNOTATIONS

**The 1989 amendment**, effective March 28, 1989, deleted a semicolon preceding "created" in the catchline; in Subsection B(1) substituted "maintenance, repair, improvement and paving of public highways and streets and public school parking lots" for "and improvement of public highways and streets" in the introductory paragraph; and in Subsection B(3) substituted "improving and paving school bus routes and public school parking lots" for "and improving school bus routes".

**1993 amendments.** — Laws 1993, ch. 277, § 2, effective June 18, 1993, deleting "state highway" before "department" in the first and second sentences of Subsection A, the first sentence of Subsection B(2), the second sentence of Subsection B(4), and the first sentence of the second undesignated paragraph of Subsection B; deleting "for construction, maintenance, repair, improvement and paving of public highways and streets and public school parking lots" after "67-3-32 NMSA 1978" near the middle of the introductory language of Subsection B(1); substituting "project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for those" for "construction or reconstruction of those" in the first sentence of Subsection B(2); substituting "department" for "state highway commission" in the second sentence of Subsection B(2) and the first sentence of Subsection C; making stylistic changes in both sentences of Subsection B(2); inserting "acquiring rights of way and constructing" in Subsection B(3); substituting "project development, construction, reconstruction, improvement, maintenance, repair, right-of-way and material acquisition of and for" for "construction, reconstruction, improvement and maintenance of" in the first sentence and "1201" for "1200" near the end, in Subsection B(4); and substituting "this subsection" for "Subsection B of this section" in the last sentence of Subsection B, was approved April 7, 1993. However, Laws 1993, ch. 312, § 1, effective June 18, 1993, also amending this section by making the same changes as Laws 1993, ch. 277, except for the stylistic changes in former Subsection B and, in addition, adding present Subsection B, redesignating former Subsections B and C as present Subsections C, and adding "Except for the amount in Subsection B of this section" to the beginning of the first Subsection C, was approved April 8, 1993. This section was set out as amended by Laws 1993, ch. 312, § 1. See 12-1-8 NMSA 1978.

**The 1995 amendment**, effective July 1, 1995, inserted "cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978 for" in Paragraph C(3) and made minor stylistic changes.

**67-3-28.3. Secretary of highway and transportation; counties; public roads maintained by counties; duties.**

A. The board of county commissioners of each of the respective counties shall by May 1, 1988 and by April 1 of every year thereafter certify reports to the secretary of highway and transportation of the total mileage of public roads maintained by each county as of May 1, 1988, and by [as of] April 1 of every year thereafter [, of that year]; provided that in their reports the boards of county commissioners shall identify each of the public roads maintained by them by name, route and location. By July 1 of every year, the secretary of highway and transportation shall verify the reports of the counties and revise, if necessary, the total mileage of public roads maintained by each county and the mileage verified by the secretary of highway and transportation shall be the official mileage of public roads maintained by each county. After August 1, 1988, no distribution of amounts to any county for road purposes shall be made until that county has certified mileages to the secretary of highway and transportation in accordance with this section.

B. If a county has not made the required mileage certification pursuant to this section by May 1, 1988 and by April 1 of every year thereafter, the secretary of highway and transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties which have certified mileages.

**History:** 1978 Comp., § 67-3-28.3, enacted by Laws 1987, ch. 347, § 22; 1988, ch. 106, § 3.

## ANNOTATIONS

**Bracketed material.** — The brackets in the first sentence in Subsection A have been added by the compiler for clarity and to indicate apparent surplusage following the amendment of this section by Laws 1988, ch. 106, § 3. The bracketed material was not enacted by the legislature and it is not part of the law.

**The 1988 amendment,** effective May 18, 1988, designated the existing provisions of the section as Subsection A; substituted "Secretary of highway and transportation" for "Chief highway administrator" in the catchline; in Subsection A, substituted "May 1, 1988 and by April 1 of every year thereafter" for "August 1, 1987 and by August 1 of every odd-numbered year thereafter" and "May 1, 1988, and by April 1 of every year thereafter" for "January 1" in the first sentence, substituted "By July 1 of every year" for "By December 1, 1987 and December 1 of every odd-numbered year thereafter" in the second sentence, and substituted "August 1, 1988" for "July 1, 1988", in the last sentence; deleted the former last sentence regarding mileage estimates; and added Subsection B.

**67-3-29. Department personnel; county and municipal road technical assistance.**



The state transportation commission may establish and maintain within the department qualified technical personnel including engineers, designers and survey crews to assist counties and municipalities in the engineering, design and other technical aspects of county and municipal road projects.

**History:** 1953 Comp., § 55-2-20.1, enacted by Laws 1973, ch. 143, § 1; 2003, ch. 142, § 43.

### ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, deleted "Highway" preceding "Department Personnel" in the section heading; and substituted "state transportation commission" for "state highway commission."

### **67-3-30. Counties authorized to contract with commission; insufficient funds; exemption from Bateman Act.**

The boards of county commissioners of the respective counties of this state are hereby authorized to enter into cooperative agreements with the state transportation commission in accordance with the provisions of Sections 67-3-28 and 67-3-30 NMSA 1978. An agreement shall bind the state and a county becoming a party thereto and shall not be invalidated by reason of the fact that a participating county may not have or collect during the current year sufficient money to pay the indebtedness of said county incurred under such contract for said current year. A contract shall be exempted from the provisions of Section 6-6-11 NMSA 1978.

**History:** Laws 1929, ch. 100, § 3; C.S. 1929, § 64-603; 1941 Comp., § 58-222; 1953 Comp., § 55-2-22; 2003, ch. 142, § 44.

### ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission; substituted" "Sections 67-3-28 and 67-3-30 NMSA 1978" for "this act and. All such agreements"; substituted "Section 6-6-111 NMSA 1978" for "Section 1227 of the New Mexico Statutes Annotated"; and in the last sentence substituted "Section 6-6-11 NMSA 1978" for "Section 1227 of the New Mexico Statutes Annotated".

**Installment payments not prohibited.** — In view of this section, Bateman Act (6-6-11 NMSA 1978) would not prevent board of county commissioners from contracting with state highway department for acquisition of right-of-way on an installment payment plan. 1945-46 Op. Att'y Gen. No. 4887.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 16.

39A C.J.S. Highways § 158(1).

### **67-3-31. County roads; improvement or construction; state aid; duties of state highway engineer.**

Whenever the board of county commissioners of any county desires that any main traveled road or roads in such county included among those adopted by the state transportation commission as a system of state roads shall be improved or constructed under the provisions of Chapter 67 NMSA 1978, written application shall be made by the board of county commissioners to the secretary for such improvement or construction and for state aid therefor. If the board of county commissioners of any county fails to apply for state aid during the year for which such aid is available, that county shall thereby forfeit its right to its portion of state aid for that year, and the funds apportioned to that county for the year shall remain in and be a part of the state road fund for the succeeding year. If upon receipt of such application the state transportation commission is satisfied, after investigation, that the proposed improvement should be made or undertaken and that the county will be able to pay its portion of the cost and that state funds will be available to pay the state's portion of the cost, it may approve the same and undertake such work of improvement in accordance with the provisions of Chapter 67 NMSA 1978. The secretary or one of his assistants shall proceed to view the road or part thereof proposed to be improved and make all surveys, plans, specifications and estimates of cost for its construction out of such materials as may be decided upon by the secretary; provided, that whenever in the judgment of the state transportation commission it is desirable to proceed with the improvement of any road in the system of state roads, for the improvement of which the county commissioners of the county in which the same is located shall have failed or declined to make application as provided in this section, it is lawful for the secretary to proceed with the improvement of any such road without application from the board of county commissioners and to pay the entire cost of such improvement from the portion of the state road fund made available under the provisions of Chapter 67 NMSA 1978 for expenditure wholly within the discretion of the state transportation commission and from the state apportionment of funds under the act of congress referred to in Section 67-3-33 NMSA 1978.

**History:** Laws 1917, ch. 38, § 8; C.S. 1929, § 64-309; 1941 Comp., § 58-223; 1953 Comp., § 55-2-23; 2003, ch. 142, § 45.

#### **ANNOTATIONS**

**Cross references.** — For contracts for county road work with state transportation commission, see 67-4-3 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "secretary" for "state highway engineer".

**Act of congress.** — See 67-3-33 NMSA 1978 and notes thereto.

**Extensions of federal aid system.** — State highway department may construct and maintain extensions of federal aid system into and through municipalities, secondary and feeder roads. 1933-34 Op. Att'y Gen. 65.

**Power to improve road.** — Until the commission certifies back to the county or municipality a section of a road it has been using as part of the state highway system and for which an alternative routing has been adopted, it has the power to improve such section under 67-3-14, 67-3-16, 67-3-26, 67-3-31 and 67-3-40 NMSA 1978. 1933-34 Op. Att'y Gen. 150.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 122 to 129.

40 C.J.S. Highways § 179.

### **67-3-32. Cooperative agreements; preference.**

In entering into cooperative agreements pursuant to Section 67-3-28 NMSA 1978, the state transportation commission shall give preference to political subdivisions of this state if the subdivision contributes an amount equal to at least twenty-five percent of the project cost.

**History:** 1978 Comp., § 67-3-32, enacted by Laws 1983, ch. 38, § 1; 1999, ch. 212, § 4; 2003, ch. 142, § 46.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1983, ch. 38, § 1, repeals former 67-3-32 NMSA 1978, relating to the commission, in extending aid and cooperation, giving preference to those counties which match or exceed commission appropriations, and enacts the above section.

**The 1999 amendment,** effective August 1, 1999, substituted "twenty-five percent" for "forty percent" near the end.

**The 2003 amendment,** effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Effective dates.** — Laws 1983, ch. 38, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983.

### **67-3-33. Assent to federal rural post road acts; pledge of state's good faith; expenditures.**

The legislature of New Mexico hereby assents to the provisions of the act of congress approved July 11, 1916 entitled "an act to provide that the United States shall

aid the states in the construction of rural post roads, and for other purposes", 39 U. S. Statutes at Large, page three hundred fifty-five, and all acts amendatory thereof and supplementary thereto, and the legislature of New Mexico hereby assents to the provisions of the act of congress approved November 9, 1921 entitled "an act to amend the act entitled 'an act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes', approved July eleven, nineteen hundred and sixteen as amended and supplemented and for all other purposes", 42 U. S. Statutes at Large, page two hundred twelve and all acts amendatory thereof and supplementary thereto. The state transportation commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the construction and maintenance of rural post roads under the provisions of the said acts of congress, to submit such scheme or program of construction and maintenance as may be required by the secretary of agriculture and to do all other things necessary fully to carry out the cooperation contemplated and provided by the acts. The good faith of the state is hereby pledged to make available funds sufficient to equal the sum apportioned to the state by or under the United States government during each of the five years for which federal funds are appropriated by the acts, to maintain the roads constructed under the provision of the acts and to make adequate provision for carrying out such maintenance. All money accruing to the state road fund and available for expenditure in the construction and maintenance of highways and all federal funds apportioned to this state under the acts of congress shall be expended upon the highways comprising the system of state roads provided for by Chapter 67 NMSA 1978.

**History:** Laws 1917, ch. 38, § 19; C.S. 1929, § 64-320; Laws 1937, ch. 195, § 1; 1941 Comp., § 58-225; 1953 Comp., § 55-2-25; 2003, ch. 142, § 47.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission"

**Compiler's notes.** — Laws 1917, ch. 67, § 1, as originally enacted, was identical with this section, and is deemed to be superseded by it because of the 1937 amendment.

42 Stat. 212, appeared as 23 U.S.C. § 1 et seq., before being repealed in 1958.

The provision in the third sentence of this section making funds available to equal those apportioned to the state "during each of the five years for which federal funds are appropriated" apparently refers to the Act of Congress of July 11, 1916, § 3, 39 Stat. 355, referred to in the first sentence appropriating funds from 1917 to 1921. Since then, however, various acts of congress have appropriated funds for such purposes for each year.

**Appropriation to compensate for death.** — An appropriation of \$500 made by Laws 1939, ch. 214, to compensate for the death of a child killed by an oil distribution truck operated by the state highway department, out of highway funds, would not constitute a

diversion of moneys for highway purposes under federal law. 1939 Op. Att'y Gen. No. 280.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 122, 127, 129.

39A C.J.S. Highways § 158.

### **67-3-34. Federal aid road project; document execution.**

Whenever a federal aid road project has been approved by the state transportation commission, the secretary is hereby authorized to execute and sign for and on behalf of the commission the project agreement and modifications thereof and all required documents in connection with such project. The agreements, modifications and documents so executed and signed shall be binding upon the state and upon the department to the same extent as if they had been signed by every member of the commission.

**History:** Laws 1925, ch. 18, § 1; C.S. 1929, § 64-401; 1941 Comp., § 58-226; 1953 Comp., § 55-2-26; 2003, ch. 142, § 48.

#### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, added the section heading; substituted "secretary" for "state highway engineer"; and substituted "state transportation commission" for "state highway commission".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 201.

40 C.J.S. Highways § 177.

### **67-3-35. Auditor; appointment; duties; bond.**

The secretary, by and with the approval of the state transportation commission, may appoint some suitable person who shall be authorized to sign the name of said engineer to all vouchers as he designates from time to time in writing for the disbursement of funds. The appointee shall take the oath of office required of other employees of the department and shall execute in favor of the state a surety company bond in the sum of fifty thousand dollars (\$50,000), subject to approval of the state transportation commission, conditional for the faithful performance of his duties, the premium of the bond to be paid out of the state road fund.

**History:** Laws 1925, ch. 18, § 2; C.S. 1929, § 64-402; 1941 Comp., § 58-227; 1953 Comp., § 55-2-27; 2003, ch. 142, § 49.

## ANNOTATIONS

**Cross references.** — For form of oath, see 14-13-1 NMSA 1978.

**The 2003 amendment**, effective July 1, 2003, added the section heading; substituted "secretary" for "state highway engineer"; and substituted "state transportation commission" for "state highway commission" twice.

### **67-3-36. Acquisition of rights of way; duty of county and district attorney.**

Except as provided in Section 67-3-37 NMSA 1978, the rights of way deemed necessary by the state transportation commission for highways constructed or reconstructed under the supervision of the state transportation commission shall be acquired by the county through which such highways shall or do pass by donation, agreement, exchange, by the exercise of the power of eminent domain or otherwise, in the manner provided by law for acquiring property or property rights for public uses. It is the duty of the district attorney for the county wherein such property or property rights are situate to commence and prosecute an action to acquire all such property or property rights upon request of the board of county commissioners or the state transportation commission.

**History:** 1953 Comp., § 55-2-28.1, enacted by Laws 1963, ch. 249, § 1; 2003, ch. 142, § 50.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 152 to 194.

39A C.J.S. Highways § 136.

### **67-3-37. Acquisition of rights of way for interstate system; primary system; secondary system; payment.**

A. In the acquisition of property or property rights deemed necessary by the state transportation commission for construction or reconstruction of the national system of interstate and defense highways, more commonly known as the "federal aid interstate system", the "federal aid primary system" and the "federal aid secondary system", the state transportation commission shall, at its costs, acquire the property or property rights directly, by either donation, agreement, exchange, condemnation or otherwise, without recourse to the county.

B. The secretary is authorized to make full payment directly to the owner or party having an interest in the property or property interests involved, in the manner prescribed by law, or may reimburse the county for the actual costs.

**History:** 1953 Comp., § 55-2-28.2, enacted by Laws 1963, ch. 249, § 2; 2003, ch. 142, § 51.

#### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission"; and substituted "secretary" for "state highway engineer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 192 to 194.

39A C.J.S. Highways § 136.

#### **67-3-38. Action by state transportation commission.**

When the state transportation commission secures property or property rights required for the construction or reconstruction of the federal aid interstate system, the federal aid primary system or the federal aid secondary system, it is the duty of the district attorney for the county wherein such property or property rights are situate to aid and assist the state transportation commission in all matters pertaining thereto and to be present and assist at any trial involving the property or property rights required upon written request of the secretary or the head of the legal section of the department.

**History:** 1953 Comp., § 55-2-28.3, enacted by Laws 1963, ch. 249, § 3; 2003, ch. 142, § 52.

#### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission" in the section heading and the section; and substituted "secretary" for "state highway engineer".

#### **67-3-39. Waiver of immunity.**

Nothing contained herein shall be construed as waiving the state's immunity to suit without its consent.

**History:** 1953 Comp., § 55-2-28.4, enacted by Laws 1963, ch. 249, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 119.

### **67-3-40. Control of state highways; maintenance costs.**

The state transportation commission shall have full control over all roads designated by the commission as state highways or created as state highways by acts of the legislature. The costs of maintenance thereof shall be paid by the state, provided, that if at any time the money in the state road fund available for improvement or maintenance of all such state highways in the state shall not be sufficient for such purposes, the state transportation commission shall certify to the respective boards of county commissioners the certain sections of the highways in the counties, proportionately to such deficiency, which shall be improved and maintained wholly by the respective counties until sufficient funds are provided in the state road fund to enable the state to take over and maintain them as state highways.

**History:** Laws 1919, ch. 99, § 13; C.S. 1929, § 64-333; 1941 Comp., § 58-229; 1953 Comp., § 55-2-29; 2003, ch. 142, § 53.

#### **ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

**Compiler's notes.** — The proviso in this section was formerly placed in parentheses by the compiler to indicate that it was deemed to be superseded by 67-4-13 NMSA 1978.

**Exclusive authority to grant franchises.** — The commission has exclusive authority to grant franchises for use of highways. 1919-20 Op. Att'y Gen. 168.

**Power to improve road.** — Until the commission certifies back to a county or municipality a section of road it has been using as part of the state highway system, and for which an alternative route has been adopted, it has the power to improve such section under 67-3-14, 67-3-16, 67-3-26, 67-3-31 and 67-3-40 NMSA 1978. 1933-34 Op. Att'y Gen. 150.

**Permission to post signs.** — On a road over which the commission has exclusive jurisdiction without regard whatsoever to obligations incurred to another governmental agency, the commission can grant or refuse permission to post signs. On such highways, the state soil conservation committee (now soil and water conservation division) can make application subject to the discretion of the commission. 1957-58 Op. Att'y Gen. No. 58-99.

**On rights-of-way.** — The commission has the authority within its own discretion to grant or refuse permits to place signs of boundaries on highway rights-of-way. 1957-58 Op. Att'y Gen. No. 58-99.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 157.

### **67-3-41. Highway maintenance contracts with counties; failure of county to maintain; utility lines.**

All state highways constructed and improved under the provisions of Chapter 67 NMSA 1978 shall be maintained by the state transportation commission, but not more than fifty percent of the cost of such maintenance shall be paid by the state and not less than fifty percent shall be paid by the counties. The state transportation commission may, however, contract with the board of county commissioners of any county to maintain any state highway or highways therein in accordance with standards prescribed by the secretary and subject to supervision and inspection by him, and if the board of county commissioners of any county so contracting to maintain such highways shall fail, neglect or refuse properly to execute such work of maintenance, the secretary, after reasonable notice, may have such work of maintenance done and charge the county's portion of the cost to the allotment due the county from the state road fund for the year in which work is done. No pipelines, poles or telephone or electric transmission lines or railways, authorized to be placed on or along roads constructed or improved under the provisions of Chapter 67 NMSA 1978 shall be located except in accordance with rules and regulations prescribed therefor by the state transportation commission.

**History:** Laws 1917, ch. 38, § 14; C.S. 1929, § 64-315; 1941 Comp., § 58-230; 1953 Comp., § 55-2-30; 2003, ch. 142, § 54.

#### **ANNOTATIONS**

**Cross references.** — For contracts with counties or federal bureau for construction or improvement of highways, see 67-3-28 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "secretary" for "state highway engineer".

**Compiler's notes.** — The first sentence of this section was formerly placed in parentheses by the compiler to indicate that it was deemed superseded by 67-3-40 and 67-4-13 NMSA 1978.

**Limitation on powers of county commissioners to grant easements.** — County commissioners have no right to grant any easement to a public utility over a state highway, the right-of-way of which came under the control of the commission after 1917. 1973 Op. Att'y Gen. No. 73-26; 1933-34 Op. Att'y Gen. 89.

**No authority to designate city underpass as state highway.** — The commission is not authorized by this section, 67-2-4, 67-3-15 or 67-3-16 NMSA 1978 to designate as a state highway an underpass in a city not part of or intended to be part of a state

highway. Springer Transf. Co. v. City of Albuquerque, 44 N.M. 407, 103 P.2d 129 (1940).

**Relocation of utilities at own expense.** — In the absence of a clear statutory mandate shifting the burden to the state, utilities are obliged to relocate at their own expense their facilities located in public highways when required to facilitate highway improvements. State ex rel. State Hwy. Comm'n v. Town of Grants, 66 N.M. 355, 348 P.2d 274 (1960), rev'd in part, 69 N.M. 145, 364 P.2d 853 (1961).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 157.

### **67-3-42. Bridges considered part of highway.**

For the purposes of Chapter 67 NMSA 1978, necessary bridges, culverts and other appertaining structures on any highway shall be considered a part of such highway. Not more than fifty percent of the cost of all construction or improvement of highways, under the provisions of Chapter 67 NMSA 1978, shall be paid by the state and not less than fifty percent by the county in which such work is done, except where such work is done by the state transportation commission without the use of county funds.

**History:** Laws 1917, ch. 38, § 13; C.S. 1929, § 64-314; 1941 Comp., § 58-231; 1953 Comp., § 55-2-31; 2003, ch. 142, § 55.

## **ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

**Compiler's notes.** — Parentheses were formerly inserted by the compiler to indicate that the words "or improvement" were deemed to be superseded by 67-3-40 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 11, 12, 41 to 48, 80.

### **67-3-43. Road work; bid advertising; restrictions; rejection; bond.**

The state highway department may construct, reconstruct and maintain all state highways by work done with its own forces or let the work on contract after advertising for bids subject to the approval of the state highway commission. Such advertisement for bids shall be in accordance with the rules and regulations adopted therefor by the commission, and bids shall be received at such places and shall be made on such forms and in such manner and accompanied by such guarantee as may be prescribed by the commission. The chief highway administrator may reject any or all bids if they are unbalanced or for any other good reason, but otherwise he shall award the contract to the lowest responsible bidder allowing for such preference as may be provided by law.

The successful bidder is required to furnish satisfactory bond in such amount as may be determined by the commission. The commission may adopt rules and regulations providing for the exclusion of contractors from bidding and for the determination of a responsible bidder pursuant to the provisions of the Public Purchases Act.

**History:** Laws 1917, ch. 38, § 9; 1929, ch. 110, § 2; C.S. 1929, § 64-310; Laws 1939, ch. 92, § 1; 1941 Comp., § 58-232; 1953 Comp., § 55-2-32; Laws 1983, ch. 72, § 1.

## ANNOTATIONS

**The 1983 amendment** substituted the present section catchline for the former catchline which read: "Road work; use of commission forces; bids; advertising; restrictions; rejection; contractor's bond," deleted "That" at the beginning of the first sentence, substituted "department" for "commission" following "state highway" near the beginning of the first sentence, substituted "or" for "In all other cases it shall be the duty of the state highway engineer to" preceding "let the work" near the middle of the first sentence, inserted "state highway" preceding "commission" near the end of the first sentence, substituted "the" for "such" preceding "rules" near the beginning of the second sentence, deleted "as may be" preceding "adopted" near the beginning of the second sentence, substituted "the" for "such" preceding "commission" near the middle of the second sentence, deleted "said" preceding "commission" near the end of the second sentence, substituted "chief highway administrator" for "state highway engineer" near the beginning of the third sentence, added "allowing for such preference as may be provided by law" at the end of the third sentence, substituted "is" for "shall be" preceding "required" near the beginning of the fourth sentence, deleted "state highway" preceding "commission" near the end of the fourth sentence, and added the last sentence.

**Effective dates.** — Laws 1983, ch. 72, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983.

**Compiler's notes.** — The title of the 1929 act amending this section does not indicate that such act is amendatory of the 1917 act. However, the preliminary clause of § 2 reads: "Section 9 of chapter 38 of the Laws of 1917, be and it is hereby amended to read as follows."

**Public Purchases Act.** — The Public Purchases Act, referred to in this section, was repealed by Laws 1984, ch. 65, § 175. Laws 1984, ch. 65, § 2, compiled as 13-1-29 NMSA 1978, provides that all references in law to the Public Purchases Act shall be construed to be references to the Procurement Code, 13-1-28 to 13-1-199 NMSA 1978.

**Recovery by materialman on bond of contractor.** — A bond to the state, conditioned for the performance by a highway contractor of the obligations of his contract, one of which obligations was to pay for materials used, could be sued on by a materialman, though the same bond indemnified the state, and though no statute authorized exacting

such a contract or bond. *Southwestern Portland Cement Co. v. Williams*, 32 N.M. 68, 251 P. 380 (1926).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

Public contracts: authority of state or its subdivision to reject all bids, 52 A.L.R.4th 186.

Equipment leasing expense as element of construction contractor's damages, 52 A.L.R.4th 712.

Highway contractor's liability to highway user for highway surface defects, 62 A.L.R.4th 1067.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 A.L.R.4th 93.

Standing of disappointed bidder on public contract to seek damages under 42 USCS § 1983 for public authorities' alleged violation of bidding procedures, 86 A.L.R. Fed. 904.

40 C.J.S. Highways §§ 197 to 202.

**67-3-44, 67-3-45. Repealed.**

#### ANNOTATIONS

**Repeals.** — Laws 1981, ch. 127, § 20, repeals 67-3-44 and 67-3-45 NMSA 1978, relating to the use of convict labor on highway work.

Laws 1981, ch. 127, contains no effective date provision applicable to this section, but was enacted at the session which adjourned on March 21, 1981. See N.M. Const., art. IV, § 23.

**67-3-46. Rental of equipment; bids not required in emergencies; bid procedure; restrictions.**

In cases of emergency where a state highway is rendered impassable for vehicular traffic by reason of fire, flood, storm or any other unusual condition and when it is necessary to take emergency action to reestablish the highway to a condition to render it passable to traffic, and equipment owned by the state transportation commission suitable for such purpose is not immediately available, the secretary, subject to approval of the state transportation commission, may rent equipment for such purpose at a reasonable rental rate without advertising for bids. In all other cases, the secretary shall advertise for bids before renting equipment and shall rent such equipment from the party submitting the lowest satisfactory bid. Such advertisement for bids shall be in accordance with such rules as may be adopted therefor by the state transportation

commission, and bids shall be on such forms and in such manner and accompanied by such guarantee as may be prescribed by the commission.

**History:** Laws 1939, ch. 91, § 1; 1941 Comp., § 58-235; 1953 Comp., § 55-2-35; 2003, ch. 142, § 56.

## ANNOTATIONS

**Cross references.** — For Procurement Code, see 13-1-28 to 13-1-199 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "secretary" for "state highway engineer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 233, 234.

40 C.J.S. Highways §§ 197 to 202.

### **67-3-47. [Contracts for state aid roads; execution; restrictions.]**

That every contract for highway improvement upon state roads or roads improved, maintained or constructed with state aid, under the provisions of this act, shall be made in the name of the state of New Mexico and signed by the state highway engineer, together with the board of county commissioners or other proper officer or officers of a participating county, and by the contracting party, and no such contract shall be entered into, nor shall any such work be authorized, in any county which will create a liability on the part of the state in excess of the funds apportioned to or otherwise available for expenditures in such county under the terms of this act.

**History:** Laws 1917, ch. 38, § 10; C.S. 1929, § 64-311; 1941 Comp., § 58-236; 1953 Comp., § 55-2-36.

## ANNOTATIONS

**Meaning of "this act".** — The term "this act" refers to Laws 1917, ch. 38, the provisions of which are presently compiled as 67-3-9 to 67-3-11, 67-3-24, 67-3-26, 67-3-31, 67-3-33, 67-3-41 to 67-3-43, 67-3-47, 67-3-48, and 67-4-17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 96, 98.

Construction and effect of "changed conditions" clause in public works or construction contract with state or its subdivision, 56 A.L.R.4th 1042.

40 C.J.S. Highways §§ 197 to 202.

### **67-3-48. Partial payments on road contracts; progress estimates; limitation; division of amounts.**

Partial payments may be made on any contract for highway improvement under the provisions of this act, as the work progresses. Progress estimates shall be based on materials in place and labor expended thereon, but no more than ninety-five percent of the contract price of the work shall be paid in advance of the full completion of such contract and its acceptance by the state highway engineer. The state and county shall each pay its proportionate share of such partial payments on the certification of the amount thereof by the state highway engineer.

**History:** Laws 1917, ch. 38, § 11; C.S. 1929, § 64-312; 1941 Comp., § 58-237; 1953 Comp., § 55-2-37; Laws 1975, ch. 266, § 1.

#### **ANNOTATIONS**

**Meaning of "this act".** — The term "this act" refers to Laws 1917, ch. 38, the provisions of which are presently compiled as 67-3-9 to 67-3-11, 67-3-24, 67-3-26, 67-3-31, 67-3-33, 67-3-41 to 67-3-43, 67-3-47, 67-3-48, and 67-4-17.

**Limitation on advancement.** — Even though the contractor cannot finish job because of conditions completely beyond his control, such as nondelivery of steel to the state necessary to complete the project, commission may not advance more than 85% (now 95%) of the contract price. 1947-48 Op. Att'y Gen. No. 5116.

**Effect of claim by judgment creditor on final proceedings.** — No payment of the retainage and no final settlement can be made where a creditor, who has a disputed claim upon which suit has been brought, has pursued the case to judgment in the state court. 1951-52 Op. Att'y Gen. No. 5395.

### **67-3-49. Claims of highway contractor's creditors; state highway suspense fund.**

Whenever, after the completion of any contract for the construction, repair or maintenance of any public highway under the supervision of the state transportation commission and the final acceptance of the work done thereunder, there now is or hereafter may be funds in a sum of less than five hundred dollars (\$500) remaining in the hands of the state treasurer, properly payable under said contract, and claims of alleged creditors of such contractor have been filed with the state transportation commission against such funds, then, and at the election of the state transportation commission and upon an appropriate voucher issued by the proper officer of said commission specifying the project number of such contract and the name of such contractor and the names of all creditors who have filed such claims with said commission and the amounts of all claims so filed, the secretary of finance and administration shall issue a warrant for the transfer of the full amount of said fund to a special account to be known as the "state highway suspense fund" and shall specify

upon his records the amount of money so transferred, the project number of said contract, the name of said contractor and the names and amounts of the claims of such creditors. Upon receipt of such warrant, the state treasurer shall transfer such funds to the state highway suspense fund in accordance with said warrant.

**History:** Laws 1929, ch. 108, § 1; C.S. 1929, § 64-342; 1941 Comp., § 58-238; 1953 Comp., § 55-2-38; Laws 1977, ch. 247, § 165; 2003, ch. 142, § 57.

## ANNOTATIONS

**The 1977 amendment** substituted "secretary of finance and administration" for "state auditor" in the first sentence.

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Making final payment when road may need to be redone.** — The commission may lawfully make final payment to a highway contractor on a road constructed by the said contractor even though it appears that it may be necessary to remove and replace the surface base and subbase of the highway at considerable expense, unless the contractor failed to meet the standard and special specifications which constitute a part of the contract and such failure to follow said specifications resulted in the failure of the highway. 1957-58 Op. Att'y Gen. No. 58-147.

### **67-3-50. Account closing; nonliability.**

Upon transfer of the funds as provided in Section 67-3-49 NMSA 1978, the state transportation commission shall close its book of account upon such project and shall have no further responsibility in connection with such fund or with the payment of the balance of money remaining to the credit of said contractor upon said contract.

**History:** Laws 1929, ch. 108, § 2; C.S. 1929, § 64-343; 1941 Comp., § 58-239; 1953 Comp., § 55-2-39; 2003, ch. 142, § 58.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "of the funds as provided in Section 67-3-49 NMSA 1978" for "being made"; and substituted "state transportation commission" for "state highway commission".

**Making final payment when road may need to be redone.** — The commission may lawfully make final payment to a highway contractor on a road constructed by the said contractor when it appears that it may be necessary to remove and replace the surface base and subbase of the highway at considerable expense, unless the contractor failed to meet the standard and special specifications which constitute a part of the contract

and such failure to follow said specifications resulted in the failure of the highway. 1957-58 Op. Att'y Gen. No. 58-147.

### **67-3-51. [Restrictions on disbursements from suspense fund.]**

The monies in said "state highway suspense fund" shall be paid to such contractor or his creditors, as the case may be, only upon the determination of the respective rights of such contractor and said creditors who have filed such claims, by a court of competent jurisdiction in some action by or against the contractor or the sureties upon his bond.

**History:** Laws 1929, ch. 108, § 3; C.S. 1929, § 64-344; 1941 Comp., § 58-240; 1953 Comp., § 55-2-40.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 C.J.S. Highways §§ 176, 203 et seq.

### **67-3-52. Payment from state highway suspense fund.**

Upon the delivery to the department of finance and administration of a certified copy of any such decree determining the respective rights of said contractor or sureties, and all of said creditors to said fund, the secretary of finance and administration shall issue a warrant for the payment thereof in accordance with such decree, and the state treasurer shall pay the same in accordance therewith.

**History:** Laws 1929, ch. 108, § 4; C.S. 1929, § 64-345; 1941 Comp., § 58-241; 1953 Comp., § 55-2-41; Laws 1977, ch. 247, § 166.

#### **ANNOTATIONS**

**The 1977 amendment** substituted "department of finance and administration" for "state auditor" and "secretary of finance and administration" for "state auditor."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 208.

### **67-3-53. [Reversion of suspense fund balances.]**

If any monies remain in said "state highway suspense fund" for a period of five years without such a determination of the respective rights of said contractor and creditors thereto, the same shall revert to the state of New Mexico and be covered back into the state road fund.

**History:** Laws 1929, ch. 108, § 5; C.S. 1929, § 64-346; 1941 Comp., § 58-242; 1953 Comp., § 55-2-42.



## **67-3-54. Flight strips, airport and access roads; contracts with federal government; secretary.**

The state transportation commission is hereby authorized to enter into and make agreements with the federal government, or any agency, bureau or commission thereof, providing for the construction and maintenance of flight strips for the landing and launching of aircraft adjacent to or in the vicinity of public highways, for the construction and maintenance of airports or the construction and maintenance of access roads to flight strips, airports, bombing ranges, target ranges, federal reservations or to any industry or location deemed necessary to the war effort. Whenever a project for the construction and maintenance of a flight strip, an airport or an access road has been approved by the state transportation commission, the secretary is hereby authorized to execute and sign on behalf of the commission the project agreement and modifications thereof and all other documents in connection with such project. Such agreements, modifications thereof and documents, when so executed and signed, shall be binding upon the state to the same extent as if they had been signed by every member of the state transportation commission.

**History:** 1941 Comp., § 58-254, enacted by Laws 1943, ch. 7, § 1; 1953 Comp., § 55-2-44; 2003, ch. 142, § 59.

### **ANNOTATIONS**

**Cross references.** — For Procurement Code, see 13-1-28 to 13-1-199 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "secretary" for "state highway engineer".

**Construction and funding of state-owned airport.** — State highway department rather than aeronautics commission (now aviation division) may legally construct and maintain a state-owned public airport (necessary to the war effort) and may accept federal money in connection with it. 1947-48 Op. Att'y Gen. No. 5117.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 201.

40 C.J.S. Highways §§ 179, 197 et seq.

## **67-3-55. Flight strips, airports and access roads; bidding procedures; bond.**

The state transportation commission may construct, reconstruct or maintain any flight strips, any airport or access road by work done with its own forces. In all other cases, it is the duty of the secretary to let the work on contract, after taking bids

therefor, subject to the approval of the state transportation commission. The taking of bids therefor shall be in accordance with such rules as may be adopted by the commission. The secretary may reject any or all bids if they are unbalanced or for any other good cause, but otherwise he shall award the contract to the lowest responsible bidder. The successful bidder shall be required to furnish satisfactory bond in such amount as may be determined by the state transportation commission pledged to the faithful performance by the bidder of the terms of his contract.

**History:** 1941 Comp., § 58-255, enacted by Laws 1943, ch. 7, § 2; 1953 Comp., § 55-2-45; 2003, ch. 142, § 60.

### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; and substituted "secretary" for "state highway engineer".

### **67-3-56. State transportation commission; power to acquire land for flight strip, airport or access thereto.**

The state transportation commission is hereby authorized and empowered to acquire by purchase, condemnation, gift or easement any and all lands or property necessary for the construction, maintenance and use of a flight strip for the landing or launching of aircraft adjacent to or in the vicinity of a public highway, for the construction, maintenance and use of an airport, or any access road. The secretary is authorized to issue his voucher for the payment to the owner of any or all lands required for such purpose in the sum agreed upon with such owners or as may be determined by appraisal and, when presented with such voucher by the secretary, it is the duty of the secretary of finance and administration to issue a warrant in such amount, and the state treasurer shall pay the same out of the state road fund.

**History:** 1941 Comp., § 58-256, enacted by Laws 1943, ch. 7, § 3; 1953 Comp., § 55-2-46; Laws 1977, ch. 247, § 167; 2003, ch. 142, § 61.

### **ANNOTATIONS**

**The 1977 amendment** deleted "of " preceding "any access" near the end of the first sentence and substituted "secretary of finance and administration" for "state auditor" in the second sentence.

**The 2003 amendment**, effective July 1, 2003,; substituted "state transportation commission" for "state highway commission" in the section heading and the section; and substituted "secretary" for "state highway engineer".

### **67-3-57. Annual appropriation; purposes.**

There is hereby appropriated for each of the thirty-fifth and thirty-sixth fiscal years the sum of nineteen million dollars (\$19,000,000) or so much thereof as is necessary for the purpose of carrying out the provisions of the laws relating to the issue, sale and payment of state highway debentures and the interest thereon; for the construction, maintenance and improvement of public highways under the direction of the state transportation commission; for the purchase of equipment therefor; for cooperation with the United States in the construction of roads under the federal aid road law and other laws; and for the payment of salaries and other expenses incurred by the state transportation commission pursuant to law.

The appropriations shall be paid only out of the money in the state treasury to the credit of the state road fund and that may be placed to the credit of said fund, special road funds and funds from time to time set aside for the payment of the principal of and interest on state highway debentures and money received by the state treasurer from allotments of appropriations by congress for road construction or other purposes, from sales of state highway debentures, from special road tax levies and other money provided by law to be expended under the direction of the state transportation commission.

**History:** 1941 Comp., § 58-264, enacted by Laws 1947, ch. 118, § 1; 1953 Comp., § 55-2-47; 2003, ch. 142, § 62.

### ANNOTATIONS

**The 2003 amendment** effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

**Compiler's notes.** — This section, 67-3-58 and 67-3-59 NMSA 1978 are deemed to supersede Laws 1939, ch. 74, which reads exactly as Laws 1947, ch. 118, except that the annual appropriation was \$15,000,000.

The appropriation made by this section is continued past the thirty-sixth fiscal year by 67-3-59 NMSA 1978.

**Bond issues.** — Laws 1955, ch. 269, § 1, as amended by Laws 1961, ch. 115, § 1, authorizes the state highway commission (now state transportation commission) to sell debentures not exceeding \$20,000,000 to mature 25 years from date for constructing and improving state highways, and includes procedure for sale and payment of such debentures.

Laws 1965, ch. 93, authorizes the state highway commission (now state transportation commission) to sell debentures not exceeding \$20,000,000 to mature 25 years from date for constructing and improving state highways, and includes procedure for sale and payment of such debentures.

Laws 1968, ch. 54, approves the state highway commission (now state transportation commission) issue of debentures of \$1,125,000 under powers of Laws 1965, ch. 93, for construction or improvement of state secondary highways, and states certain conditions.

Laws 1969, ch. 230, § 1, approves the state highway commission (now state transportation commission) issue of debentures of \$2,000,000 under powers of Laws 1965, ch. 93, for construction or improvement of state secondary highway system, and states certain conditions.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 C.J.S. Highways § 176.

### **67-3-58. Allotment of appropriation.**

From the money appropriated in Section 67-3-57 NMSA 1978, the state treasurer shall set aside each month out of the funds prescribed by law for the payment thereof a sufficient sum to pay the interest accrued each month on each series of state highway debentures then outstanding and, during the twelve months next preceding the maturity of each series of such debentures, he shall set aside from said funds sufficient money to provide for the payment of the principal thereof at maturity. The money so set aside shall be disbursed by the state treasurer only for the payment of the principal and interest of the series of the state highway debentures for which the money is set aside. The remainder of the money appropriated in Section 67-3-57 NMSA 1978 shall be disbursed upon the order of the state transportation commission or its duly authorized agent in the manner provided by law for disbursement of money in the state road fund.

**History:** 1941 Comp., § 58-265, enacted by Laws 1947, ch. 118, § 2; 1953 Comp., § 55-2-48; 2003, ch. 142, § 63.

### **ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

**Compiler's notes.** — This section, 67-3-57 and 67-3-59 NMSA 1978 are deemed to supersede Laws 1939, ch. 74, which reads exactly as Laws 1947, ch. 118, except that the annual appropriation was \$15,000,000.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 C.J.S. Highways § 176.

### **67-3-59. [Balances; continuation of appropriation.]**

All monies hereby appropriated for any fiscal year or any part thereof which are not expended at the end of such fiscal year shall be added to the appropriation hereby made for the succeeding fiscal year.

The same appropriation with the same provisions and limitations as is made by this act [67-3-57 to 67-3-59 NMSA 1978] for the thirty-sixth fiscal year is hereby declared to apply and be continued to and in every fiscal year subsequent to the thirty-sixth fiscal year, unless otherwise provided by law.

**History:** 1941 Comp., § 58-266, enacted by Laws 1947, ch. 118, § 3; 1953 Comp., § 55-2-49.

## ANNOTATIONS

**Compiler's notes.** — This section, 67-3-57 and 67-3-58 NMSA 1978 are deemed to supersede Laws 1939, ch. 74, which reads exactly as Laws 1947, ch. 118, except that the annual appropriation was \$15,000,000.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 C.J.S. Highways § 176.

### **67-3-59.1. State highway debentures; issuance; limits; approval; coupons.**

A. In order to provide funds to finance state highway projects, including state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement or payment as authorized by federal legislation, the state transportation commission is authorized, subject to the limitations of this section, to issue bonds from time to time, payable from federal funds not otherwise obligated that are paid into the state road fund and the proceeds of the collection of taxes and fees that are required by law to be paid into the state road fund and not otherwise pledged solely to the payment of outstanding bonds and debentures.

B. Except as provided in Subsections C and D of this section, the total aggregate outstanding principal amount of bonds issued from time to time pursuant to this section, secured by or payable from federal funds not otherwise obligated that are paid into the state road fund and the proceeds from the collection of taxes and fees required by law to be paid into the state road fund, shall not, without additional authorization of the state legislature, exceed one hundred fifty million dollars (\$150,000,000) at any given time, subject to the following provisions:

(1) the total aggregate outstanding principal amount of bonds issued for state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement or payment as authorized by federal legislation shall not exceed one hundred million dollars (\$100,000,000); and

(2) the total aggregate outstanding principal amount of bonds issued for state highway projects other than state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement or payment as authorized by federal legislation shall not exceed fifty million dollars (\$50,000,000).

C. Upon specific authorization and appropriation by the legislature, and subject to the limitations of Subsection D of this section, an additional amount of bonds may be issued pursuant to this section for state highway projects, to be secured by or payable from taxes or fees required by law to be paid into the state road fund and federal funds not otherwise obligated that are paid into the state road fund, and, as applicable, taxes or fees required by law to be paid into the highway infrastructure fund, as follows:

(1) an aggregate outstanding principal amount of bonds, not to exceed six hundred twenty-four million dollars (\$624,000,000), for major highway infrastructure projects for which the department has, prior to January 1, 1998, submitted or initiated the process of submitting a plan to the federal highway administration for innovative financing pursuant to 23 USCA Sections 122 and 307;

(2) an aggregate outstanding principal amount of bonds, not to exceed one hundred million dollars (\$100,000,000), for state highway projects that are required for the waste isolation pilot project and are eligible for federal reimbursement; and

(3) an aggregate outstanding principal amount of bonds, not to exceed four hundred million dollars (\$400,000,000), for other state highway projects.

D. The total amount of bonds that may be issued by the state transportation commission for state highway projects pursuant to Subsection C of this section shall not exceed a total aggregate outstanding principal amount of:

(1) three hundred million dollars (\$300,000,000) prior to July 1, 1999;

(2) six hundred million dollars (\$600,000,000) from July 1, 1999 through June 30, 2000;

(3) nine hundred million dollars (\$900,000,000) from July 1, 2000 through June 30, 2001; and

(4) one billion one hundred twenty-four million dollars (\$1,124,000,000) after June 30, 2001.

E. The state transportation commission may issue bonds to refund other bonds issued pursuant to this section by exchange or current or advance refunding.

F. Each series of bonds shall have a maturity of no more than twenty-five years from the date of issuance. The state transportation commission shall determine all other terms, covenants and conditions of the bonds; provided that the bonds shall not be issued pursuant to this section unless the state board of finance approves the issuance of the bonds and the principal amount of and interest rate or maximum net effective interest rate on the bonds.

G. The bonds shall be executed with the manual or facsimile signature of the chairman of the state transportation commission, countersigned by the state treasurer and attested to by the secretary of the state transportation commission, with the seal of the state transportation commission imprinted or otherwise affixed to the bonds.

H. Proceeds of the bonds may be used to pay expenses incurred in the preparation, issuance and sale of the bonds and, together with the earnings on the proceeds of the bonds, may be used to pay rebate, penalty, interest and other obligations relating to the bonds and the proceeds of the bonds under the Internal Revenue Code of 1986, as amended.

I. The bonds may be sold at a public or negotiated sale at, above or below par or through the New Mexico finance authority. A negotiated sale shall be made with one or more investment bankers whose services are obtained through a competitive proposal process. For any sale, the state transportation commission or the New Mexico finance authority shall also procure the services of any financial advisor or bond counsel through a competitive proposal process. If sold at public sale, a notice of the time and place of sale shall be published in a newspaper of general circulation in the state, and in any other newspaper determined in the resolution authorizing the issuance of the bonds, once each week for two consecutive weeks prior to the date of sale. The bonds may be purchased by the state treasurer or state investment officer.

J. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bond for value.

K. The bonds shall be legal investments for a person or board charged with the investment of public funds and may be accepted as security for a deposit of public money and, with the interest thereon, are exempt from taxation by the state and a political subdivision or agency of the state.

L. Any law authorizing the imposition or distribution of taxes or fees paid into the state road fund or the highway infrastructure fund or that affects those taxes and fees shall not be amended or repealed or otherwise directly or indirectly modified so as to impair outstanding bonds secured by a pledge of revenues from those taxes and fees paid into the state road fund or the highway infrastructure fund, unless the bonds have been discharged in full or provisions have been made for a full discharge. In addition, while any bonds issued by the state transportation commission pursuant to the provisions of this section remain outstanding, the powers or duties of the commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holder of such bonds.

M. In contracting for state highway projects to be paid in whole or in part with proceeds of bonds authorized by this section, the department shall require that any sand, gravel, caliche or similar material needed for the project shall, if practicable, be

mined from state lands. Each contract shall provide that the contractor notify the commissioner of public lands of the need for the material and that, through lease or purchase, the material shall be mined from state lands if:

- (1) the material needed is available from state lands in the vicinity of the project;
- (2) the commissioner determines that the lease or purchase is in the best interest of the state land trust beneficiaries; and
- (3) the cost to the contractor for the material, including the costs of transportation, is competitive with other available material from non-state lands.

N. Bonds issued pursuant to this section shall be paid solely from federal funds not otherwise obligated and taxes and fees deposited into the state road fund and, as applicable, the highway infrastructure fund, and shall not constitute a general obligation of the state.

**History:** 1978 Comp., § 67-3-59.1, enacted by Laws 1989, ch. 157, § 1; 1991, ch. 9, § 41; 1998, ch. 86, § 1; 1999 (1st S.S.), ch. 9, § 4; 2003, ch. 142, § 64.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1989, ch. 157, § 1 repealed former 67-3-59.1 NMSA 1978, as amended by Laws 1980, ch. 57, § 1, relating to state highway debentures, and enacted a new 67-3-59.1 NMSA 1978, effective June 16, 1989. For provisions of former section, see 1988 Cumulative Supplement.

**The 1991 amendment**, effective June 14, 1991, deleted "only those" following "finance" and inserted "including state highway projects" near the beginning of Subsection A and, in Subsection B, substituted "one hundred fifty million dollars (\$150,000,000)" for "one hundred million dollars (\$100,000,000)" in the first paragraph, added "subject to the following provisions", and added Paragraphs (1) and (2).

**The 1998 amendment**, in Subsection A, inserted "or payment" following "federal reimbursement", "subject to the limitations of this section" following "authorized,", "federal funds not otherwise obligated that are paid into the state road fund" following "payable from" and deleted "gasoline excise" preceding "taxes" and "motor vehicle registration" preceding "fees"; in Subsection B, added the exception at the beginning and substituted "federal funds not otherwise obligated that are paid into the state road fund and the proceeds from the collection of taxes and fees required by law to be paid into the state road fund" for "the gasoline excise taxes and motor vehicle registration fees"; in Paragraph B(1) inserted "or payment" following "federal reimbursement"; added Subsections C and D; redesignated former Subsections C through I as Subsections E through K and added Subsections L and M; in Subsection G made a



minor stylistic change; and in Subsection I rewrote the first sentence and added the second and third sentences.

**The 1999 amendment**, effective July 1, 1999, in Subsection C, inserted "and, as applicable, taxes or fees required by law to be paid into the highway infrastructure fund" near the end of the introductory language and, in Paragraph (1), deleted "state highway and transportation" preceding "department" near the middle; in Subsection L, inserted "or the highway infrastructure fund" in two places; added Subsection M and redesignated the subsequent subsection accordingly; and inserted "as applicable, the highway infrastructure fund, and" in Subsection N.

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Effective dates.** — Laws 1998, ch. 86, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature.

**Appropriations.** — Laws 1998, ch. 84, § 1, effective May 20, 1998, provides that, in compliance with the provisions of this code section, the state highway commission (now state transportation commission) may issue and sell state highway bonds in an amount not exceeding \$315,000,000 to be appropriated to the state highway and transportation department [department of transportation] for construction, improvement, planning, designing, engineering, constructing and acquiring rights-of-ways on various roads, highways and interstate highways throughout the state.

Laws 1998, ch. 85, § 1, effective May 20, 1998, provides that, in compliance with the provisions of this code section, the state highway commission (now state transportation commission) may issue and sell state highway bonds in an amount not exceeding \$804,000,000 to be appropriated to the state highway and transportation department (department of transportation) for construction, improvement, planning, designing, engineering, constructing and acquiring rights-of-ways on various roads, highways and interstate highways throughout the state. Any unexpended or unencumbered balance remaining six months after the completion of a project authorized in this section shall revert to the state road fund. If the state highway commission (now state transportation commission) has not certified the need for the issuance of bonds for any project authorized in this section by the end of fiscal year 2001, the authorization provided in this section shall be void.

Laws 1998, ch. 85, § 2, effective May 20, 1998, appropriates \$22,500,000 from the state road fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1999 through 2001 for the four-lane construction, including planning, designing, engineering, constructing and acquiring rights-of-way, of United States highway 70, contingent upon the commitment of the state highway and transportation department [department of transportation] of \$122,500,000 in matching federal funds to the project. Any unexpended or

unencumbered balance remaining at the end of fiscal year 2001 shall revert to the state road fund.

Laws 1999, ch. 51, § 1, effective March 17, 1999, provides that, if the proceeds from state highway bonds authorized pursuant to Subsection F of Section 1 of Chapter 85 of Laws 1998 and appropriated to the state highway and transportation department [department of transportation] for construction of the southwest loop in Albuquerque, including the Paseo del Volcan interchange at interstate 40, cannot be used for that project in a timely manner, the state highway and transportation department [department of transportation] may use the proceeds to improve any road classified as a current or future principal arterial that is located south of interstate 40 and west of interstate 25 in Bernalillo county and the proceeds are appropriated for that purpose.

**Internal Revenue Code of 1986.** — The Internal Revenue Code of 1986, referred to in Subsection H, appears as 26 U.S.C. § 1 et seq.

### **67-3-59.2. Highway infrastructure fund created; purpose.**

A. The “highway infrastructure fund” is created in the state treasury and shall be administered by the department. The fund shall consist of money from various fees and taxes distributed to the fund. Earnings on investment of the fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall not revert and shall remain in the fund for the purposes authorized in this section.

B. Money in the fund shall be used solely for acquisition of rights of way or planning, design, engineering, construction or improvement of state highway projects authorized pursuant to the provisions of Laws 1998, Chapter 84, Subsections C through H of Section 1 of Chapter 85 of Laws 1998 and Sections 27 and 28 of this 2003 act [Laws 2003 (1st S.S.), ch. 3, §§ 27, 28] and is appropriated to the department for expenditure for those purposes.

C. The taxes and fees required by law to be distributed to the highway infrastructure fund may be pledged for the payment of state highway bonds issued pursuant to Sections 67-3-59.1 and 67-3-59.3 NMSA 1978 and Section 26 of this 2003 act [Section 67-3-59.4 NMSA 1978] for the highway projects authorized in the laws specified in Subsection B of this section.

**History:** Laws 1999 (1st S.S.), ch. 9, § 3; 2003 (1st S.S.), ch. 3, § 23.

### **ANNOTATIONS**

**Effective dates.** — Laws 1999 (1st S.S.), ch. 9, § 5 makes the act effective on July 1, 1999.

**The 2003 (1st S.S.) amendment,** effective February 3, 2004, deleted “and” preceding “Subsections C” and inserted “and Sections 27 and 28 of this 2003 act” in Subsection B,

and substituted “Sections 67-3-59.1 and 67-3-59.3 NMSA 1978 and Section 26 of this 2003 act” for “Section 67-3-59.1 NMSA 1978” in Subsection C.

### **67-3-59.3. State transportation project bonds; issuance; procedures; approval.**

A. In order to provide funds to finance state transportation projects, the New Mexico finance authority, when directed by the state transportation commission, is authorized, subject to the limitations of this section and Section 26 of this 2003 act [Section 67-3-59.4 NMSA 1978], to issue bonds from time to time, payable from:

- (1) federal funds not otherwise obligated that are paid into the state road fund;
- (2) proceeds of the collection of taxes and fees that are required to be paid into the state road fund and not otherwise pledged exclusively to the payment of outstanding bonds and debentures; and
- (3) taxes and fees required by law to be paid into the highway infrastructure fund.

B. The New Mexico finance authority, when directed by the state transportation commission, may issue bonds to refund other bonds issued by or at the direction of the state transportation commission pursuant to this section or Section 67-3-59.1 NMSA 1978 by exchange or current or advance refunding.

C. In consultation with the state transportation commission, the New Mexico finance authority shall determine all terms, covenants and conditions of the bonds; provided that the project design life of a project meets or exceeds the life of the bond issued for that project, and each series of bonds shall be sold, executed and delivered in accordance with the provisions of the New Mexico Finance Authority Act [6-21-1 NMSA 1978]. The New Mexico finance authority may enter into interest rate exchange agreements, interest rate swap contracts, insurance agreements, remarketing agreements and any other agreements deemed necessary in connection with the issuance of the bonds.

D. Proceeds of the bonds and amounts on deposit in the state road fund and the highway infrastructure fund may be used to pay expenses incurred in the preparation, administration, issuance and sale of the bonds and, together with the earnings on the proceeds of the bonds, may be used to pay rebate, penalty, interest and other obligations relating to the bonds and the proceeds of the bonds under the Internal Revenue Code of 1986, as amended.

E. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bond for value.

F. The bonds shall be legal investments for a person or board charged with the investment of public funds and may be accepted as security for a deposit of public money and, with the interest thereon, are exempt from taxation by the state and a political subdivision or agency of the state.

G. Any law authorizing the imposition or distribution of taxes or fees paid into the state road fund or the highway infrastructure fund or that affects those taxes and fees shall not be amended or repealed or otherwise directly or indirectly modified so as to impair outstanding bonds secured by a pledge of revenues from those taxes and fees paid into the state road fund or the highway infrastructure fund, unless the bonds have been discharged in full or provisions have been made for a full discharge. In addition, while any bonds issued by the New Mexico finance authority pursuant to the provisions of this section remain outstanding, the powers or duties of the state transportation commission or the authority shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holder of such bonds.

H. In contracting for state transportation projects to be paid in whole or in part with proceeds of bonds authorized by this section, the department shall require that any sand, gravel, caliche or similar material needed for the project shall, if practicable, be mined from state lands. Each contract shall provide that the contractor notify the commissioner of public lands of the need for the material and that, through lease or purchase, the material shall be mined from state lands if:

- (1) the material needed is available from state lands in the vicinity of the project;
- (2) the commissioner determines that the lease or purchase is in the best interest of the state land trust beneficiaries; and
- (3) the cost to the contractor for the material, including the costs of transportation, is competitive with other available material from nonstate lands.

I. Bonds issued pursuant to this section shall be paid solely from federal funds not otherwise obligated and taxes and fees deposited into the state road fund and the highway infrastructure fund and shall not constitute a general obligation of the state.

J. For purposes of this section, "state transportation project bonds" includes only those bonds issued pursuant to this section and excludes transportation bonds as defined in Section 67-3-72 NMSA 1978.

**History:** Laws 2003 (1st S.S.), ch. 3, § 24.

## ANNOTATIONS

**Effective dates.** — Laws 2003 (1st S.S.), ch. 3, § 24 has no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on February 3, 2004, 90 days after adjournment of the legislature.

**Cross references.** — For New Mexico Finance Authority Act, see Chapter 6, Article 21 NMSA 1978.

**Temporary provisions.** — Laws 2003 (1st S.S.), ch. 3, § 29 provides that nothing in the act shall be deemed to impair state highway revenue bonds previously issued by the Transportation Commission, and authorizes the inclusion in subsequently issued bonds of such terms as may be required to avoid impairment of previously issued bonds.

**Internal Revenue Code of 1986.** — The Internal Revenue Code of 1986, referred to in Subsection D, is codified throughout Title 26 of the United States Code.

**Compiler's notes.** — Laws 2003 (1st S.S.), ch. 3, § 24, as enacted by the legislature, included the provision “without obtaining the approval of such agreements by any agency or board of the state, notwithstanding the provisions of any other law of the state” at the end of Subsection C; however, such provision was vetoed by the governor.

Laws 2003 (1st S.S.), ch. 3, §§ 27 and 28 list the authorized transportation projects for which the Department of Transportation may use the net proceeds of state transportation project bonds issued by the New Mexico Finance Authority pursuant to this section and 67-3-59.4 NMSA 1978.

#### **67-3-59.4. State transportation project bonds; authorization and appropriation; priorities; criteria; reports.**

A. It is the intent of the legislature to authorize the New Mexico finance authority to issue state transportation bonds for projects specified in Sections 27 and 28 of this 2003 act in the total aggregate principal amount of one billion five hundred eighty-five million dollars (\$1,585,000,000) in annual increments of three hundred fifty million dollars (\$350,000,000), beginning with the appropriation for 2003 provided for in Subsection B of this section.

B. After the effective date of this act, the state transportation [transportation] commission may authorize the New Mexico finance authority to issue and sell state transportation bonds. The proceeds of the bonds are appropriated to the department of transportation for projects listed in Sections 27 and 28 of this 2003 act.

C. The department of transportation shall provide to the legislature and the governor a report on transportation priorities and progress. The report shall include:

(1) justification of priority ranking of projects, including the following for each highway project enumerated in Sections 27 and 28 of this 2003 act:

(a) traffic counts and accident rates and the expected improvements to traffic flow, health and safety;

(b) the ranking of the pavement and substructure conditions;

(c) an assessment of economic development impacts; and

(d) other information deemed significant by the department;

(2) the expected life of the proposed improvement;

(3) sufficiency of revenue to pay the principal and interest of all outstanding and proposed bonds based on a five- and twenty-year financial forecast for the state road fund and the effect of the bond program on the department's construction and maintenance program;

(4) status report of ongoing major construction;

(5) the relationship between the requested projects and the statewide transportation improvement program; and

(6) any other information requested by the legislature or the executive.

D. The department of transportation shall provide quarterly progress reports to the department of finance and administration and the legislative finance committee.

E. The department of transportation shall adopt and enforce rules with the goal that no less than seventy percent of the work force of an exclusively state-funded project authorized in Sections 27 and 28 of this 2003 act shall be residents of New Mexico.

**History:** Laws 2003 (1st S.S.), ch. 3, § 26.

## ANNOTATIONS

**Effective dates.** — Laws 2003 (1st S.S.), ch. 3, § 26 has no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on February 3, 2004, 90 days after adjournment of the legislature.

**Cross references.** — For New Mexico Finance Authority Act, see Chapter 6, Article 21 NMSA 1978.

**Temporary provisions.** — Laws 2003 (1st S.S.), ch. 3, § 29 provides that nothing in the act shall be deemed to impair state highway revenue bonds previously issued by the Transportation Commission, and authorizes the inclusion in subsequently issued bonds of such terms as may be required to avoid impairment of previously issued bonds.

**Bracketed material.** — The bracketed material in the first sentence of Subsection B was inserted by the compiler for clarity. It was not enacted by the legislature and it is not part of the law.

**Meaning of “this act”.** — The term “this act,” which appears in the first sentence of Subsection B, refers to Laws 2003 (1st S.S.), ch. 3, which is compiled in 7-1-6.10, 7-1-6.39, 7-15A-2, 7-15A-6, 7-15A-7, 7-15A-12, 7-15A-13, 7-15A-14, 7-16A-3, 66-3-3.1, 66-6-1, 66-6-2, 66-6-3, 66-6-4, 66-6-5, 66-6-8, 66-6-9, 66-6-10, 66-6-12, 66-6-23.1, 66-7-413, 66-7-413.4, 67-3-59.2, 67-3-59.3, 67-3-59.4 and 67-3-65.1 NMSA 1978.

**Meaning of “Sections 27 and 28 of this 2003 act”.** — The term “Sections 27 and 28 of this 2003 act,” which appears throughout this section, refers to Laws 2003 (1st S.S.), ch. 3, §§ 27 and 28.

**Compiler’s notes.** — Laws 2003 (1st S.S.), ch. 3, § 26, as enacted by the legislature, included the provisions “as appropriated by the legislature each year” following “(\$350,000,000)” in Subsection A, “in an amount not to exceed three hundred fifty million dollars (\$350,000,000) for the 2003 annual increment” at the end of the first sentence of Subsection B, “for the 2004 and subsequent annual appropriation requests” at the beginning of the introductory language of Subsection C, and “for which the department is seeking authorization and appropriation” following “projects” in the introductory language of Paragraph (1) of that subsection; however, such provisions were vetoed by the governor.

Laws 2003 (1st S.S.), ch. 3, §§ 27 and 28 list the authorized transportation projects for which the Department of Transportation may use the net proceeds of state transportation project bonds issued by the New Mexico Finance Authority pursuant to this section and 67-3-59.3 NMSA 1978.

### **67-3-60. Bypasses and relocation projects; expenditure of highway funds; purpose.**

The purpose of Sections 67-3-60 and 67-3-61 NMSA 1978 is to foster and insure the correlation of state highway construction programs closely affecting smaller municipalities and unincorporated communities with the future economic growth, livelihood, development, safety and general welfare of the communities by limiting the use of public funds for the construction of highway bypasses or relocation projects diverting traffic and commerce from existing state highway routes through the communities in accordance with the provisions of all existing agreements between a municipality or county and the state transportation commission relating to obtaining the consent of the municipality or county pursuant to the provisions of Section 67-3-61 NMSA 1978.

**History:** 1953 Comp., § 55-2-50, enacted by Laws 1963, ch. 114, § 1; 1966, ch. 16, § 1; 2003, ch. 142, § 65.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, deleted "of Act" at the end of the section heading; substituted "Sections 67-3-60 and 67-3-61 NMSA 1978" for "this act"; substituted "state transportation commission" for "state highway commission"; and substituted "Section 67-3-61 NMSA 1978" for "Laws 1963, Chapter 114, Section 1 and Laws 1965, Chapter 188, Section 1" at the end of the section.

**Effect of repeal of by-pass laws on agreements.** — Since the commission and various municipal and county governing bodies have executed written agreements relative to highway construction and by-passes, such agreements are valid and binding upon the commission and the state highway department even if the by-pass laws (67-3-60 and 67-3-61 NMSA 1978) are repealed. 1966 Op. Att'y Gen. No. 66-13.

**Law reviews.** — For comment, "Constitutional Law - Delegation of Power - New Mexico Bypass Law," see 4 Nat. Resources J. 160 (1964).

### **67-3-61. Limitation of expenditures of highway funds for construction of highway bypasses.**

No expenditure or contract for the expenditure of state public funds for purposes of construction of highway bypasses or highway relocation projects diverting public motor vehicle travel from a previously existing highway route shall be made that violates the provisions of an existing agreement between a municipality or county and the state transportation commission relating to obtaining the consent of the municipality or county pursuant to the provisions of this section. An existing agreement between a municipality or county and the state transportation commission may be amended or revised by mutual consent of the parties to the agreement. Once authority is given by the governing authority and the state transportation commission has affirmatively acted in reliance upon the expressed approval, public funds may be expended and contracts executed despite subsequent withdrawal of approval by the governing authority.

**History:** 1953 Comp., § 55-2-51, enacted by Laws 1963, ch. 114, § 2; 1965, ch. 188, § 1; 1966, ch. 16, § 2; 2003, ch. 142, § 66.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission"; and substituted "this section" for "Laws 1963, Chapter 114, Section 1 and Laws 1965, Chapter 188, Section 1".

**Saving clauses.** — Laws 1965, ch. 188, § 2, provides that the act does not affect the limitations on expenditure of public funds imposed by Laws 1963, ch. 114 (67-3-60 NMSA 1978), prior to its effective date.



**Effect of repeal of by-pass laws on agreements.** — Since the commission and various municipal and county governing bodies have executed written agreements relative to highway construction and by-passes, such agreements are valid and binding upon the commission and the state highway department even if the by-pass laws (67-3-60 and 67-3-61 NMSA 1978) are repealed. 1966 Op. Att'y Gen. No. 66-13.

**Law reviews.** — For comment, "Constitutional Law - Delegation of Power - New Mexico Bypass Law," see 4 Nat. Resources J. 160 (1964).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 387.

### **67-3-62. Provisions for pedestrian, bicycle and equestrian traffic required.**

A. No expenditure or contract for the expenditure of state public funds for purposes of constructing highways along new alignments or for purposes of substantially widening highways along the existing alignments shall be made or entered into by the state highway department unless the design and construction of such highways makes provision for pedestrian, bicycle and equestrian traffic along and across such highway, except when the state highway department, after notice and a public hearing, determines, pursuant to its published regulations as provided in Section 67-3-63 NMSA 1978, that:

(1) such provisions for pedestrian, bicycle and equestrian traffic would be contrary to the public safety; or

(2) the cost of such provision would be disproportionate to the need or probable usage.

B. Notice of public hearings shall be required only when:

(1) project plans require acquisition of additional right-of-way for purposes of constructing the project along a new alignment;

(2) the project plans require a substantial widening of the travel lanes for highway reconstruction along an existing alignment; or

(3) the highway department is petitioned by authorized officials of affected pedestrian, bicycle or equestrian associations. If such petition is filed, public hearing shall be held.

For purposes of Paragraphs (1) and (2) of this subsection, the requirement for notice and public hearing may be satisfied by publishing two notices of opportunity for a public hearing and holding a public hearing if written request for such a hearing is received within the time specified in the published notice.

**History:** 1953 Comp., § 55-2-52, enacted by Laws 1972, ch. 78, § 1; 1973, ch. 21, § 1; 1975, ch. 51, § 1; 1979, ch. 93, § 1.

## ANNOTATIONS

**The 1979 amendment** substituted "of constructing highways" for "of construction or reconstruction of highways" and "state highway department" for "state highway commission" in two places and inserted "along new alignments or for purposes of substantially widening highways along the existing alignments" following "constructing highways" in the introductory paragraph in Subsection A and rewrote Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 195.

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 A.L.R.4th 204.

39A C.J.S. Highways §§ 67; 40 C.J.S. Highways § 244.

### **67-3-63. Construction and maintenance of footpaths, bicycle lanes and bridle paths; expenditure of funds authorized.**

A. The state transportation commission is authorized to expend as necessary matching state road funds and federal aid highway funds administered by the department for the construction and maintenance of footpaths, bridle paths or bicycle lanes along and across state, county and municipal roads, streets or highways.

B. In administering Sections 67-3-62 and 67-3-63 NMSA 1978, the state transportation commission shall promulgate regulations setting forth guidelines by which the state transportation commission shall determine whether the establishment of any proposed bicycle lanes, footpaths or bridle paths is contrary to public safety or the cost thereof is disproportionate to the need or probable usage within the meaning of Section 67-3-62 NMSA 1978. The commission shall recommend construction standards for footpaths, bicycle lanes and bridle paths and shall provide a uniform system of signs that shall apply to all such paths or lanes under the jurisdiction of the commission and all counties and municipalities. The commission may restrict the use of footpaths, bicycle lanes or bridle paths under its jurisdiction to pedestrian, equestrian or nonmotorized vehicle use.

C. As used in this section, "bicycle lane" means a publicly owned and maintained paved path, way or trail designated and signed as a bicycle route, and "bridle path" includes equestrian trails or ways.

D. In the event that any of the provisions of this section or of Section 67-3-62 NMSA 1978 conflict with provisions of federal law or regulations relating to highway construction funds and such conflict jeopardizes the receipt of funds by the state, then

the conflicting provisions of the specified sections of state law shall be suspended and not effective.

**History:** 1953 Comp., § 55-2-52.1, enacted by Laws 1973, ch. 21, § 2; 2003, ch. 142, § 67.

### ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission" in Subsection A; in Subsection B, substituted "Sections 67-3-62 and 67-3-63 NMSA 1978" for "this act"; and in Subsection D, substituted "Section 67-3-62 NMSA 1978" for "Sections 55-2-52 or 55-2-52.2 NMSA 1953".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 195.

State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 A.L.R.4th 204.

39A C.J.S. Highways § 67; 40 C.J.S. Highways § 244.

### **67-3-64. Ramps for handicapped required.**

Whenever any curbing on a public street, road or highway is constructed, repaired or remodeled to a major degree by the state highway department or the road department of any county or municipality, ramps shall be installed at any intersection having curbs or other barriers to entry onto the street or road from a sidewalk.

**History:** 1953 Comp., § 55-2-53, enacted by Laws 1973, ch. 151, § 1.

### ANNOTATIONS

**Immunity.** — The addition of ramps is immunized under the Tort Claims Act because such installation would not constitute "maintenance" but rather would be a "reconstruction". Villanueva v. City of Tucumcari, 1998-NMCA-138, 125 N.M. 762, 965 P.2d 346.

### **67-3-65. State road fund created.**

The "state road fund" is created within the state treasury, to which shall be credited all receipts authorized by law to be paid into it. No income earned on the fund shall be transferred to another fund.

**History:** 1953 Comp., § 55-2-54, enacted by Laws 1973, ch. 145, § 1; 1980, ch. 54, § 1.

## ANNOTATIONS

**The 1980 amendment**, effective July 1, 1980, added the second sentence.

**Appropriations.** — Laws 1996 (1st S.S.), ch. 4, § 39, effective March 21, 1996, appropriates \$1,000,000 from the state road fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1997 through 2000 for the purpose of completing the Santa Teresa border station in Dona Ana county.

Laws 1996 (1st S.S.), ch. 4, § 40, effective March 21, 1996, appropriates \$478,700 from the state road fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1997 through 2000 for the purpose of installing salt storage domes at patrol yards in the cities of Taos, Chama and Santa Fe.

Laws 1998, ch. 7, § 31, effective February 17, 1998, appropriates \$733,800 from the state road fund to the state highway and transportation department [department of transportation] for expenditure in fiscal years 1998 through 2002 to acquire land, plan, design, construct and equip a maintenance patrol yard near Eagle Nest in Colfax county. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the state road fund.

Laws 1998, ch. 7, § 32, effective February 17, 1998, appropriates \$900,000 from the state road fund to the capital program fund for expenditure in fiscal years 1998 through 2002 to acquire land, make site improvements and purchase and erect a modular office building and equip a port-of-entry facility near Santa Teresa in Dona Ana county. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the state road fund.

Laws 1998, ch. 7, § 44, effective February 17, 1998, provides that the balance of the appropriation from the state road fund to the state highway and transportation department [department of transportation] for the purpose of installing salt storage domes at patrol yards in Taos located in Taos county, in Chama located in Rio Arriba county and in Santa Fe located in Santa Fe county pursuant to Laws 1996 (1st S.S.), ch. 4, § 40, shall not be expended for its original purpose but is appropriated to the state highway and transportation department [department of transportation] to purchase and install chemical de-icer storage units throughout the state.

Laws 2004, ch. 126, § 42, effective March 10, 2004, appropriates \$1,000,000 from the state road fund to the taxation and revenue department for expenditure in fiscal years 2004 through 2009 for the acquisition of a gas tax automation system for the taxation and revenue department.

### **67-3-65.1. State road fund distribution.**

The amounts distributed to the state road fund pursuant to Sections 7-1-6.10, 66-6-23 and 66-6-23.1 NMSA 1978 shall be used for maintenance, construction and improvement of state transportation projects and to meet federal allotments under the federal-aid road laws, but sufficient money from the state road fund shall be set aside each year by the state treasurer to pay the principal and interest due each year on state transportation revenue bonds issued to anticipate the collection of this revenue.

**History:** 1978 Comp., § 67-3-65.1, enacted by Laws 1983, ch. 211, § 40; 2003 (1st S.S.), ch. 3, § 25.

### ANNOTATIONS

**The 2003 (1st S.S.) amendment** effective February 3, 2004, substituted “Sections 7-1-6.10, 66-6-23 and 66-6-23.1” for “Section 7-1-6.10,” “state transportation projects” for “the public highways,” and “due each year on state transportation revenue bonds” for “coupons of highway debentures,” and deleted “as the principal and interest coupons mature” following “of this revenue” at the end.

### **67-3-66. Motor vehicle department [division] fees imposed by regulation; revenue disposition.**

All revenues from all fees imposed by the motor vehicle department [motor vehicle division of the taxation and revenue department] solely by regulation, without statutory authority, shall be paid to the state treasurer for credit to the state road fund.

**History:** 1953 Comp., § 55-2-54.1, enacted by Laws 1975, ch. 339, § 9.

### ANNOTATIONS

**Bracketed material.** — The bracketed material near the beginning of the section was inserted by the compiler. Laws 1977, ch. 250, § 4, abolished the motor vehicle department. Laws 1977, ch. 250, § 3 (9-12-3 NMSA 1978, now repealed) created the motor vehicle division of the transportation department. See, now, 9-11-4 NMSA 1978 as to creation of taxation and revenue department and divisions thereof. The bracketed material was not enacted by the legislature and is not part of the law.

### **67-3-67. Name.**

This act [67-3-67 to 67-3-70 NMSA 1978] may be cited as the "Public Mass Transportation Act."

**History:** 1953 Comp., § 55-2-55, enacted by Laws 1975, ch. 343, § 1.

### ANNOTATIONS

**Cross references.** — For Municipal Transit Law, see Chapter 3, Article 52 NMSA 1978.

### **67-3-68. Purpose and interpretation.**

It is the intent of the legislature to assign to the state highway and transportation department all functions and powers necessary to develop a coordinated program with the United States government, and others, in the field of public mass transportation. In order to accomplish this purpose and obtain all possible funds available to implement this program, the Public Mass Transportation Act [67-3-67 NMSA 1978] shall be liberally construed.

**History:** 1953 Comp., § 55-2-56, enacted by Laws 1975, ch. 343, § 2; 1977, ch. 250, § 35; 1987, ch. 268, § 37.

#### **ANNOTATIONS**

**The 1977 amendment** substituted "transportation department" for "highway department" in the first sentence.

**The 1987 amendment**, effective July 1, 1987, inserted "highway and" preceding "transportation department" near the beginning of the first sentence.

### **67-3-69. Power to state highway and transportation department.**

In addition to the power and authority elsewhere granted to the state highway and transportation department to enter into cooperative agreements, the department is authorized to enter into agreements with any bureau, department or agency of the United States government dealing with or concerning the planning, design, construction, maintenance or supervision of any public mass transportation program or system, or the operation thereof, in this state. The department may additionally enter into agreements with any other bureau, agency or department of this state; any city, county school district or other political entity of this state; or any individual, firm, partnership, corporation, association or other organization, to carry out the foregoing.

**History:** 1953 Comp., § 55-2-57, enacted by Laws 1975, ch. 343, § 3; 1977, ch. 250, § 36; 1987, ch. 268, § 38.

#### **ANNOTATIONS**

**The 1977 amendment** substituted "transportation department" for "highway department" in the first sentence.

**The 1987 amendment**, effective July 1, 1987, inserted "highway and" preceding "transportation department" near the beginning of the first sentence.

### **67-3-70. Use of appropriated funds.**

The department may expend such portion of its appropriated funds as it deems necessary to effectuate the purposes of the Public Mass Transportation Act [67-3-67 NMSA 1978].

**History:** 1953 Comp., § 55-2-58, enacted by Laws 1975, ch. 343, § 4; 1977, ch. 250, § 37; 1987, ch. 268, § 39; 2003, ch. 68, § 1; 2003, ch. 142, § 68.

### ANNOTATIONS

**The 1977 amendment** substituted "transportation department" for "highway department" and "appropriated funds as" for "state road funds" and deleted "state road" following "expenditure of."

**The 1987 amendment**, effective July 1, 1987, inserted "state highway and" preceding "transportation department" near the beginning and substituted "the Public Mass Transportation Act" for "this Act" near the middle of the section.

**2003 amendments** — Identical amendments to this section were enacted by Laws 2003, ch. 68, § 1 and Laws 2003, ch. 142, § 68, effective July 1, 2003, deleting "state highway and transportation" preceding "department"; and deleting "provided that such expenditure of funds which are not eligible for federal reimbursement shall not exceed fifty thousand dollars (\$50,000) in any one fiscal year" at the end of the section. The section is set out as amended by Laws 2003, ch. 142, § 68. See 12-1-8 NMSA 1978.

### **67-3-71. State highway and transportation department; power to acquire property for transportation systems; power of eminent domain.**

The state highway and transportation department may:

A. acquire property by purchase, lease, donation, gift, bequest, devise or eminent domain for the purpose of construction and operation of a transportation system; and

B. negotiate for the acquisition of property from any person, governmental entity, Indian tribe or Indian pueblo for the construction and operation of a transportation system.

**History:** Laws 1997, ch. 52, § 1.

### ANNOTATIONS

**Cross references.** — For Eminent Domain Code, see Chapter 42A, Article 1 NMSA 1978.

**Effective dates.** — Laws 1997, ch. 52, § 10 makes the act effective July 1, 1997.

### **67-3-71.1. Right-of-way agreements; Navajo Nation; terms.**

A. When acquiring a right of way for a public highway from the Navajo Nation, the secretary or his designee shall negotiate the terms and conditions of the grant with a person designated by the Navajo Nation. New Mexico and the Navajo Nation, as sovereign governments, are primarily interested in cooperating with one another and coordinating services and functions so that resources of the state and the Navajo Nation are used efficiently and to the greatest benefit of all persons traveling on the state and federal highways crossing the Navajo Nation. Right-of-way agreements shall be developed from negotiations between the Navajo Nation and the state, and shall include the following:

- (1) the term of a right of way, which in no case shall be construed to be a perpetual easement or a grant in fee simple but may be a term that does not extend beyond the life of the state highway, as long as the right of way is used by the state highway and transportation department for constructing, maintaining, rehabilitating, operating or administering the public highway;
- (2) the terms and conditions for closing the public highway in the event of emergency, for public safety purposes or for religious, ceremonial or cultural purposes;
- (3) the authority of the state highway and transportation department regarding the assignment or grant of easements through the right of way;
- (4) the manner and timeliness required of notice from either the state highway and transportation department or the Navajo Nation regarding the initiation of negotiations to grant an easement to third parties or the initiation of construction, expansion or removal of facilities by or belonging to third parties within the easement;
- (5) the terms and conditions regarding consideration for the right-of-way grant;
- (6) the method of dispute resolution that will be used to resolve disputes arising between the state and the Navajo Nation regarding the agreement or issues arising from the implementation of the agreement;
- (7) the areas of shared jurisdiction between the state highway and transportation department and the Navajo Nation, and the areas of jurisdiction that will be the sole responsibility of the state highway and transportation department or the Navajo Nation; and
- (8) any other rights or responsibilities that the state or the Navajo Nation believe should be appurtenant to a grant of right of way by the Navajo Nation to the state highway and transportation department.



B. The state highway and transportation department shall negotiate the terms of the right-of-way agreement in good faith with the Navajo Nation and shall make all attempts to conclude the negotiations in a timely manner. If the state highway and transportation department and the Navajo Nation are unable to complete a right-of-way agreement within twelve months from the date of first contact between the state highway and transportation department and the Navajo Nation requesting negotiations regarding a right-of-way agreement as evidenced by the date of a letter sent by either the Navajo Nation or the state highway and transportation department requesting negotiation regarding a particular right of way, the parties, unless they agree otherwise, shall engage mediators to help facilitate the process of reconciling the issues in dispute, at the shared expense of both parties.

C. Nothing in a grant of right of way shall operate to diminish or be construed to operate to diminish the jurisdiction of the Navajo Nation over the right of way except as expressly provided in the grant of right of way to the department.

D. Nothing in a right-of-way agreement between the state highway and transportation department and the Navajo Nation shall be construed to be a waiver of the sovereign immunity of either the state or the Navajo Nation.

**History:** Laws 2001, ch. 210, § 3.

## **ANNOTATIONS**

**Emergency clauses.** — Laws 2001, ch. 210, § 4 makes the act effective immediately. Approved April 3, 2001.

### **67-3-72. Transportation bonds.**

A. The state transportation commission may determine that interest or necessity demands the issuance of revenue bonds to finance the development and construction of transportation systems and may by resolution make and issue revenue bonds that shall be known as "transportation bonds". The bonds shall be payable solely out of the net income to be derived from the operation of the project, and the commission shall pledge irrevocably such income to the payment of those bonds. The bonds shall not become a general obligation of the state or a political subdivision of the state.

B. The proceeds from the sale of transportation bonds shall be used solely for the purpose for which the bonds were issued.

C. Transportation bonds shall not be issued pursuant to this section unless the state board of finance approves the issuance of the bonds, the principal amount of the bonds and the maximum net effective interest rate on the bonds.

**History:** Laws 1997, ch. 52, § 2; 2003, ch. 142, § 69.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Effective dates.** — Laws 1997, ch. 52, § 10 makes the act effective July 1, 1997.

### **67-3-73. Transportation bonds; terms.**

Transportation bonds issued by the state transportation commission:

- A. shall be payable at such times as the commission may provide;
- B. may be subject to prior redemption at the commission's option at such time and upon such terms and conditions, with or without payment of premiums, as may be provided in the resolution of the commission;
- C. may mature at any time not exceeding fifty years after the date of issuance;
- D. may be serial in form and maturity and may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the commission;
- E. shall be sold for cash at, above or below par and at the effective interest rate approved by the state board of finance; and
- F. may be sold at a public or private sale.

**History:** Laws 1997, ch. 52, § 3; 2003, ch. 142, § 70.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Effective dates.** — Laws 1997, ch. 52, § 10 makes the act effective July 1, 1997.

### **67-3-74. Refunding bonds.**

A. Transportation bonds issued pursuant to the provisions of Section 67-3-72 NMSA 1978 that are outstanding may be refunded at any time by the state transportation commission upon:

- (1) the adoption of a resolution providing for the issuance of refunding bonds;
- and

(2) the issuance of the refunding bonds in an amount the commission determines is necessary to refund:

(a) the principal of the transportation bonds;

(b) all unpaid accrued and unaccrued interest on transportation bonds to the normal maturity date or to selected prior redemption dates of the bonds;

(c) any redemption premiums; and

(d) all estimated costs, including any commission cost, incidental to the issuance of the refunding bonds, as may be determined by the commission.

B. The principal amount of the refunding bonds may be equal to, less than or greater than the principal amount of the bonds so refunded.

C. A refunding may be effected, whether the bonds to be refunded have then matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded or by exchange of the refunding bonds for the bonds to be refunded; provided that the bonds to be refunded shall not be canceled without the consent of the holders to surrender their bonds for payment or exchange prior to the date on which they are payable or if they are called for redemption prior to the date on which they are by their terms subject to redemption.

D. The refunding bonds issued pursuant to this section shall be payable solely from the revenues out of which transportation bonds may be payable or solely from those amounts derived from an escrow as provided in this section, including amounts derived from the investment of refunding bond proceeds and other legally available amounts also provided in this section or from any combination of those sources.

E. Proceeds of refunding bonds shall either be applied immediately to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and exercises trust powers. The escrowed proceeds may be invested in short-term securities, long-term securities or both.

**History:** Laws 1997, ch. 52, § 4; 2003, ch. 142, § 71.

### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, substituted "Section 67-3-72 NMSA 1978" for "Section 2 of this act"; and substituted "state transportation commission" for "state highway commission".

**Effective dates.** — Laws 1997, ch. 52, § 10 makes the act effective July 1, 1997.

### **67-3-75. Transportation bonds eligible for investment.**

Transportation bonds issued by the state transportation commission are securities in which public officers and public bodies of this state and its political subdivisions and insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. The bonds are securities that may properly and legally be deposited with and be received by a state or political subdivision officer for which the deposit of bonds or obligations of the state is authorized by law. Bonds shall not be eligible for investment or deposit by or with the state or its political subdivisions unless they have been rated AA or higher by an independent nationally recognized bond rating service based solely on the security of the bonds as an investment without resort to a collateral guarantee.

**History:** Laws 1997, ch. 52, § 5; 2003, ch. 142, § 72.

#### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Effective dates.** — Laws 1997, ch. 52, § 10 makes the act effective July 1, 1997.

### **67-3-76. Transportation bonds; exemption from taxation.**

The construction, operation and maintenance of a transportation project by the state transportation commission shall constitute the performance of an essential governmental function. As such, the income from the transportation bonds issued pursuant to Chapter 67, Article 3 NMSA 1978 shall at all times be free from taxation by the state and by its political subdivisions.

**History:** Laws 1997, ch. 52, § 6; 2003, ch. 142, § 73.

#### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Effective dates.** — Laws 1997, ch. 52, § 10 makes the act effective July 1, 1997.

### **67-3-77. Definition.**

As used in Chapter 67, Article 3 NMSA 1978, "transportation system" means facilities used for the transportation of natural resources, manufactured products or passengers and includes communication and transportation structures and other facilities necessary for the operation of the transportation facilities.

**History:** Laws 1997, ch. 52, § 7.

## **ANNOTATIONS**

**Effective dates.** — Laws 1997, ch. 52, § 10 makes the act effective July 1, 1997.

### **Appendix to Article 3**

#### **State Highway Bonds**

The following laws have authorized the issuance of bonds or debentures in the specified amounts for the state road fund or construction or improvement of state highways.

Laws 1937, ch. 8 (as amended by Laws 1937, ch. 128): \$10,000,000, state highway debentures for state road fund.

Laws 1939, ch. 93: \$6,000,000, state highway debentures for state road fund.

Laws 1941, ch. 12: \$4,000,000, state highway debentures for state road fund.

Laws 1943, ch. 85: \$2,500,000, state highway refunding debentures to refund and retire state highway debentures which may become due in 1943 and 1944.

Laws 1945, ch. 29: \$2,000,000, state highway debentures for state road fund.

Laws 1947, ch. 35: \$6,000,000, state highway debentures for state road fund.

Laws 1955, ch. 269: \$20,000,000, state highway debentures for state road fund.

Laws 1965, ch. 93: \$20,000,000, state highway debentures for highway construction and improvement.

Laws 1968, ch. 54: \$1,125,000, state highway debentures for construction and improvement of state highways.

Laws 1969, ch. 230, § 1: \$2,000,000, state highway debentures for construction and improvement of state highways.

Laws 1980, ch. 57, § 1: \$31,000,000, state highway debentures for state road fund.

Laws 2003 (1st S.S.), ch. 3, § 26: \$1,585,000,000, state transportation bonds for authorized transportation projects.

**Laws 2005, ch. 347, § 63**, effective April 8, 2005, appropriates funds from the state road fund to the department of transportation for 3 fiscal year 2005 through 2010 projects.

## **ARTICLE 4**

### **County Highways in General**

#### **67-4-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 117, § 3C repeals 67-4-1 NMSA 1978, as enacted by Laws 1917, ch. 38, § 18, relating to general powers of county commissioners, county road fund, and road map, effective March 28, 1989. For provisions of former section, see Original Pamphlet.

#### **67-4-2. [County commissioners succeed to powers and duties of county road superintendents.]**

Until the legislature shall otherwise provide the several boards of county commissioners shall succeed to all the powers and duties of the county road superintendents, and all public property in the possession of or under the control of said county road superintendents shall, within fifteen days after the approval of this act [this section], be turned over and delivered to the several boards of county commissioners, and said county road superintendents shall within fifteen days after the approval of this act, make a correct and detailed report to said boards of county commissioners of all pending work, contracts and unpaid accounts or claims due on account of any unfinished work or pending contract or contracts. Nothing herein contained shall be construed to invalidate or repudiate any obligations, contracts or indebtedness lawfully made or created under the provisions of said Chapter 99 of the Session Laws of 1919, but any such contracts or obligations shall be fulfilled and any such indebtedness shall be paid and the payment thereof shall be provided for by the levy of taxes at the time and in the manner contemplated by the laws under which such contracts or obligations were made and such indebtedness created.

**History:** Laws 1921, ch. 11, § 2; C.S. 1929, § 64-501; 1941 Comp., § 58-301a; 1953 Comp., § 55-3-2.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 1919, ch. 99, referred to in this section, was repealed by Laws 1921, ch. 11, § 1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions § 123.

20 C.J.S. Counties § 63.

### **67-4-3. [County road superintendent; employment; powers.]**

The board of county commissioners of any county in this state may employ a county road superintendent and by resolution provide that such county road superintendent, subject to supervisory powers in the board of county commissioners, shall have charge of all work of construction and maintenance of county roads and bridges, and the purchasing of equipment, materials and supplies therefor.

**History:** Laws 1921, ch. 135, § 1; C.S. 1929, § 64-201; 1941 Comp., § 58-302; 1953 Comp., § 55-3-3.

#### **ANNOTATIONS**

**This section is entitled to reasonable and practical construction,** as to employment of road superintendents. State ex rel. Bard v. Board of County Comm'rs, 39 N.M. 119, 41 P.2d 1105 (1935).

**Implied repeal of provisions regarding county surveyor.** — As respects right of board of county commissioners to employ county road superintendent, provision of Laws 1891, ch. 33, § 11, requiring all county surveying and engineering on roads and bridges to be performed by county surveyor, was impliedly repealed by this section. State ex rel. Bard v. Board of County Comm'rs, 39 N.M. 119, 41 P.2d 1105 (1935).

**Implications of authority to employ.** — Authority to employ implies a choice of employee and a discretion as to terms of employment. State ex rel. Bard v. Board of County Comm'rs, 39 N.M. 119, 41 P.2d 1105 (1935).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions § 123.

### **67-4-4. County road contracts with state transportation commission.**

The board of county commissioners of any county in this state may enter into a contract with the state transportation commission by which all or any part of the work of construction and maintenance of county roads and bridges and the purchasing of equipment, materials and supplies shall be under the direction and control of the state transportation commission and subject to the limitations of Sections 67-4-3 through 67-4-16 NMSA 1978, and such board of county commissioners shall draw warrants payable out of the county road and bridge fund to pay for the same, upon itemized vouchers or estimates certified by the secretary.

In the event a county has inadequate equipment and machinery to grade and maintain county roads, upon request by the board of county commissioners and at such

times as state equipment and machinery are available in the vicinity and not in use for state purposes, the state transportation commission is authorized to furnish the required equipment and machinery with the operators and personnel required to perform such work in consideration of the actual cost of the gasoline, oil and wages of such operators and personnel involved in the work performed.

**History:** Laws 1921, ch. 135, § 2; C.S. 1929, § 64-202; 1941 Comp., § 58-303; Laws 1945, ch. 102, § 1; 1953 Comp., § 55-3-4; 2003, ch. 142, § 74.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, added the section heading; substituted "state transportation commission" for "state highway commission"; substituted "Sections 67-4-3 through 67-4-16 NMSA 1978" for "this act"; and substituted "secretary" for "state highway engineer".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions § 494.

20 C.J.S. Counties § 150 et seq.

### **67-4-5. [Road districts; establishment; road supervisor; appointment; powers.]**

A. The board of county commissioners of any county in this state may by resolution duly adopted at any regular meeting of such board, divide their county into road districts composed of two or more contiguous school districts and may appoint a district road supervisor (hereinafter called road supervisor) for each of such road districts, provided that no person shall be appointed to the office of road supervisor for any road district unless his name has been proposed by a petition signed by at least twenty-five percent of the residents of such road district, who have paid a road tax in such road district during the preceding year, and the work of construction and maintenance of county roads and bridges in such road district shall be under the direction and control of the road supervisor of such district, and such road supervisor, subject to the approval of the board of county commissioners of his county, shall purchase the road equipment, materials and supplies for his district.

B. Such road supervisor shall hold office until the first day of January next after his appointment and qualifications [qualification].

C. Such road supervisor, before assuming the duties of his office, shall enter into a good and sufficient bond with two or more sureties, in the penal sum of one thousand dollars [(\$1,000)], conditioned for the honest and faithful performance of the duties of his office. Such bond shall be approved in the same manner as bonds for county officers.



D. Each road supervisor shall receive compensation for the actual time he shall be employed in work on county roads and bridges in his road district, at the rate of four dollars (\$4.00) per day. Such compensation shall be paid by warrant of the board of county commissioners of the county upon itemized and verified voucher, showing in detail the actual amount and character of work done, and the actual place where done during the day or fraction of day such road supervisor has been engaged.

**History:** Laws 1921, ch. 135, § 3; C.S. 1929, § 64-203; 1941 Comp., § 58-304; 1953 Comp., § 55-3-5.

## ANNOTATIONS

**Cross references.** — For bonds of county officers, see Chapter 10, Article 2 NMSA 1978.

**Compiler's notes.** — The parts of this section providing that the payment of a road tax shall be a qualification for those signing the petition may be obsolete since Code 1915, § 2674, as amended by Laws 1923, ch. 104, § 1, which provided for a road tax, was repealed by Laws 1927, ch. 44, § 1.

Sections 73-2-16 and 73-2-17 NMSA 1978 list certain disqualifications for "public road supervisors"; however, they are deemed inapplicable to the supervisor appointed under this section, since the office of road supervisor as it existed at the time the above mentioned sections were enacted was abolished by Laws 1912, ch. 54, § 9.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions § 13.

### **67-4-6. [Disbursements from road and bridge fund; county road superintendent's plan.]**

In those counties where the county road superintendent's plan is adopted, the county road and bridge fund shall only be paid out upon itemized bills or estimates rendered and approved by the county road superintendent, showing in detail the time, place and character of work done, or in detail the supplies or materials purchased and received for county road and bridge purposes, by warrants drawn by the board of county commissioners on the county road and bridge fund.

**History:** Laws 1921, ch. 135, § 4; C.S. 1929, § 64-204; 1941 Comp., § 58-305; 1953 Comp., § 55-3-6.

## ANNOTATIONS

**Expenditures are by board's warrant on approval of the superintendent.** State ex rel. Bard v. Board of County Comm'rs, 39 N.M. 119, 41 P.2d 1105 (1935).

**County road fund is intended** to be used for the establishment, construction and maintenance of county roads and may not be used for other purposes nor may the same be transferred to other county funds. A highway traffic patrolman is not even remotely connected with the construction and maintenance of county roads and his salary cannot properly be chargeable or disbursed from the county road fund. 1955-56 Op. Att'y Gen. No. 6110.

#### **67-4-7. Disbursements from road fund; state transportation commission plan.**

In those counties where the state transportation commission plan is adopted, the county road and bridge funds shall only be paid out upon itemized bills or estimates rendered and approved by the secretary or his assistant showing in detail the time, place and character of work done or the supplies or materials purchased and received for county road and bridge purposes by warrants drawn by the board of county commissioners on the county road and bridge fund.

**History:** Laws 1921, ch. 135, § 5; C.S. 1929, § 64-205; 1941 Comp., § 58-306; 1953 Comp., § 55-3-7; 2003, ch. 142, § 75.

#### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, added the section heading; and substituted "secretary" for "state highway engineer".

**County road fund is intended** to be used for the establishment, construction and maintenance of county roads and may not be used for other purposes nor may the same be transferred to other county funds. A highway traffic patrolman is not even remotely connected with the construction and maintenance of county roads and his salary cannot properly be chargeable or disbursed from the county road fund. 1955-56 Op. Att'y Gen. No. 6110.

#### **67-4-8. [Disbursements from road and bridge fund; road supervisor's plan.]**

In those counties where the road supervisor's plan is adopted, county road and bridge funds shall only be paid out upon itemized bills or estimates showing in detail the time, place and character of work done, or in detail the supplies or materials purchased and received for county road and bridge purposes, duly rendered and approved by the road supervisor of the road district in which such work is done or for which such supplies of materials are purchased and received, by warrant drawn by the board of county commissioners on the county road and bridge fund.

**History:** Laws 1921, ch. 135, § 6; C.S. 1929, § 64-206; 1941 Comp., § 58-307; 1953 Comp., § 55-3-8.

## **67-4-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 249, § 1 repeals 67-4-9 NMSA 1978, as enacted by Laws 1921, ch. 135, § 7, relating to adoption of plan for road work, budget, effective June 14, 1991. For provisions of former section, see Original Pamphlet.

## **67-4-10. Budget contents; limitations.**

The budget provided for in Section 67-4-9 NMSA 1978 shall provide for engineering, supervision, superintending, automobile travel expenses and other overhead expenses and for the compensation of county road superintendents in counties where the county road superintendent plan is adopted, for such overhead and other expenses of the state transportation commission in counties where the state transportation commission contract plan is adopted and for the compensation of road supervisors where the road supervisor plan is adopted. The total expenditures for all the foregoing purposes in any one fiscal year shall not exceed ten percent of the total county road and bridge budget up to and including fifty thousand dollars (\$50,000) and five percent of the budget in excess of fifty thousand dollars (\$50,000) and up to and including seventy-five thousand dollars (\$75,000) and two and one-half percent of the budget in excess of seventy-five thousand dollars (\$75,000).

**History:** Laws 1921, ch. 135, § 9; C.S. 1929, § 64-209; 1941 Comp., § 58-309; 1953 Comp., § 55-3-10; 2003, ch. 142, § 76.

### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

**No limit is placed upon superintendent's compensation** under this section. State ex rel. Bard v. Board of County Comm'rs, 39 N.M. 119, 41 P.2d 1105 (1935).

**Salary of road overseers should be included** in the 10% overhead. 1921-22 Op. Att'y Gen. 75.

## **67-4-11. Unlawful to transfer money from county road and bridge fund to any other county fund.**

It shall be unlawful to transfer any moneys from the county road and bridge fund to any other county fund. The county treasurer shall be liable on his official bond for any such transfer or transfers.

**History:** Laws 1921, ch. 135, § 10; C.S. 1929, § 64-210; 1941 Comp., § 58-310; 1953 Comp., § 55-3-11; Laws 1973, ch. 258, § 145.

## ANNOTATIONS

**Moneys may not be legally transferred** from the county road fund to other funds within the county operating budget. 1969 Op. Att'y Gen. No. 69-149.

**Disposition of surplus legislative matter.** — The disposition of any surplus in the county road fund, other than as provided in this chapter, is a matter for the legislature and it alone can authorize a different use than what is now permitted under the statute. 1951-52 Op. Att'y Gen. No. 5500.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Taxation for highway purposes as within constitutional provisions prohibiting legislature from imposing taxes for town, county, city or corporate purposes, or providing that legislature may invest power to levy such taxes in local authorities, 46 A.L.R. 609, 106 A.L.R. 906.

20 C.J.S. Counties §§ 193 to 203.

### **67-4-12. Rights of way; road location changes.**

A. Rights of way deemed necessary by the board of county commissioners for new roads or changes in location in roads shall be acquired by the board of county commissioners by donation by the owner, by payment of a price agreed upon by the owner and the board of county commissioners or by the exercise of the power of eminent domain in the manner provided by law for acquiring property for public use. No change of location of any portion of a state highway or road construction with federal or state aid shall be made without the approval of the state transportation commission.

B. Future rights of way may be designated without immediate acquisition if:

(1) the changes in the county highway map due to designation of a future right of way are posted at the county courthouse of the respective county;

(2) persons who may be adversely affected are notified of the future right of way designation and the estimated period of time that may elapse before acquisition;

(3) a hearing is provided for all interested persons; and

(4) the county highway map, as amended, is filed with the state transportation commission.

**History:** Laws 1921, ch. 135, § 11; C.S. 1929, § 64-211; 1941 Comp., § 58-311; 1953 Comp., § 55-3-12; Laws 1971, ch. 197, § 1; 2003, ch. 142, § 77.

## ANNOTATIONS

**Cross references.** — For eminent domain, see Chapter 42A, Article 1 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, substituted "state transportation commission" for "state highway commission."

**Damages not unreasonable or excessive.** — The fact that the last award of damages for land condemned was 10 times as much as the original award is not indicative that the final judgment was unreasonable and excessive, without evidence of the value of the land. Board of County Comm'rs v. Wasson, 37 N.M. 503, 24 P.2d 1098 (1933); Board of County Comm'rs v. Gardner, 37 N.M. 514, 24 P.2d 1104 (1933).

### **67-4-13. Road maintenance; insufficiency of state funds.**

All county roads and bridges shall be maintained at the expense of the respective counties. All roads, and bridges upon roads, that have been declared to be a state highway by acts of the legislature or resolution of the state transportation commission shall be maintained at the expense of the state, provided, that whenever there are not sufficient funds available in the state road fund for maintenance of all state highway mileage in any county, the state transportation commission shall certify to the board of county commissioners of the county the sections of highways that it is unable to maintain at state expense, and these sections shall thereafter be maintained at the expense of the county until such time as there are state funds available to maintain them.

**History:** Laws 1921, ch. 135, § 12; C.S. 1929, § 64-212; 1941 Comp., § 58-312; 1953 Comp., § 55-3-13; 2003, ch. 142, § 78.

## ANNOTATIONS

**The 2003 amendment,** effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

**Extensions of federal aid system.** — State highway department may construct and maintain extensions of federal aid system into and through municipalities and secondary and feeder roads. 1933-34 Op. Att'y Gen. 65.

**Public meeting required.** — While the board of county commissioners need not hold a hearing when it closes a county road or highway for repair and maintenance, former 67-4-9 NMSA 1978 required a public meeting that educates county residents about roads on which the county will work in the following year. 1988 Op. Att'y Gen. No. 88-62.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of governmental entity for damage to motor vehicle or injury to person riding therein resulting from collision between vehicle and domestic animal at large in street or highway, 52 A.L.R.4th 1200.

## **67-4-14. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 249, § 1 repeals 67-4-14 NMSA 1978, as enacted by Laws 1921, ch. 135, § 14, relating to contracts for construction, advertisement for bids, effective June 14, 1991. For provisions of former section, see Original Pamphlet.

## **67-4-15. [Violation of 67-4-3 to 67-4-16 NMSA 1978; penalty; disposition of fines.]**

Any person or officer refusing to comply with the provisions of this act [67-4-3 to 67-4-16 NMSA 1978], or violating any of the provisions thereof, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five [(\$25.00)] nor more than one hundred dollars [(\$100)] and the costs of prosecution, which fine and costs shall be paid to the county treasurer and by such county treasurer credited to the county road and bridge fund of the precinct or district within such county where the defendant or person liable for the payment of said road tax resides.

**History:** Laws 1921, ch. 135, § 16; C.S. 1929, § 64-215; 1941 Comp., § 58-314; 1953 Comp., § 55-3-15.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material in this section was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** — New Mexico Const., art. XII, § 4, provides that "All fines and forfeitures collected under general laws . . . shall constitute the current school fund of the state."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions § 414.

20 C.J.S. Counties §§ 77, 142.

## **67-4-16. [Misuse of funds and other violations; liability on bond; removal from office.]**

Any public official who shall divert or misuse any county road and bridge funds or who shall violate or fail to carry out any of the provisions of this act [67-4-3 to 67-4-16 NMSA 1978] shall be liable on his official bond therefor, and shall be subject to removal from office on account thereof.

**History:** Laws 1921, ch. 135, § 17; C.S. 1929, § 64-216; 1941 Comp., § 58-315; 1953 Comp., § 55-3-16.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivision § 414.

20 C.J.S. Counties §§ 104, 137, 142.

#### **67-4-17. [Cooperative agreements with federal government.]**

The boards of county commissioners of the several counties are hereby authorized to enter into cooperative agreements with the secretary of agriculture for the survey, construction and maintenance of roads and trails within their counties as provided by Section 8 of the act of congress of the United States, approved July eleven, 1916, entitled "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes."

**History:** Laws 1917, ch. 38, § 22; C.S. 1929, § 64-323; 1941 Comp., § 58-318; 1953 Comp., § 55-3-19.

#### ANNOTATIONS

**Compiler's notes.** — The federal act referred to in this section was codified at 16 U.S.C. § 503, but has since been repealed.

#### **67-4-18. [Portion of proceeds of tax levies paid to municipalities.]**

From and after the time this act shall take effect, the treasurer of each county shall immediately as the same are received, pay over to the treasurer of any city, town or village situate within such county thirty per centum of all moneys coming into the hands of such county treasurer and collected from or under any road tax levied for county roads under general laws on the taxable property within the corporate limits of such city, town or village, the proceeds of which tax are not pledged for the payment of certificates of indebtedness or bonds already issued, or not levied to meet the assent of the state of New Mexico to the provisions of the act of congress, approved July 11, 1916, entitled, "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes," under Chapter 38 of the Session Laws of the third state legislative assembly of New Mexico.

**History:** Laws 1919, ch. 90, § 1; C.S. 1929, § 64-802; 1941 Comp., § 58-321; 1953 Comp., § 55-3-22.

#### ANNOTATIONS

**Compiler's notes.** — The federal act referred to in this section was codified at 16 U.S.C. § 503, but has since been repealed.

Chapter 38 of the Session Laws of the third state legislature (1917) is compiled principally in Articles 3 and 4 of Chapter 67, NMSA 1978. The particular sections referring to federal aid were 55-3-19 and 55-3-20, 1953 Comp., the former presently compiled as 67-4-17 NMSA 1978, the latter being repealed by Laws 1974, ch. 92, § 34.

### **67-4-19. [Municipal "street paving and improvement fund"; purposes for which used.]**

All moneys received by treasurers of cities, towns and villages under this act [67-4-18, 67-4-19 NMSA 1978] shall be held and expended as "street paving and improvements funds," and for no other purposes, providing that all funds received hereunder shall be expended for street maintenance and improvement of streets in such cities, towns and villages which are extensions of the public roads and highways through or into such cities, towns and villages and that paving shall not be considered as improvements for the purposes of this act.

And provided further that such funds may be expended upon roads within the county outside of the limits of and leading into such cities, towns and villages.

**History:** Laws 1919, ch. 90, § 2; C.S. 1929, § 64-803; 1941 Comp., § 58-322; 1953 Comp., § 55-3-23.

### **67-4-20. Local county roads; assessment for maintenance; lien.**

A. Any board of county commissioners may adopt a resolution determining that any streets totally within a subdivided area approved by the county commission, outside the corporate limits of any municipality, and which the board determines to have such a prospective population density as to require extraordinary street maintenance shall be maintained in part at the expense of the owner of any property which abuts upon the streets. The resolution shall only be adopted after a public hearing, notice of which has been advertised in a newspaper of general circulation within the county for two consecutive weeks, the first such advertisement being at least ten days prior to the date of hearing. In the resolution, the board of county commissioners shall determine:

- (1) the expense of maintaining the streets;
- (2) the proportion of the expense to be borne by the property which abuts the streets;
- (3) the charge to be assessed against each lineal foot of frontage of the abutting property which shall not exceed one-half of the average cost per lineal foot of county road maintenance for the prior fiscal year nor be less than one dollar (\$1.00) for each assessment billing; and



(4) the assessment, on an equitable basis, of each parcel or tract within the subdivided area according to its proportionate share of the expense of maintaining the streets. As used in this paragraph, "equitable basis" includes an assessment based on a front-foot, improved or unimproved property, zone or area basis or an assessed valuation basis where each tract or parcel bears the same percentage of total costs as the percentage that the tract's or parcel's assessed value bears to the total assessed value of the property included in the improvement district.

B. The assessment for the expense of maintaining the streets shall be billed and collected by the county treasurer at the same time as the property taxes and shall become delinquent thirty days after the date of billing. All delinquent assessments shall be a lien against the tract or parcel of property abutting the street, and the lien shall be enforced as provided in Section 67-4-21 NMSA 1978.

C. As used in this section, the term "streets" shall include both improved and unimproved streets, roads, thoroughfares, curbs, divider strips and median strips or any combination of the foregoing.

**History:** 1953 Comp., § 55-3-24, enacted by Laws 1969, ch. 167, § 1; 1975, ch. 125, § 1; 2001, ch. 342, § 2.

## ANNOTATIONS

**The 2001 amendment**, effective June 15, 2001, in Paragraph A(4), substituted "on an equitable basis, of each parcel or tract within the subdivided area" for "according to its frontage, of each tract, lot or parcel of abutting property", and added the current last sentence; and in Subsection B, substituted "67-4-21 NMSA 1978" for "55-3-25 NMSA 1953".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions § 581.

20 C.J.S. Counties § 233.

### **67-4-21. County lien; filing; contents; interest.**

A. The county treasurer shall file in the office of the county clerk a notice of lien covering each delinquent assessment for street maintenance. The notice of lien shall include:

- (1) the fact that a lien for a street maintenance assessment is established;
- (2) the name and address of the owner of the property against which the lien is established as determined from the records of the county assessor;
- (3) a description of the property against which the lien is established;

(4) the amount of the lien; and

(5) if the lien is for more than one assessment, the dates for which the lien is established.

B. All assessment liens may be included in the same notice of lien and it shall not be necessary to file separate liens against the separate properties. The lien shall be attested in the name of the county treasurer under the seal of the county.

C. The principal amount of any lien imposed for a street maintenance assessment shall bear interest at the same rate as delinquent property taxes and shall be collected at the same time as the property taxes.

**History:** 1953 Comp., § 55-3-25, enacted by Laws 1969, ch. 167, § 2; 1975, ch. 125, § 2.

### **67-4-22. Effect of filing notice of lien.**

After the filing of the notice of the lien in the office of the county clerk, the county shall have a lien upon the property described in the notice of lien. The filing of the notice of the lien shall be notice to all the world of the existence of the lien and of the contents of the notice of lien.

**History:** 1953 Comp., § 55-3-26, enacted by Laws 1969, ch. 167, § 3.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties and Other Political Subdivisions § 515.

### **67-4-23. Manner of releasing lien.**

The county treasurer may release a lien against any specific property by:

A. entering and signing a receipt of payment upon the notice of lien filed in the office of the county clerk; or

B. issuing a separate receipt which recites that payment of the lien, with any accrued interest and penalty, has been made.

**History:** 1953 Comp., § 55-3-27, enacted by Laws 1969, ch. 167, § 4.

**67-4-24. County lien; foreclosure; joinder of defendants; complaint; several judgment; lien recitals as prima facie evidence; attorney fee.**

A. The county may, in a single suit, foreclose the liens against all of the persons named in a notice of liens or against the property if the owners are unknown. The complaint filed by the county shall:

- (1) expressly state the name and address of each defendant, if known;
- (2) describe the property against which the lien is established; and
- (3) set forth the amount of the lien and the date from which any interest has accrued.

B. The judgment or decree rendered in said cause shall be several against the named defendants and against the several properties for the amounts decreed to be due by each. Liens shall be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed, with like rights of redemption. At the trial foreclosing the lien, the recitals of the liens or the notices of lien shall be received in evidence as prima facie true. In any foreclosure of a lien for street maintenance assessments under this act [67-4-20 to 67-4-24 NMSA 1978], a reasonable attorney's fee shall be taxed by the court as part of the costs.

**History:** 1953 Comp., § 55-3-28, enacted by Laws 1969, ch. 167, § 5.

## **ARTICLE 5**

### **Vacation, Alteration and Establishment of County Roads and Bridges**

#### **67-5-1. [County bridges, township and section lines are parts of public highways; width.]**

County bridges are parts of public highways and must not be less than sixteen feet in width; when practicable the county commissioners shall declare all township and section lines, public highways of not less than forty feet in width, and where there is no improvement, no compensation shall be paid for such highways.

**History:** Laws 1891, ch. 89, § 2; C.L. 1897, § 1829; Code 1915, § 2653; C.S. 1929, § 64-702; 1941 Comp., § 58-401; 1953 Comp., § 55-4-1.

#### **ANNOTATIONS**

**Compiler's notes.** — The 1915 Code compilers omitted the first sentence of this section which read: "The right of way of county and territorial roads hereafter established must be not less than forty feet wide nor more than eighty feet, but any road already established may be made wider." Its omission may be accounted for by the provisions of 67-5-2 NMSA 1978.

**Section insufficient to accept federal right-of-way grant.** — This section, if intended as acceptance of federal grant of right-of-way for construction of highways over public lands, was insufficient for such purpose. *Frank A. Hubbell Co. v. Gutierrez*, 37 N.M. 309, 22 P.2d 225 (1933).

**Compensation necessary where private lands declared public highways.** — Section lines cannot be declared public highways without compensation where lands are privately owned. *Frank A. Hubbell Co. v. Gutierrez*, 37 N.M. 309, 22 P.2d 225 (1933).

Although this section authorizes county commissioners to declare township and section lines public highways, they must provide compensation for any private property taken and comply with the ordinary statutory procedures for establishing county roads. 1988 Op. Att'y Gen. No. 88-59.

**Constitutionality of provision authorizing taking without compensation.** — Statutory provision, if intended to authorize boards of county commissioners to take private lands along section lines for highway without compensation, would be unconstitutional. *Frank A. Hubbell Co. v. Gutierrez*, 37 N.M. 309, 22 P.2d 225 (1933).

**Procedure for establishment of section line highways.** — Highways on section lines must be established under regular statutory proceedings the same as any other highway. *Frank A. Hubbell Co. v. Gutierrez*, 37 N.M. 309, 22 P.2d 225 (1933).

**Section not self-executing.** — Although this section authorizes the county commissioners to establish public highways on section lines, this is not self-executing, and private property cannot be taken for such highways without just compensation. 1912-13 Op. Att'y Gen. 155, 176; 1914 Op. Att'y Gen. 20.

**Section does not preserve section lines for road purposes,** and if there has been a permissive use only of a section line, the owner of the land may fence it up or put gates on it. 1912-13 Op. Att'y Gen. 222.

**No obligation to keep section line as road.** — Unless a road was established on a section line before any right was acquired by the owner on one side to land on the other side, there is no obligation to keep it up as a road and it may be enclosed. 1919-20 Op. Att'y Gen. 151.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 11, 12, 41 to 48, 80.

Mistake in highway line as giving rise to adverse possession by public, 97 A.L.R. 95.

Alteration or relocation of street or highway as abandonment or vacation of parts not included, 158 A.L.R. 543.

11 C.J.S. Bridges § 3.

### **67-5-2. [Width of public highways.]**

All public highways laid out in this state shall be sixty feet in width unless otherwise ordered by the board of county commissioners.

**History:** Laws 1905, ch. 124, § 18; Code 1915, § 2670; C.S. 1929, § 64-719; 1941 Comp., § 58-402; 1953 Comp., § 55-4-2.

#### **ANNOTATIONS**

**Width of roads.** — This section being later than 67-5-1 NMSA 1978 would probably authorize the county commissioners to decide width of roads regardless of the 40-foot provision in 67-5-1 NMSA 1978. 1929-30 Op. Att'y Gen. 140.

**Highway established via prescriptive use.** — The width requirement of this section should not be applied where the highway was established by means of prescriptive use. *State ex rel. Baxter v. Egolf*, 107 N.M. 315, 757 P.2d 371 (Ct. App. 1988).

**Roads established by use are not "laid out"** as required by this section. The applicability of this section is dependent upon the laying out of a road by a governmental entity authorized to do so. *Quintana v. Knowles*, 115 N.M. 360, 851 P.2d 482 (Ct. App. 1993).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Width and boundaries of public highway acquired by prescription or adverse user, 76 A.L.R.2d 535.

### **67-5-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 249, § 1 repeals 67-5-3 NMSA 1978, as enacted by Laws 1891, ch. 89, § 3, relating to method of changing or discontinuing county or public road, effective June 14, 1991. For provisions of former section, see Original Pamphlet.

### **67-5-4. [Discontinuance; procedure; viewers; county-line roads.]**

Whenever, in the opinion of the board of county commissioners of any county, any road or part of road then established and maintained as a public highway is not needed, or the repairs of the same are burdensome and in excess of the benefits therefrom, they may at a regular meeting appoint a board of commissioners of three freeholders of the county as viewers, to view such road or part of road, and make report thereof to the board of county commissioners at their next regular meeting, setting forth fully their finding, and if they recommend a discontinuance of such road or part of road, then the board of county commissioners may order the same vacated: provided, that if such road

runs on the county line between two counties, the county commissioners of both the counties interested shall appoint viewers and the concurrence of the county commissioners of both counties shall be necessary to vacate it.

**History:** Laws 1905, ch. 124, § 3; Code 1915, § 2655; C.S. 1929, § 64-704; 1941 Comp., § 58-404; 1953 Comp., § 55-4-4.

## ANNOTATIONS

**Legislative intent.** — Sections 67-5-4, 67-2-6 and 67-2-7 NMSA 1978 all relate to the vacation or abandonment of public highways, streets or roads by formal declaration, determination or order of the state or the appropriate commission, department, institution, bureau or political subdivision thereof, being in pari materia, these statutes should be construed, if reasonably possible, so as to give effect to every provision of each, and these statutes evince an intent on the part of the legislature to provide a formal procedure for the abandonment or vacation of public roads, streets and highways; hence the district courts are not vested with this power. *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974).

**Effect of section.** — This section is authority for the board of county commissioners of Bernalillo county vacating and closing a portion of a public road located in a platted area outside of the Albuquerque city limits. 1957-58 Op. Att'y Gen. No. 58-87.

**General rule** is to the effect that where the absolute and unqualified fee is in the municipality or other public agency, it divests the original owner of its entire interest so that upon discontinuance of the way as such the title does not revert to the grantor or abutting owner but remains in the municipality or other agency unaffected by the vacation. 1957-58 Op. Att'y Gen. No. 58-87.

**Right to object to closing by nonabutting property owner.** — One whose property does not abut on a closed section of a street or road ordinarily has no right to complain of the closing or vacation of such road, provided he still has reasonable access to the general street or road system. *Mandell v. Board of Comm'rs*, 44 N.M. 109, 99 P.2d 108 (1940).

**Proof of special damages by nonabutting owner.** — Proof of some special or peculiar damage to a claimant, though not an abutting owner, may support damages resulting from closing of road or street, but the damage suffered must be substantially different in kind, and not merely in degree, from that suffered by the public in general. *Mandell v. Board of Comm'rs*, 44 N.M. 109, 99 P.2d 108 (1940).

**Complaint seeking vacation proceedings review dismissed.** — Dismissal of complaint seeking review of proceedings by board of county commissioners in vacating a highway within county but outside of a city, and seeking injunctive relief as an interference with plaintiffs' private easement of way, required to be appraised for correctness upon a determination of whether plaintiffs had an easement of right-of-way,

or at least one superior to the statutory right of the county to vacate the section of street or road in question. *Mandell v. Board of Comm'rs*, 44 N.M. 109, 99 P.2d 108 (1940).

**Statutory requirements for viewers' report.** — Statute does not require viewers' report to contain more than a finding that the road or street sought to be vacated is not needed, and the recommendation that it be closed. *Mandell v. Board of Comm'rs*, 44 N.M. 109, 99 P.2d 108 (1940).

**Jurisdiction over subject matter.** — Although the county entered an appearance in the quiet title suit and participated in the proceedings therein conducted by the district court, this did not confer jurisdiction or power in the district court over the subject matter of the suit, insofar as the subject matter of the suit was concerned with the quieting of title in the roads, as subject-matter jurisdiction cannot be conferred by consent of the parties. *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 137 to 139, 154.

Right to compensation by nonabutting owner for vacation of section of highway, 49 A.L.R. 330, 93 A.L.R. 639.

Validity and construction of regulations as to subdivision maps or plats, 11 A.L.R.2d 524.

39A C.J.S. Highways § 116.

### **67-5-5. [Alteration or establishment; petition; contents.]**

The board of county commissioners may alter, widen or change any established road or lay out any new road in their respective counties, when petitioned by ten freeholders residing within two miles of the road sought to be altered, widened, changed or laid out. Said petition shall set forth a description of the road sought to be altered, widened or changed and if the petition be for a new road it shall set forth the points where it is to terminate.

**History:** Laws 1905, ch. 124, § 4; Code 1915, § 2656; C.S. 1929, § 64-705; 1941 Comp., § 58-405; 1953 Comp., § 55-4-5.

### **ANNOTATIONS**

**Petition for proposed road.** — A petition is not bad because it sets forth a detailed and specific description of the route of the proposed road, when it should set forth the termini only. *Michelet v. Board of Comm'rs*, 21 N.M. 95, 152 P. 1140 (1915).

**Provisions for acquiring land not repealed.** — Laws 1912, ch. 54 (now repealed) granting to the county road boards general powers over public roads did not repeal this

statute (Laws 1905, ch. 124), empowering boards of county commissioners to acquire by purchase or condemnation, land for use as a public road. *State ex rel. County Comm'rs v. Romero*, 19 N.M. 1, 140 P. 1069 (1914).

**Inclusion of new with old road in petition.** — Even though a proposed new road follows an existing road part of the way, as long as it is continuous, it may be considered and included in the same petition. 1943-44 Op. Att'y Gen. No. 4553.

**Vesting of fee when steps provided not taken.** — Even though the steps provided herein were never taken, since the road was used for over half a century and was declared a state highway by legislative act, the fee therein had vested in the state for highway purposes. 1945-46 Op. Att'y Gen. No. 4641.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 130 to 137.

39A C.J.S. Highways §§ 96 to 112.

### **67-5-6. Establish rights-of-way.**

The board of county commissioners, in their respective counties, may establish township and section lines as rights-of-way of not less than thirty feet in width for the purpose of constructing gas lines or drainage ditches when petitioned by ten freeholders residing within five miles of any proposed right-of-way; provided that each petition shall apply to rights-of-way not exceeding two (2) miles in length.

**History:** 1953 Comp., § 55-4-5.1, enacted by Laws 1965, ch. 200, § 1.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 136.

### **67-5-7. [Petitioners' deposit or bond covering viewing expense.]**

The petitioners shall deposit with the county clerk of the county in which any road is sought to be altered, widened, changed or laid out and established, a sufficient sum of money, which shall be fixed by the board of county commissioners, to defray the expense of viewing the proposed road, which sum shall be paid into the county road fund in case the prayer of the petitioner is refused, but if the board of county commissioners alter, widen, change or lay out such road, then such sum shall be returned to the person or persons depositing the same. The petitioners in lieu of such deposit may file with the county clerk aforesaid, a good and sufficient bond conditioned for the payment of the expenses of viewing such road should the prayer of the petitioner be refused.



**History:** Laws 1905, ch. 124, § 5; Code 1915, § 2657; C.S. 1929, § 64-706; 1941 Comp., § 58-406; 1953 Comp., § 55-4-6.

### **67-5-8. [Proposed county-line roads; petitions; viewers; opening and maintaining.]**

If any proposed highway be on the county line between two counties, the board of county commissioners of each county interested shall be petitioned, and each of such boards shall appoint three viewers, qualified as in other cases, who, or a majority of whom, shall meet at a time and place named by the board of county commissioners first interested and proceed to view and mark out the road, and report to the board of county commissioners of both counties, as in other cases, and the concurrence of the county commissioners of both such counties shall be necessary to establish it. And, if any such road be established, each of such counties shall open and maintain a definite part thereof, which the board of county commissioners of such counties shall apportion by mutual agreement between the two counties, and if the board of county commissioners cannot agree upon their apportionment, they may refer the matter to three disinterested freeholders as arbitrators, whose duty it shall be to apportion the same and report thereon to the boards of county commissioners of both counties.

**History:** Laws 1905, ch. 124, § 6; Code 1915, § 2658; C.S. 1929, § 64-707; 1941 Comp., § 58-407; 1953 Comp., § 55-4-7.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 35, 39, 49.

39A C.J.S. Highways § 101.

### **67-5-9. [Viewers for proposed alteration or establishment; appointment; notice of time and place for viewing; posting.]**

It shall be the duty of the board of county commissioners of any county in the state at their next meeting, after a petition as required in Section 67-5-5 NMSA 1978 is received, to appoint a board of commissioners of three freeholders of the county to view and mark out the road prayed for in the petition, and to fix a time for such view and to cause notices to be posted in three of the most public places, along the new proposed road, at least five days previous to the day fixed for the view thereof, giving parties in interest notice that at the time fixed by the board of county commissioners the viewers so appointed will meet at the point designated in the petition as the starting point of such road, to attend to their duties as viewers.

**History:** Laws 1905, ch. 124, § 7; Code 1915, § 2659; C.S. 1929, § 64-708; 1941 Comp., § 58-408; 1953 Comp., § 55-4-8.

## ANNOTATIONS

**Cross references.** — For publication in lieu of posting, see 14-11-12 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 146.

39A C.J.S. Highways § 106.

### **67-5-10. [Warrants to viewers; contents.]**

The county clerk shall issue a warrant directed to the viewers appointed, setting forth their appointment, and requiring them to meet at the time and place named by the board of county commissioners, and to proceed to view and mark out such road and to assess the damages and benefits accruing to the owner or owners of any of the lands over which the same may pass, by reason of the alteration, changing, widening or location thereof, and the proper cost of opening such road for travel.

**History:** Laws 1905, ch. 124, § 8; Code 1915, § 2660; C.S. 1929, § 64-709; 1941 Comp., § 58-409; 1953 Comp., § 55-4-9.

### **67-5-11. [Service of warrants; return; refusal of viewer to serve; forfeiture.]**

The sheriff of the proper county shall serve the warrant mentioned in the preceding section [67-5-10 NMSA 1978] by delivering a copy to each of the viewers named therein, and the original shall be returned to the county clerk with his endorsement of service made thereon. Any person appointed road viewer and duly served with a warrant, who shall willfully neglect or refuse to act, shall forfeit the sum of twenty-five dollars (\$25) to the county.

**History:** Laws 1905, ch. 124, § 9; Code 1915, § 2661; C.S. 1929, § 64-710; 1941 Comp., § 58-410; 1953 Comp., § 55-4-10.

## ANNOTATIONS

**Compiler's notes.** — New Mexico Const., art. XII, § 4, provides that, "All fines and forfeitures collected under general laws . . . shall constitute the current school fund of the state."

### **67-5-12. [Duties of road viewers; plats.]**

The viewers shall meet at the time and place specified in the warrant, and commence at the place designated in said petition, as the starting point of the road sought to be altered, widened, changed or laid out and established, the said viewers

shall proceed to view and mark out the same by setting stakes, blazing trees, turning a furrow or other appropriate monuments to the terminus named in the petition by the most practicable and convenient route that they in their judgment can find. They shall assess the benefits and damages accruing to all persons by reason of the alteration, widening, changing or laying out of such road, and award to any person damages in excess of the benefits accruing to him or them a sum equal to such excess. And if the viewers or a majority of them, be of the opinion that the road should be altered, widened, changed or laid out and established, they shall cause a survey and plat of the same to be made by the county surveyor, or other competent person, giving the courses and distances and specifying the land over which the road extends.

**History:** Laws 1905, ch. 124, § 10; Code 1915, § 2662; C.S. 1929, § 64-711; 1941 Comp., § 58-411; 1953 Comp., § 55-4-11.

## ANNOTATIONS

**In fixing definite line of highway,** the viewers, under the provisions of this section, may lay out the same by the most practical and convenient route that they in their judgment can find. This discretion is not taken away or limited by the fact that the petition describes a definite and particular line, nor does such description render the petition void. *Michelet v. Board of Comm'rs*, 21 N.M. 95, 152 P. 1140 (1915).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 146.

39A C.J.S. Highways § 106.

### **67-5-13. [Replacing road viewers.]**

If any viewer duly appointed and served with warrant refuses to act or is disqualified or does not appear, the other two viewers may fill such vacancy, or if but one of the viewers appears who is qualified and consents to act, he shall appoint two others who shall be freeholders to assist him and they shall proceed to view such road.

**History:** Laws 1905, ch. 124, § 11; Code 1915, § 2663; C.S. 1929, § 64-712; 1941 Comp., § 58-412; 1953 Comp., § 55-4-12.

### **67-5-14. [Report of viewers; contents; compensation.]**

The viewers shall file a report of the view in the office of the county clerk of the county in which such view was made, ten days before the next regular meeting of the board of county commissioners held after the same is completed, which shall be signed by a majority of the viewers and shall contain a full statement of their proceedings, a description of the land over which such road extends, an estimate of the cost of opening it for travel, an assessment of the damages and benefits accruing to any person or persons by reason of the alteration, widening, changing or laying out of such road and

the sum awarded any person or persons for damages in excess of the benefits assessed to him or them, and if such road be practicable, and the establishment of it be recommended by them. To this report the viewers shall annex the plat, survey and report of the surveyor. For their services the viewers shall receive a warrant on the county treasurer for a sum to be fixed by the county commissioners, not exceeding five dollars [(\$5.00)] per day.

**History:** Laws 1905, ch. 124, § 12; Code 1915, § 2664; C.S. 1929, § 64-713; 1941 Comp., § 58-413; 1953 Comp., § 55-4-13.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 63.

### **67-5-15. [Consideration of viewer's report by county commissioners; additional data.]**

The board of county commissioners at their next regular meeting, after the filing of such report, shall proceed to consider the same and all objections that there may be made thereto, and they shall determine whether or not such road shall be established and opened for travel. And they may refer the matter of viewing to the same or other viewers with instructions to report in like manner, as herein required, or specially upon some particular matter.

**History:** Laws 1905, ch. 124, § 13; Code 1915, § 2665; C.S. 1929, § 64-714; 1941 Comp., § 58-414; 1953 Comp., § 55-4-14.

## ANNOTATIONS

**Legislative intent.** — By considering this section, 67-5-17 and 67-5-18 NMSA 1978, it will be found that the evident intent of the legislature was only to provide for the actual payment of the damages before a taking of the condemned property. *Michelet v. Board of Comm'rs*, 21 N.M. 95, 152 P. 1140 (1915).

**Report of viewers is properly considered** by the board of county commissioners at its next regular session after such report is filed with the clerk of such board. *Michelet v. Board of Comm'rs*, 21 N.M. 95, 152 P. 1140 (1915).

**Authority of board to alter award.** — Boards of county commissioners are without authority to alter award made by viewers in proceeding to lay out a road, except where the property owner is dissatisfied with the award. *State ex rel. Sisney v. Board of Comm'rs*, 27 N.M. 228, 199 P. 359 (1921).

**Remedy to review alteration of award.** — Since there is no appeal provided from action of a board of county commissioners in altering an award made by viewers in

proceeding to lay out road, the proper remedy to review such action is by certiorari. State ex rel. Sisney v. Board of Comm'rs, 27 N.M. 228, 199 P. 359 (1921).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways §§ 62, 63.

### **67-5-16. [Approval of road opening; recording viewers' report.]**

If the board of county commissioners determine [determines] to open any such road, they shall cause the full and final report of the viewers including the plat and report of the surveyor to be recorded in the office of the county clerk and recorded, in a book kept for that purpose.

**History:** Laws 1905, ch. 124, § 14; Code 1915, § 2666; C.S. 1929, § 64-715; 1941 Comp., § 58-415; 1953 Comp., § 55-4-15.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material in this section was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways §§ 62, 63.

### **67-5-17. [Notice of road opening; prerequisites; posting.]**

The board of county commissioners having considered the report of any road review, and the compensation to which any person or persons damaged having been ascertained and paid to the owner or owners or into court for him or them, may order the road to be open for travel and declared a public highway. And if they do so, or order, they shall cause notices to be posted at three public places along the line of such road, giving all parties notice that they have or will direct their proper officers to open and work the same from and after sixty days from the date of such notice: provided, no such road shall be ordered opened through fields of growing crops or along a line where growing crops would thereby be exposed to stock until the owner or owners of such crops shall have sufficient time to harvest and take care of the same.

**History:** Laws 1905, ch. 124, § 15; Code 1915, § 2667; C.S. 1929, § 64-716; 1941 Comp., § 58-416; 1953 Comp., § 55-4-16.

#### **ANNOTATIONS**

**Remedy to review alteration of award.** — There is no appeal provided for action of a board of county commissioners in altering an award made by viewers in proceeding to lay out a road. The proper remedy to review quasi-judicial action by board of county commissioners is by certiorari. State ex rel. Sisney v. Board of Comm'rs, 27 N.M. 228, 199 P. 359 (1921).

**Requirements for payment or tender of damages.** — This section only requires the payment or tender of the damages awarded prior to the actual taking of the property required. *Michelet v. Board of Comm'rs*, 21 N.M. 95, 152 P. 1140 (1915).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways §§ 43, 46.

### **67-5-18. [Damages exceeding benefits; persons under disability.]**

If the damages assessed to any person or persons by reason of the alteration, widening, changing or laying out of any road, shall exceed the benefits, the excess shall be paid to such person or persons by warrant on the county treasurer for the amount. If any person or persons to whom damages are awarded, be under disability or cannot be found, the same shall be set apart to such person or persons in the county treasury.

**History:** Laws 1905, ch. 124, § 16; Code 1915, § 2668; C.S. 1929, § 64-717; 1941 Comp., § 58-417; 1953 Comp., § 55-4-17.

## **ANNOTATIONS**

**Cross references.** — For notes on damages, see notes to 67-5-15 NMSA 1978.

**Provisions regarding payment not repealed by implication.** — Although Laws 1912, ch. 54 (now repealed) created a county road board which was vested with general control of roads and with the power to draw its warrants directly against the county road fund, it did not repeal by implication this statute (Laws 1905, ch. 124), which empowers the board of county commissioners to draw warrants against such fund to pay for land acquired for use as a public road by eminent domain. *State ex rel. County Comm'rs v. Romero*, 19 N.M. 1, 140 P. 1069 (1914).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 270, 271.

39A C.J.S. Highways § 70.

### **67-5-19. [Determination of damages on appeal to district court.]**

If any person or persons be of the opinion that the damages awarded him or them by the viewers are inadequate and insufficient, the board of county commissioners may agree with such person or persons upon the measure of the same, and should they fail to so agree such person or persons may appeal from the decision of the viewers to the district court of the county and evidence shall be taken before the court or a referee as in other cases and the court shall determine the amount of damages and render judgment accordingly.

**History:** Laws 1905, ch. 124, § 17; Code 1915, § 2669; C.S. 1929, § 64-718; 1941 Comp., § 58-418; 1953 Comp., § 55-4-18.

## ANNOTATIONS

**Cross references.** — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

**Compiler's notes.** — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

**Remedy to review alteration of award.** — There is no appeal provided from action of a board of county commissioners in altering an award made by viewers in proceeding to lay out a road. The proper remedy to review quasi-judicial action by board of county commissioners is by certiorari. *State ex rel. Sisney v. Board of Comm'rs*, 27 N.M. 228, 199 P. 359 (1921).

**Appeal and effect of irregularities in assessing damages and benefits.** — Since this section allows an appeal to the district court in the matter of assessment of damages, and a review of that question before the court, the opening of a highway cannot be enjoined on ground of irregularities in action of viewers in assessing damages and benefits. *Michelet v. Board of Comm'rs*, 21 N.M. 95, 152 P. 1140 (1915).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 270, 271.

39A C.J.S. Highways § 80.

### **67-5-20. [Establishment on petition of all owners.]**

Whenever a petition shall be presented to the board of county commissioners of any county of this state praying for a public highway, and the names of all the owners of all the land through which said road is to be laid out, shall be signed by the owners thereof to said petition, giving the right-of-way through the land, and accompanied by a plat of the road, it shall be the duty of the board of county commissioners, if in their opinion, the public good requires it, to declare the same a public highway, and thereupon a plat shall be filed and recorded and the said road shall become a public highway from and after that date.

**History:** Laws 1905, ch. 124, § 19; Code 1915, § 2671; C.S. 1929, § 64-720; 1941 Comp., § 58-419; 1953 Comp., § 55-4-19.

## ANNOTATIONS

**Subdivision Act requires formal county acceptance** to obligate the county for road maintenance and such acceptance cannot be satisfied through the common law doctrines of prescriptive acquisition or implied dedication. *McGarry v. Scott*, 2003-NMSC-016, 134 N.M. 32, 72 P.3d 608.

## **67-5-21. [Private roads; procedure for establishment.]**

The matter of laying out any private wagon road from the dwelling of any person to any public road and of condemning the lands necessary therefor shall be the same as hereinbefore provided, excepting that the viewers of the same shall only receive compensation for one day's service, and mileage to and from their respective residence; and the petition in such cases need only be signed by such person, and the expense of viewing and surveying such road and the damages that may accrue, to any person by reason of laying out the same, and the expense of opening such road shall be paid by such petitioner.

**History:** Laws 1905, ch. 124, § 20; Code 1915, § 2672; C.S. 1929, § 64-721; 1941 Comp., § 58-420; 1953 Comp., § 55-4-20.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 48.

39A C.J.S. Highways § 1.

## **ARTICLE 6 County Highways and Bridge Bonds**

### **67-6-1. [Bond issue by county commissioners; limitation.]**

Subject to the provisions of this article the boards of county commissioners of the several counties in this state are hereby authorized to issue bonds for the construction and repair of roads and bridges within the limits of their respective counties to an amount, which including the existing indebtedness of said counties, shall not exceed four per centum on the value of the taxable property within any such county, as shown by the last preceding assessment for state and county taxes.

**History:** Laws 1912, ch. 79, § 1; Code 1915, § 2683; C.S. 1929, § 64-901; 1941 Comp., § 58-501; 1953 Comp., § 55-5-1.

### **ANNOTATIONS**

**Meaning of "this article".** — The term "this article," inserted by the 1915 Code compilers, refers to Laws 1915, ch. 52, art. VI, §§ 2683 to 2689, the provisions of which are presently compiled as 67-6-1 to 67-6-7 NMSA 1978.

**County highway bonds issued to match federal fund for repair of roads not classified as county roads.** — See 1974 Op. Att'y Gen. No. 74-27.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 500 to 505.

**67-6-2. [Aggregate amount; denominations; interest; date of maturity; prior redemption.]**

Said bonds may be issued in the aggregate amount to be determined by the board of county commissioners, and in denominations of one hundred dollars [(\$100)] each or some multiple thereof, and shall bear interest at a rate not exceeding five per centum per annum, payable semiannually, and shall become due within a period of not exceeding thirty years, but same may be made redeemable prior to their date of maturity as may be provided by order of the said board of county commissioners.

**History:** Laws 1912, ch. 79, § 2; Code 1915, § 2684; C.S. 1929, § 64-902; 1941 Comp., § 58-502; 1953 Comp., § 55-5-2.

**ANNOTATIONS**

**County road bond elections require no registration of voters,** but voters must have paid property tax in county during preceding year. 1915-16 Op. Att'y Gen. 15.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 194.

**67-6-3. [Petition for bond issue; election call; ballots.]**

Whenever there shall be filed with the board of county commissioners a petition signed by not less than ten per centum of the qualified electors in any county in the state who are taxpayers therein, asking for the issuance of bonds for the purposes above specified in an amount to be designated in such petition, subject to the limitations of Section 67-6-1 NMSA 1978, said county commissioners, within thirty days after the filing of such petition, shall call a special election for the purpose of submitting to the people of the county the proposition of the issuance of bonds in accordance with such petition, and shall fix a date not less than sixty nor more than ninety days thereafter upon which a vote shall be taken thereon. Such call shall be published in at least one newspaper of general circulation in the county, once a week for four successive weeks, the last publication to be at least three days preceding the date fixed for said election. Ballots at said election shall have printed thereon the words "for the \$. . . . . bond issue for roads and bridges," inserting the amount of the proposed bond issue; and in a separate line under the same words "against the \$. . . . . bond issue for roads and bridges," inserting the amount of the proposed bond issue. Opposite said lines there shall be a square in which the voters may make or stamp a cross to indicate whether they vote for or against said bond issue, and those voting for said bond issue shall do so by placing a cross in the square opposite the words "for the \$. . . . . bond issue for roads and bridges," and those voting against said bond issue shall do so by placing

a cross in the square opposite, "against the \$. . . . . bond issue for roads and bridges."

**History:** Laws 1912, ch. 79, § 3; Code 1915, § 2685; C.S. 1929, § 64-903; 1941 Comp., § 58-503; 1953 Comp., § 55-5-3.

### ANNOTATIONS

**Cross references.** — For legal newspapers, see 14-11-2 NMSA 1978.

**Placing road bond before voters.** — A road bond question may be placed before the voters either by special election on petition of voters under this section or at a general election by a resolution of the board of county commissioners under N.M. Const., art. IX, § 10. *State ex rel. Board of County Comm'rs v. Jones*, 101 N.M. 660, 687 P.2d 95 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 125 to 128.

### **67-6-4. [Election on bond issue; conduct; returns; limitation on frequency.]**

The election herein provided for shall be held under the same substantial provisions, and the votes cast for or against such bond issue shall be counted, returned and canvassed and declared, in the same manner and subject to the same rules as votes cast for county officers, and if it appears that said proposed bond issue shall have received a majority of all the votes cast at such election as aforesaid, then the same shall have the effect of authorizing the board of county commissioners to proceed to the issuance of said bonds; but if a majority of the votes cast as aforesaid shall be against the proposed bond issue, then said bonds shall not be issued. Provided, however, that an election for the issuance of bond shall not be held in any county oftener than once in any calendar year.

**History:** Laws 1912, ch. 79, § 4; Code 1915, § 2686; C.S. 1929, § 64-904; 1941 Comp., § 58-504; 1953 Comp., § 55-5-4.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 131 to 179.

11 C.J.S. Bonds § 56.

### **67-6-5. [Taxation; general fund; interest fund.]**

There shall be collected annually, in the same manner and at the same time as other county taxes are collected, such a sum in addition to the ordinary revenue of the county as shall be required to pay the principal and interest on said bonds as herein provided; and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of said revenue to do and perform each and every act which shall be necessary to collect such additional sum. Such sum when collected shall be covered into the general fund, and the treasurer of any county issuing bonds as provided herein, shall transfer from such general fund to the interest fund thereof such an amount of money as shall be required to pay the accrued interest on the bonds theretofore sold, until the interest on all of said bonds so sold shall have been paid or shall have become due in accordance with the provisions of this article.

**History:** Laws 1912, ch. 79, § 5; Code 1915, § 2687; C.S. 1929, § 64-905; 1941 Comp., § 58-505; 1953 Comp., § 55-5-5.

### ANNOTATIONS

**Meaning of "this article".** — See same catchline in notes to 67-6-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 399.

### **67-6-6. [County highway sinking fund; payment of bond principal and interest.]**

The treasurer of any county issuing bonds as aforesaid shall create a fund to be known and designated as the county highway sinking fund, and on the first day of July of each and every year in which a parcel of the bonds sold pursuant to the provisions of this article shall become due, shall transfer from said general fund to said county highway sinking fund such amount of money as may be required to pay the principal of the bonds so becoming due and payable in such years. As the same becomes due, the principal of all such bonds sold shall be paid from such county highway sinking fund, and as the same becomes due the interest on all bonds sold shall be paid from said interest fund. Both principal and interest shall be paid upon warrants drawn by the board of county commissioners upon the county treasurer, and the faith of the county issuing any such bonds shall be pledged for the payment of the principal of said bonds so sold and the interest accruing thereon.

**History:** Laws 1912, ch. 79, § 6; Code 1915, § 2688; C.S. 1929, § 64-906; 1941 Comp., § 58-506; 1953 Comp., § 55-5-6.

### ANNOTATIONS

**Meaning of "this article".** — The term "this article," inserted by the 1915 Code compilers, refers to Laws 1915, ch. 52, art. VI, §§ 2683 to 2689, the provisions of which are presently compiled as 67-6-1 to 67-6-7 NMSA 1978.

**Redemption of bond coupons.** — County treasurer, upon presentation to him for payment of coupons detached from bonds issued by the county, should immediately redeem them without waiting until county commissioners issue warrants for payment thereof. 1915-16 Op. Att'y Gen. 339.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 12.

### **67-6-7. [Proceeds of bonds; payment into county road fund.]**

Immediately after the sale of bonds, as in this article provided, the county treasurer shall pay into the county treasury and cause to be placed in the county road fund the total amount received for said bonds, and the moneys placed in the said county road fund pursuant to the provisions of this article shall be used exclusively for the construction and repair of roads and bridges within the limits of the county.

**History:** Laws 1912, ch. 79, § 7; Code 1915, § 2689; C.S. 1929, § 64-907; 1941 Comp., § 58-507; 1953 Comp., § 55-5-7.

#### **ANNOTATIONS**

**Meaning of "this article".** — The term "this article," inserted by the 1915 Code compilers, refers to Laws 1915, ch. 52, art. VI, §§ 2683 to 2689, the provisions of which are presently compiled as 67-6-1 to 67-6-7 NMSA 1978.

## **ARTICLE 7**

### **Obstructions and Injuries to Highways**

#### **67-7-1. [Obstructing roads; penalties.]**

It shall hereafter be unlawful for any person or persons to in any manner obstruct any public road in this state, by putting therein or thereon any obstruction whatsoever, and all persons convicted of a violation of this section shall upon conviction before any court of competent jurisdiction be fined in any sum not to exceed fifty dollars (\$50.00) or be imprisoned in the county jail for a period not to exceed thirty days, and pay all the costs of prosecution, or both such fine and imprisonment at the discretion of the court trying the cause.

**History:** Laws 1903, ch. 58, § 2; Code 1915, § 2698; C.S. 1929, § 64-1307; 1941 Comp., § 58-602; 1953 Comp., § 55-6-2.

#### **ANNOTATIONS**

**Cross references.** — For construction of cattle guards where private fences cross school bus routes, see 22-16-8 NMSA 1978.

For unlawful permitting of animals on highways, see 30-8-12 NMSA 1978.

For placing of equipment by utilities upon highways, see 62-1-2 NMSA 1978.

**This section prohibits placing structures on highways** for which prosecutions may be had through the district attorney, and the commission has full control in such matters. 1937-38 Op. Att'y Gen. 232.

**Belief road private not to be considered.** — In prosecuting violations of this statutory offense, the intent or belief that the road was a private one is not to be considered by the courts. State v. Brown, 72 N.M. 274, 383 P.2d 243 (1963).

**Prosecution for obstruction with gate.** — A person may be prosecuted under this section for obstructing a public road by means of a gate. 1915-16 Op. Att'y Gen. 275.

**Gates are obstructions to roads.** 1915-16 Op. Att'y Gen. 358.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 273, 274.

Right or duty of highway contractor as to barricading street or highway, 7 A.L.R. 1203, 104 A.L.R. 955.

Closing or obstructing street temporarily to permit its use for purposes of sport or entertainment, 34 A.L.R. 270.

Liability for injury due to condition of part of street occupied by street railway, 54 A.L.R. 1291.

Public contractor's liability to property owner for obstructing street, 68 A.L.R. 1510.

Attracting people in such numbers as to obstruct access to the neighboring premises, as nuisance, 2 A.L.R.2d 437.

Duty of highway construction contractor to provide temporary way or detour around obstruction, 29 A.L.R.2d 876.

Liability for injuries occasioned by falling of awning or the like, 34 A.L.R.2d 486.

Liability of private landowner for vegetation obscuring view at highway or street intersection, 69 A.L.R.4th 1092.

Measure and elements of damages for injury to bridge, 31 A.L.R.5th 171.

40 C.J.S. Highways §§ 231, 248.

## **67-7-2. [Obstructions and damage to highways and bridges prohibited.]**

No person or persons shall erect any fence, house or other structure, or dig pits or holes in or upon any highway or place thereon any stone, timber, trees or any obstruction whatsoever; and no person or persons shall tear down, burn or otherwise damage any bridge of any highway, or cause waste water or the water from any ditch, road, drain or flume to flow in or upon any road or highway so as to damage the same.

**History:** Laws 1905, ch. 124, § 36; Code 1915, § 2701; C.S. 1929, § 64-1310; 1941 Comp., § 58-603; 1953 Comp., § 55-6-3.

### **ANNOTATIONS**

**Cross references.** — For criminal trespass, see 30-14-1 NMSA 1978.

For criminal damage to property, see 30-15-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 273 to 281.

40 C.J.S. Highways § 221.

## **67-7-3. [Fords; obstructions and damage; penalties; toll bridges prohibited.]**

When any public road heretofore laid out or traveled as such or hereafter to be laid out or traveled, crosses any creek or stream of water, and such stream during any part of the year is usually fordable where such road passes the same, the said ford and the banks of the stream adjacent thereto, and the roadway or tract usually traveled leading thereto, from such highway, shall be deemed and be taken to be part of such highway, and any person who shall obstruct such ford, or the road leading thereto, or shall dig down the banks of such ford, or who shall erect any dam, or any embankment or other obstruction in such stream, or wingdam or other obstruction on the banks of such stream, for the purposes of raising the water of such stream upon the said ford, so as to render the said ford impassable, or more difficult of passage than heretofore, or who shall maintain any such dam, wingdam, embankment or obstruction heretofore erected, after being by the county road board of district notified to remove or abate the same, shall be liable to the penalties prescribed in the following section [67-7-4 NMSA 1978] for obstructing the public highway, and no person or corporation upon any pretense or authority, shall be permitted to erect a toll bridge over any stream at or upon a public ford, or road crossing, or so near thereto, as by the abutments, embankments or piers of such bridge, to obstruct or render impassable the said ford, or roadway leading thereto.

**History:** Laws 1905, ch. 124, § 22; Code 1915, § 2699; C.S. 1929, § 64-1308; 1941 Comp., § 58-604; 1953 Comp., § 55-6-4.

## ANNOTATIONS

**Compiler's notes.** — The 1915 Code compilers substituted the words "penalties prescribed in the following section" for the words "same penalties hereinafter prescribed."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges § 609.

40 C.J.S. Highways §§ 221, 229.

### **67-7-4. [Dams causing overflow or injuring bridges prohibited; damages; penalty.]**

No person or persons, corporation or company, shall dam the waters of any stream so as to cause the same to overflow any road, or damage or weaken the abutments, walls or embankments of any bridge or any highway. Any person or persons, corporation or company, violating any of the provisions of this section shall forfeit the sum of fifty dollars [(\$50.00)] to the county as a penalty, and shall be liable to the county and to any person or persons, corporation or company for any damages resulting therefrom.

**History:** Laws 1905, ch. 124, § 37; Code 1915, § 2700; C.S. 1929, § 64-1309; 1941 Comp., § 58-605; 1953 Comp., § 55-6-5.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** — New Mexico Const., art. XII, § 4, provides that, "All fines and forfeitures collected under general laws . . . shall constitute the current school fund of the state."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 280, 299, 362, 455.

40 C.J.S. Highways §§ 221, 229.

### **67-7-5. [Fines; penalties; forfeitures; action of debt to recover.]**

All fines, penalties and forfeitures incurred under any provisions of Sections 67-7-3, 67-7-4 and 67-7-2 NMSA 1978, except as otherwise provided, shall be recoverable by

an action of debt in the name of the people of the state of New Mexico in any court of competent jurisdiction.

**History:** Laws 1905, ch. 124, § 40; Code 1915, § 2702; C.S. 1929, § 64-1311; 1941 Comp., § 58-606; 1953 Comp., § 55-6-6.

### ANNOTATIONS

**Compiler's notes.** — The specific statutory references in this section, which formerly referred to "Sections 2699, 2700 and 2701," were substituted by the 1915 Code compilers for "this act."

The 1915 Code compilers omitted the words "and the county treasurer shall set the same apart to the district wherein the same accrued," at the end of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges § 609.

40 C.J.S. Highways §§ 228, 229.

### **67-7-6. [Irrigation or drainage water overflowing highway; penalty.]**

Any farmer, mayordomo of acequia or other person having charge of irrigation or drainage waters, who, through neglect, oversight, carelessness or design, shall allow irrigation or drainage waters to flow upon any public highway so as to hinder, delay or obstruct travel, or any person, who, through neglect, oversight, carelessness or design, shall allow water to flow from any reservoir, tank or watering trough upon any public highway, so as to hinder, delay or obstruct travel, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not to exceed twenty-five dollars (\$25.00).

**History:** Laws 1917, ch. 100, § 1; C.S. 1929, § 64-1305; 1941 Comp., § 58-607; 1953 Comp., § 55-6-7.

### ANNOTATIONS

**Cross references.** — For repairs required to prevent overflow, see 72-8-2 NMSA 1978.

**Failure to construct waterway under highway.** — A landowner, who has conveyed a strip of land through her property to the highway commission for a road, without any conditions or reservations, and had at the time no ditches to convey water from one side of the road to the other, has no claim for damages against the contractor constructing the highway for not leaving a waterway under the roadbed. *De Montoya v. Lee-Moor Contracting Co.*, 36 N.M. 109, 9 P.2d 140 (1932).



**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 479.

40 C.J.S. Highways §§ 221, 229.

### **67-7-7. [Water overflowing highway; liability for damages.]**

Any farmer, mayordomo of acequia or other person having charge of irrigation or drainage waters, who, through neglect, oversight, carelessness or design, shall allow irrigation or drainage waters to flow upon any public highway, so as to hinder, delay or obstruct travel, or any person who, through neglect, oversight, carelessness or design shall allow water to flow from any reservoir, tank or watering trough upon any public highway, so as to hinder, delay or obstruct travel, shall be liable to any person, corporation or copartnership for any delay, deterioration or damage to any field, beast of burden, freight or commodity caused by reason of such water flowing upon the public highway.

**History:** Laws 1917, ch. 100, § 2; C.S. 1929, § 64-1306; 1941 Comp., § 58-608; 1953 Comp., § 55-6-8.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 312 to 320.

Liability of state, municipality or public agency for vehicle accident occurring because of accumulation of water on street or highway, 61 A.L.R.2d 425.

40 C.J.S. Highways § 218.

### **67-7-8. [Irrigation ditches crossing roads; bridges.]**

If any person or persons, or mayordomos of acequias, should have to make ditches across the roads to pass the water to their fields, gardens or mills, they shall construct a bridge sufficiently wide and strong for loaded wagons or carts to pass over, so that no obstruction will be placed in the way of the mail or any other passenger, nor any of those that may have to travel over said roads with their crops or other affairs of their houses.

**History:** Laws 1860-1861, p. 82; C.L. 1865, ch. 96, § 8; C.L. 1884, § 1293; C.L. 1897, § 1860; Code 1915, § 2692; C.S. 1929, § 64-1303; 1941 Comp., § 58-609; 1953 Comp., § 55-6-9.

#### **ANNOTATIONS**

**Cross references.** — For mayordomos to construct bridge, see 73-2-43 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 479.

40 C.J.S. Highways § 221.

### **67-7-9. [Ditches; drains; flumes; bridges required; penalty.]**

Any person or persons, corporation or company, owning or constructing any ditch, raise, drain, flume, in, upon or across any highway shall keep the highway open for safe and convenient travel, by constructing bridges over such ditch, raise, drain or flume, or by providing other safe and convenient way across or around the said ditch; and within five days after any ditch is constructed across, in or upon any highway, at any point thereof, so as to interfere with or obstruct such highway, the person or persons owning or constructing such ditch shall erect a good and substantial bridge across the same, which shall thereafter be maintained by the county. Any person or persons, corporation or company constructing any ditch, raise, drain, flume, in, upon or across any highway, and failing to keep the highway open for safe and convenient travel, shall forfeit the sum of twenty-five dollars [(\$25.00)] to the county. And any person or persons, corporation or company, who shall fail to erect a good, substantial bridge across any ditch, raise, drain or flume within five days after the same is constructed in, upon or across any highway, shall forfeit the sum of twenty-five dollars [(\$25.00)] to the county, together with the cost of constructing there a good and substantial bridge which the county road board shall at once proceed to build, and shall also be liable in damages to any person or persons damaged by such neglect.

**History:** Laws 1905, ch. 124, § 38; Code 1915, § 2693; C.S. 1929, § 64-1304; 1941 Comp., § 58-610; 1953 Comp., § 55-6-10.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** — New Mexico Const., art. XII, § 4, provides that, "All fines and forfeitures collected under general laws . . . shall constitute the current school fund of the state."

This section may be superseded by 72-8-2 NMSA 1978 which permits the county commissioners to construct the bridge if not built by the owner of the ditch within three days, and provides for recovery of the cost of the bridge by civil action.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 479.

40 C.J.S. Highways §§ 221, 229.

## **67-7-10. Unlawful use of highways; penalties.**

The public highways in the state are dedicated to the reasonable use thereof by the public.

It shall be unlawful for any person to injure or damage any public highway or street or any bridge, culvert, sign, signpost or structure upon or used or constructed in connection with any public highway or street for the protection thereof or for protection or regulation of traffic thereon by any unusual, improper or unreasonable use thereof, or by the careless driving or use of any vehicle thereon, or by wilful mutilation, defacing or destruction thereof.

It shall be considered unreasonable use of any bridge or structure to operate or conduct upon or over the same any vehicle, tractor, engine or load of greater weight than that specified by the state, county or municipal authorities having control of such bridge or structure in a notice posted at or near each end of such bridge or structure.

It shall be considered unreasonable use of any improved highway or street to operate, drive or haul thereon any truck, tractor or engine in such manner or at times when the surface thereof is in a soft or plastic condition from moisture, so as to cause excessive ruts or excessive deterioration or displacement of the surfacing thereof.

It shall be unlawful to operate, haul or conduct over any public highway or street any vehicle, tractor, engine, truck, load, building or other object, more than eight feet in width except loads of hay, straw or other farm products without a permit from the state, county or municipal authority in control of such highway or street, which permit shall specify the manner of operation thereof so as not [sic] to prevent as far as possible inconvenience and danger to the traveling public and damage to the surface.

It shall be unlawful to maintain any fence across any public road unless the owner or person in control of such fence shall construct and maintain in good condition a gate and a cattle-guard passageway for motor vehicles in accordance with the specifications of the authorities having control of such road. And no fence shall be maintained across any public road without a written permit from the authorities having control of such road.

Any person violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars [(\$25.00)] nor more than five hundred dollars [(\$500)], or by imprisonment in the county jail not less than five days nor more than thirty days or by both such fine and imprisonment, and the owner and the operator of such vehicle, truck, tractor or engine, shall be jointly and severally liable to the state, county or municipality as the case may be for the actual damage caused by the operation, conducting or hauling thereof over any public highway, street, bridge, culvert or structure in violation of any provision of this act [67-7-10, 67-7-11 NMSA 1978] to be collected by suit brought in the name of the state, county or municipality having control of such highway or street; and such vehicle,

truck, tractor or engine may be attached and held to satisfy any judgment for such damages.

The proceeds of any such judgment shall be paid to the treasurer of the state, or of such county or municipality, and placed to the credit of a fund for the construction and improvement of roads or streets.

**History:** Laws 1921, ch. 94, § 10; C.S. 1929, § 11-710; 1941 Comp., § 58-611; 1953 Comp., § 55-6-11.

## ANNOTATIONS

**Cross references.** — For penalty for destroying direction signs, see 67-8-7 NMSA 1978.

For erection of gates at intersections with public road by lessees and purchasers of state lands, see 19-6-6 NMSA 1978.

For public nuisance, see 30-8-1 NMSA 1978.

For placing injurious substances upon highways, see 30-8-10 NMSA 1978.

For gates in fences in herd law districts, see 77-12-9 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Compiler's notes.** — New Mexico Const., art. XII, § 4, provides that "All fines and forfeitures collected under general laws . . . shall constitute the current school fund of the state."

Some of the provisions of this section were probably superseded by Laws 1929, ch. 75, repealed by Laws 1955, ch. 37, § 15. For present provisions, see 66-7-403, 66-7-405, 66-7-412 and 66-7-415 NMSA 1978.

Laws 1921, ch. 94, § 10, is deemed to supersede Laws 1882, ch. 42, § 2, providing that inclosures constructed upon land upon which a public road or trail may pass shall be constructed with gates so as to not prevent the travel on such roads, and providing that no owner of such inclosures shall be considered as obstructing such roads.

**Posting of road construction notices authorized.** — Any agent of the commission is authorized to post notices prohibiting traffic on roads under construction. 1923-24 Op. Att'y Gen. 98.

**Placing of structures on highways.** — The statutes prohibit placing structures on highways for which prosecutions may be had through district attorney, and the commission has full control in such matters. 1937-38 Op. Att'y Gen. 232.

**Permits to land airplanes on highways.** — State highway department could grant permit for airplanes to land on particular portions of New Mexico highways where proper clearance is also obtained from civil aeronautics administration and the state corporation commission (now public regulation commission). 1943-44 Op. Att'y Gen. 4240.

**Gate may be maintained on public road** if there is compliance with the provisions of this section. *Hindi v. Smith*, 73 N.M. 335, 388 P.2d 60 (1963).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges § 609.

Damaging highway or bridge by nature or weight of vehicles or loads transported over it, 53 A.L.R.3d 1035, 31 A.L.R.5th 171.

40 C.J.S. Highways §§ 231, 248.

### **67-7-11. [Arrest for violation; seizure of vehicle; fee.]**

Sheriffs, deputy sheriffs, constables, marshals, police officers and all peace officers shall have power to arrest any person violating any provision of this act [67-7-10, 67-7-11 NMSA 1978] on view or upon warrant issued by any justice of the peace [magistrate court] or magistrate. Such officers are also authorized and directed to take into custody any vehicle involved in the violation of any provision of this act and hold the same until all fees, fines, costs and damages therefor shall be paid; provided that the owner or person in control of such vehicle may secure its release by furnishing a good and sufficient bond as required by the officer or magistrate before whom the case is prosecuted.

The fee for making the arrest of any person violating any provision of this act shall upon conviction of the person or persons arrested be assessed as part of the costs and paid to the officer making such arrest, but shall not exceed one (\$1.00) dollar in any case.

**History:** Laws 1921, ch. 94, § 11; 1927, ch. 82, § 1; C.S. 1929, § 11-711; 1941 Comp., § 58-612; 1953 Comp., § 55-6-12.

### **ANNOTATIONS**

**Cross references.** — For damages for using vehicle of excessive load or size, see 67-7-10 NMSA 1978.

For damages for unlawful injuring of signs, see 67-7-10 NMSA 1978.

For placing injurious substance on highways, see 30-8-10 NMSA 1978.

**Bracketed material.** — The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**"On view" means in presence of officer.** *Cave v. Cooley*, 48 N.M. 478, 152 P.2d 886 (1944).

**Jury instructions for wrongful arrest damages.** — No error was committed in instructing the jury that they could award damages to the complainant in an action for false arrest if, and only if, they believed from a preponderance of the evidence that it did not reasonably appear to the defendant, state policeman, that complainant was violating the state traffic laws or that he did not act as an ordinarily reasonable and prudent man would under the circumstances. *Cave v. Cooley*, 48 N.M. 478, 152 P.2d 886 (1944).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges § 609.

40 C.J.S. Highways §§ 231, 248.

## **ARTICLE 8**

### **Miscellaneous Provisions**

#### **67-8-1. [Danger signals or lights for roads or bridges under construction.]**

Hereafter any person, firm, association, copartnership, contractor or corporation engaged in the alteration, repair or construction of any bridge, road or public highway in this state shall maintain at all times proper danger signals, or lights, posted conspicuously at or near the place where such work, alteration, repair or construction is being done.

**History:** Laws 1923, ch. 34, § 1; C.S. 1929, § 64-1401; 1941 Comp., § 58-701; 1953 Comp., § 55-7-1.

#### **ANNOTATIONS**

**Commission not within scope of section.** — State highway commission [State transportation commission] is not a "firm, association, copartnership, contractor or corporation," within the meaning of this section. *Rapp v. New Mexico State Hwy. Dep't*, 87 N.M. 177, 531 P.2d 225 (Ct. App. 1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges §§ 556, 557, 568.

Contractor's duty to maintain barriers, 7 A.L.R. 1203, 104 A.L.R. 955.

Duty to make highway safe for children by providing proper barriers, 36 A.L.R. 309.

Duty as regards barriers for protection of automobile travel, 86 A.L.R. 1389, 173 A.L.R. 626.

Liability for automobile colliding with temporary obstruction in connection with alteration or repair of street as affected by insufficiency of warning of danger, 100 A.L.R. 1389.

Duty of highway construction contractor to provide temporary way or detour around obstruction, 29 A.L.R.2d 876.

40 C.J.S. Highways §§ 263, 264.

### **67-8-2. [Failure to install warnings; penalty.]**

Any person found guilty of violating the provisions of this act [67-8-1, 67-8-2 NMSA 1978] shall be fined in a sum not less than \$50.00, and shall be liable for the damages sustained to any person injured by reason of the failure to comply with the provisions of this act.

**History:** Laws 1923, ch. 34, § 2; C.S. 1929, § 64-1402; 1941 Comp., § 58-702; 1953 Comp., § 55-7-2.

### **ANNOTATIONS**

**State highway department is not a "person"** within the meaning of this section. Rapp v. New Mexico State Hwy. Dep't, 87 N.M. 177, 531 P.2d 225 (Ct. App. 1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 88, 100.

Highways: governmental duty to provide curve warnings or markings, 57 A.L.R.4th 342.

40 C.J.S. Highways § 248.

### **67-8-3. [Fencing of roads on public lands; cost.]**

Where any public road in this state passes over the public lands it shall be lawful for the board of county commissioners to permit the sides of such road to be fenced whenever a majority of the legal voters of the precinct through which said public road

passes so desire: provided, however, that said fencing shall not be at the expense of the county in which the road is located.

**History:** Laws 1903, ch. 58, § 3; Code 1915, § 2629; C.S. 1929, § 64-104; 1941 Comp., § 58-703; 1953 Comp., § 55-7-3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 530.

#### **67-8-4. [Direction signboards at road intersections; duty of county commissioners.]**

It shall be the duty of the board of county commissioners of each county in this state to cause to be placed conspicuously and permanently at the forks of all public and main-traveled roads in their respective counties, and at all such roads crossing or leading away from such public and main-traveled road, metal index boards attached to metal posts; such metal index boards shall have printed thereon in letters of sufficient size to be easily read by travelers, with directions plainly marked thereon designating the most noted places to which each of such roads leads.

**History:** Laws 1912, ch. 30, § 1; Code 1915, § 2703; C.S. 1929, § 64-1501; 1941 Comp., § 58-704; 1953 Comp., § 55-7-4.

#### **ANNOTATIONS**

**It is duty of the county commissioners** to provide and place signboards on public highways, which are to be paid for out of the county road fund on order of the county road board. 1912-13 Op. Att'y Gen. 102, 107.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 195, 207.

#### **67-8-5. [Replacement of direction signs.]**

When an index board shall be removed or defaced the commissioners shall cause same to be immediately replaced.

**History:** Laws 1912, ch. 30, § 2; Code 1915, § 2704; C.S. 1929, § 64-1502; 1941 Comp., § 58-705; 1953 Comp., § 55-7-5.

#### **67-8-6. [Payment of direction sign expenses.]**



The expenses of erecting and replacing such index boards shall be paid out of the road fund.

**History:** Laws 1912, ch. 30, § 3; Code 1915, § 2705; C.S. 1929, § 64-1503; 1941 Comp., § 58-706; 1953 Comp., § 55-7-6.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 157.

#### **67-8-7. [Defacing, disfiguring or destroying direction signs; penalty.]**

It shall be unlawful to deface, disfigure, destroy or otherwise in any manner interfere with any such index board, whether same be placed by public authority or by any citizen of the state. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than five dollars [(\$5.00)] nor more than twenty-five dollars [(\$25.00)], and in default of payment thereof shall be imprisoned for not less than five nor more than twenty-five days.

**History:** Laws 1912, ch. 30, § 4; Code 1915, § 2706; C.S. 1929, § 64-1504; 1941 Comp., § 58-707; 1953 Comp., § 55-7-7.

#### **ANNOTATIONS**

**Cross references.** — For penalties for unlawful use of highways, see 67-7-10 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges §§ 604, 605.

#### **67-8-8. [Advertising signs adjoining public highways; definitions.]**

The following words and phrases as used in this act [67-8-8 to 67-8-10 NMSA 1978] shall for the purpose of this act have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

A. "public highway." Every public street, road, highway or thoroughfare of any kind in this state used by the public whether actually dedicated to the public and accepted by proper authority or otherwise;

B. "state highway." Every public highway which has been designated a state highway either by the legislature or by the state highway engineer;

C. "person." Any person, firm or corporation whatsoever.

**History:** Laws 1929, ch. 123, § 1; C.S. 1929, § 64-2001; 1941 Comp., § 58-708; 1953 Comp., § 55-7-8.

## ANNOTATIONS

**Legislative intent.** — Unless an agreement to the contrary exists, it was the legislative intent that the reasonable regulation of the billboard law apply on Indian lands adjoining rights-of-way obtained pursuant to 25 U.S.C. § 311. 1953-54 Op. Att'y Gen. No. 5632.

**Jurisdiction of roads not in state highway system.** — Since this act (Laws 1929, ch. 123) is silent as to who has jurisdiction over roads not included in the state highway system, the county commissioners of the various counties have jurisdiction of the roads within their respective counties. 1939-40 Op. Att'y Gen. 72.

**No penal provisions.** — Laws 1929, ch. 123 (67-8-8 to 67-8-10 NMSA 1978) is not such a penal law as would come within the Assimilative Claims Act (18 U.S.C. § 13) since there are no penal provisions nor provisions for its enforcement by any court. 1953-54 Op. Att'y Gen. No. 5632.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

Billboards or other conditions on adjoining property which are deemed dangerous to travel or offensive aesthetically to travelers, power of highway officers in respect of, 81 A.L.R. 1547.

### **67-8-9. [Advertising signs on or over public highway right-of-way outside incorporated cities prohibited.]**

No person shall place, erect or maintain any advertising sign, signboard or device of any character upon or over the right-of-way or right-of-way fences of any public highway within this state outside of the limits of any incorporated city, town or village.

**History:** Laws 1929, ch. 123, § 2; C.S. 1929, § 64-2002; 1941 Comp., § 58-709; Laws 1953, ch. 92, § 1; 1953 Comp., § 55-7-9.

## ANNOTATIONS

**State highway department has adequate authority** to clear away all unauthorized signs upon the highway right-of-way. 1951-52 Op. Att'y Gen. No. 5506.

**State can regulate or prohibit signboards** from property abutting the highway as a valid exercise of the police power. Of course, the law must be reasonable and bear a substantial relation to the welfare and safety of the public. 1955-56 Op. Att'y Gen. No. 6082.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

### **67-8-10. [Restrictions on placing signs upon or over highway rights-of-way.]**

No person shall place, erect or maintain any advertising sign, signboard or device of any character upon or over the right-of-way of or upon any land adjacent to any public highway, outside of an incorporated city, town or village under any of the following conditions:

- A. within 300 feet of an intersection of a highway with another highway, at a point where such sign, signboard or device would obstruct the line of sight between vehicles on either of said intersecting highways when such vehicles are at any point within a distance of 300 feet from such intersection;
- B. where such sign, signboard or device is so located that it obstructs the line of sight, not otherwise obstructed, of a train at any point within 1,200 feet of an intersection of a highway with a railroad from any point on such highway within 500 feet of such intersection;
- C. in or near any stream or arroyo where such sign might be deluged by freshet and swept on to the roadway or spillway of such public highway or under a highway structure crossing the stream or arroyo or against the supports of any highway structure;
- D. if placed upon a hill above a highway in such manner that there is a reasonable danger that such sign, signboard or device might fall or be blown or propelled by the forces of erosion upon such highway;
- E. if such sign carries a directional warning or light or reflector information legend of a type which is carried by standard highway marker system signs;
- F. if such sign is in the general shape of a railroad crossing sign or in imitation of any warning or danger sign;
- G. if such sign, signboard or device is on the inside of a curve of a highway at such location as to obstruct the line of sight from one vehicle on such highway to another vehicle on such highway when such vehicles are within a distance of 1,200 feet of each other;

H. if such sign, signboard or device, together with one or more other advertising signs, signboards or devices in a series advertising the same business, place of business or establishment, or advertising products, commodities, exhibits or services, sold or exhibited at the same place or places of business, and are in such proximity to each other, and are of such continuity of context, distinctive copy catchlines (not trademarks), art or shape as to naturally direct the attention of the traveling public from one such sign to another;

None of the provisions of Subparagraphs A, B, C or G of this section shall apply to any sign or other device which is erected upon or is attached to a building.

**History:** Laws 1929, ch. 123, § 3; C.S. 1929, § 64-2003; 1941 Comp., § 58-710; Laws 1953, ch. 92, § 2; 1953 Comp., § 55-7-10.

### ANNOTATIONS

**Regulation of signboard curves.** — Regulation prohibiting signboards in vicinity of 25 degree curves or greater, if determined to be dangerous to public safety, would be upheld as a reasonable exercise of the police power. 1949-50 Op. Att'y Gen. No. 5293.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

### 67-8-11. Signs placed in violation of act declared public nuisances.

Any sign, signboard or device erected, placed or maintained in violation of the provisions of this act is hereby declared to be a public nuisance.

**History:** 1941 Comp., § 58-712a, enacted by Laws 1953, ch. 92, § 5; 1953 Comp., § 55-7-13; Laws 1961, ch. 73, § 1.

### ANNOTATIONS

**Cross references.** — For abatement of a public nuisance, see 30-8-8 NMSA 1978.

**Meaning of "this act".** — The term "this act" refers to Laws 1953, ch. 92, the provisions of which are presently compiled as 67-8-9 to 67-8-12 NMSA 1978.

**Permitting sign boards to remain on adjoining Indian lands** while removing them from all other lands adjacent to the highway in the state where they are no more dangerous or detrimental to public welfare would tend to undermine the enforcement by the state of its own law. 1953-54 Op. Att'y Gen. No. 5632.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 288, 533.

## **67-8-12. [Officers charged with enforcement of act.]**

The provisions of this act shall be enforced by the attorney general or by the several district attorneys of the state in their respective districts by any appropriate remedy.

**History:** 1941 Comp., § 58-712c, enacted by Laws 1953, ch. 92, § 7; 1953 Comp., § 55-7-15.

### **ANNOTATIONS**

**Severability clauses.** — Laws 1953, ch. 92, § 9, provides for the severability of the act if any part or application thereof is held invalid.

**Meaning of "this act".** — The term "this act" refers to Laws 1953, ch. 92, the provisions of which are presently compiled as 67-8-9 to 67-8-12 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 168.

## **67-8-13. Wiring adjoining highway structures; permit required; application.**

It is unlawful for any person, company or corporation to place or cause to be placed any conduit, wires or cables across, upon, attached to or upon the highway right of way parallel to and within twenty-five feet of any state highway bridge or structure except pursuant to a permit obtained from the state transportation commission and upon compliance with reasonable conditions and requirements specified in such permit. The state transportation commission is authorized and empowered to prepare application and permit forms for such purposes.

**History:** Laws 1939, ch. 30, § 2; 1941 Comp., § 58-715; 1953 Comp., § 55-7-19; 2003, ch. 142, § 79.

### **ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 259 to 263.

39A C.J.S. Highways § 139.

## **67-8-14. [Violation of wiring requirements; penalty.]**

A violation of the above statute [67-8-13 NMSA 1978] shall constitute a misdemeanor, and shall be punishable by fine of not less than fifty dollars [(\$50.00)], and not more than two hundred dollars [(\$200)], or by imprisonment in the county jail for not less than three months, and not more than six months, or both such fine and imprisonment at the discretion of the court.

**History:** Laws 1939, ch. 30, § 3; 1941 Comp., § 58-716; 1953 Comp., § 55-7-20.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 292, 453, 457.

40 C.J.S. Highways §§ 231, 248.

### **67-8-15. Declaration of policy.**

A. The construction of modern highways is necessary to promote public safety, facilitate the movement of present-day motor traffic, both interstate and intrastate in character, and to promote the national defense, and in the construction of such highways it is also in the public interest to provide for the orderly and economical relocation of utilities when made necessary by such highway improvements, including extensions thereof within urban areas, without occasioning utility service interruptions or unnecessary hazards to the health, safety and welfare of the traveling or utility consuming public.

B. Utilities have been authorized by statute for many years to locate their facilities within the boundaries of public roads and streets in this state; because utilities are subject to extensive regulation by state agencies and they are affected with the public interest in that, among other things:

(1) the business and activities of utilities involve the rendition of essential public services to large numbers of the general public, and no cessation of utility service is permitted without authority of law;

(2) the financing of utilities involves the investment of large sums of money, including capital obtained from many members of the general public;

(3) the development and extension of utilities directly affects the development, growth and expansion of the general welfare, business and industry of this state; and

(4) all persons in this state are actual or potential consumers of one or more utility services, and all consumers will be affected by the cost of relocation of their utilities as necessary to accommodate highway improvements.

Public highways are intended principally for public travel and transportation; but they are also intended for proper utility uses in serving the public, as authorized pursuant to the laws of this state, and such utility uses are for the benefit of the public served. Without making use of public ways utility lines could not reach or economically service the adjacent public, particularly in urban areas.

C. Federal-aid highways of the interstate system and other modern highway improvements serve the need of nonlocal and long distance traffic.

D. The burden of such utility relocations is a burden on the public in this state, whether initially borne by the state or the utility or in part by both, and it is, therefore, in the public interest that such burden be minimized to the extent that same can be done consistently with the principal purpose of such highways for vehicular movement of persons and property; therefore, it is the intent of the legislature to insure that the state's police power in requiring relocation of utilities shall be exercised in a reasonable manner.

E. Utility relocations necessitated by construction of public highways or improvements thereto are a public governmental function, properly a part of such construction and to the extent in this act [67-8-15 to 67-8-21 NMSA 1978] provided such relocations shall be made at state expense; however, although made in obedience to the commission's orders in exercise of the police power under this act, relocations hereunder for which compensation is not provided by this act or otherwise by law are declared to be *damnum absque injuria* and no claim therefor shall be enforceable against the state. Utility relocations to which this act is applicable shall be made only in pursuance hereof.

F. The statements in this Section 1 [this section] are legislative determinations and declarations of public policy, and this act shall be liberally construed in conformity with its declarations and purposes to promote the public interest.

**History:** 1953 Comp., § 55-7-23, enacted by Laws 1959, ch. 310, § 1.

### **ANNOTATIONS**

**Payment of nonbetterment costs not unconstitutional.** — Laws 1959, ch. 310 (67-8-15 to 67-8-21 NMSA 1978) requiring the state to pay, in certain cases, the nonbetterment costs of relocation made necessary by highway improvement is not unconstitutional. *State ex rel. City of Albuquerque v. Lavender*, 69 N.M. 220, 365 P.2d 652 (1961).

The reimbursable provisions of Laws 1959, ch. 310 (67-8-15 to 67-8-21 NMSA 1978), and particularly ch. 310, § 4 (67-8-18 NMSA 1978), are unconstitutional. 1959-60 Op. Att'y Gen. No. 60-59. But see preceding note.

**Obligation to state not released.** — Laws 1959, ch. 310 (67-8-15 to 67-8-21 NMSA 1978) does not constitute a release of an obligation to the state. State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

**In exercising its police power, the state** may legitimately and properly consider the effect, not only upon the entire public, but also upon particular segments thereof, and evolve a plan and scheme which will accomplish the greatest public good at the least expense to those adversely affected. State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

**Apportionment, not donation.** — In the passage of Laws 1959, ch. 310 (67-8-15 to 67-8-21 NMSA 1978), the legislature considered that the construction of interstate highways, through a community, is for the primary benefit of interstate travelers and public transportation facilities making use of such thoroughfares, rather than the citizens of the community itself. The legislature was attempting to aid the citizens of the state of New Mexico, through apportionment of costs of relocation, as distinguished from making any type of donation from the funds of the state. State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

**Law reviews.** — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Electric light or power line in street or highway as additional servitude, 58 A.L.R.2d 525.

Placement, maintenance, or design of standing utility pole as affecting private utility's liability for personal injury resulting from vehicle's collision with pole within or beside highway, 51 A.L.R.4th 602.

## **67-8-16. Definitions.**

As used in Sections 67-8-15 through 67-8-21 NMSA 1978:

A. "utility" means publicly, privately and cooperatively owned utilities, without distinction, for the rendition of water, electric power, sanitary sewer, storm sewer, steam, fuel gas, telephone or telegraph service through a system of pipes or wires devoted to public utility service;

B. "cost of relocation" means the entire amount paid properly attributable to such relocation after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility;



C. "commission" means the state transportation commission;

D. "public highway" means any state highway or other public way in this state, including extensions thereof within urban areas, constructed in whole or in part with state aid and shall include any incorporated or related physical facilities for the handling of traffic and the right of way;

E. "relocation" means any horizontal or vertical movement of utility facilities intact and any protective measures taken or, where found by the commission to be necessary, the construction of new or additional facilities, with or without contemporaneous removal and salvage of old facilities, in this state including in any case adjustment or protection of connecting off-highway utility lines to the extent necessary;

F. "federal-aid highways" means all roads constructed in whole or in part with federal aid and includes the "interstate system", the "primary system" and the "secondary system" in this state as designated by the commission; and

G. "urban area" means an area in this state including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available federal census, within reasonable boundaries fixed by the commission.

**History:** 1953 Comp., § 55-7-24, enacted by Laws 1959, ch. 310, § 2; 2003, ch. 142, § 80.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "Sections 67-8-15 through 67-9-21 NMSA 1978" for "this act" in the introductory paragraph; and substituted "state transportation commission" for "state highway commission" in Subsection C.

### **67-8-17. Relocation of utility facilities authorized.**

A. The commission may, after notice and hearing, by order provide for the relocation of utility facilities within a public highway (including, if required, the entire removal therefrom of certain facilities except as necessary to serve abutting premises or as necessary to cross the highway) and may require any utility to make or suffer any such specified relocation, upon a finding that the action provided for is necessitated by highway improvement determined upon by the commission as a matter of policy relating to the design, construction, location and maintenance of public highways; and the commission shall direct and control the reasonable manner and time of effecting any such relocation so as to promote the public interest in the highway improvement without undue cost or risk and without impairment of utility service, whether the commission undertakes the relocation on behalf of the state or requires the utility to perform such relocation. If undertaken by the commission, it may contract such relocation work.

B. The obligation of the utility shall be to make or suffer relocation as so required by the commission, and to do so cooperatively and in the reasonable manner and time as may be prescribed by the commission, and to advance and pay all costs incurred in effecting relocation which the state is not authorized to pay hereunder or otherwise by law. It shall not be grounds for delay in relocation that a dispute exists over the cost of relocation or the method of paying or sharing same.

C. The commission is authorized to enter into an agreement with a utility with respect to any relocation, the time and manner of its accomplishment and the payment and sharing of the cost incurred in effecting relocation, all upon such reasonable terms and conditions as the commission shall approve as necessary or appropriate in the interest of a public highway program in this state; and in such event no notice, hearing or other proceedings under this act [67-8-15 to 67-8-21 NMSA 1978] shall be required.

**History:** 1953 Comp., § 55-7-25, enacted by Laws 1959, ch. 310, § 3.

### ANNOTATIONS

**Constitutionality of present provisions.** — Laws 1959, ch. 310 (67-8-15 to 67-8-21 NMSA 1978), requiring in certain cases the state to pay the nonbetterment costs of utility relocation made necessary by highway improvements, is not a release of an obligation to the state and does not violate N.M. Const., art. IX, § 14, prohibiting state aid to private enterprise. State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

**Present and former provisions distinguished.** — Under Laws 1959, ch. 310 (67-8-15 to 67-8-21 NMSA 1978), as distinguished from Laws 1959, ch. 237, § 1 (former 55-7-18, 1953 Comp.), (1) the legislature has authorized the commission itself to expend public funds for the relocation of utility facilities; (2) the utility, as to relocations, is under the absolute control of the commission and is merely acting as a contractor for the state; and (3) the legislature has expressly prohibited reimbursement for relocation in cases where there is a specific obligation on the part of the utility to relocate. State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

**Scope of relocation provisions.** — The provisions of Laws 1959, ch. 310 (67-8-15 to 67-8-21 NMSA 1978) apply only to cases involving the construction of interstate and defense system highways, rather than on all federal-aid highways. These particular highways are designed primarily for the nation as a whole, not merely for a community or for the state of New Mexico. State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 278.

39A C.J.S. Highways § 27.

## **67-8-18. State pays certain relocation costs.**

A. In the following types of utility relocation ordered by the commission pursuant to Section 3 A [67-8-17A NMSA 1978] it shall either, as it elects, undertake the relocation work on behalf of the state, paying the cost of relocation, or reimburse the utility for the cost of relocation:

- (1) relocations necessitated by improvements of public highways in the interstate system, including extensions thereof within urban areas; and
- (2) relocations by complete removal and construction of facilities off the public highway.

The commission is authorized upon notice and opportunity for hearing to find and determine in relocations hereunder the cost of relocation, and the same shall, to the extent authorized herein, be borne by the state as other highway construction costs.

The commission is authorized to make rules and regulations with respect to the advancement and/or payment from time to time of funds by utilities to insure that the state shall never advance nor pay any costs which it is not authorized by law to pay, including rules and regulation [regulations] with respect to the proper determination of cost of relocation payable or reimbursable by the state, to aid the commission in carrying out the intention of this act [67-8-15 to 67-8-21 NMSA 1978]; and this provisions [provision] shall be cumulative of other authority possessed by the commission to promulgate rules and regulations.

### B. Exceptions:

(1) the cost of relocation from which a utility would be otherwise relieved pursuant to Subparagraph A (1) above shall nevertheless be borne in full by the utility in any of the following cases, without reimbursement from the state:

(a) in case of a privately owned utility which is obligated, or to the extent it is obligated by valid, written contract with the state to make such relocation when called for by the state without cost to the latter;

(b) in case the utility line was initially installed, or for the distance to which it was installed, under a valid statute or regulation applicable thereto and providing that relocation should be effected by the owner thereof at the latter's expense;

(c) in case of relocation of a utility facility not municipally owned for which local municipal or county government authorization, if required by law, had not been granted;

(d) in case the utility shall after effectiveness of this act agree for a valid consideration to effect the relocation at its expense under the terms of such agreement; or

(e) in case of any required relocation with respect to which the commission shall determine that the utility failed without just cause to make or suffer such relocation in the reasonable manner and time as prescribed by the commission.

C. The commission shall make no reimbursement payment to a utility to which it is otherwise entitled pursuant to Subsection A above unless and until the commission is satisfied that relocation has been fully completed in accordance with the commission's requirements; and the commission shall in no event make reimbursement of any cost otherwise due under Subsection A above which it finds, after notice and hearing, to have been unnecessarily, negligently or improvidently incurred by the utility.

D. To insure that the state shall never pay any cost of relocation necessitated by improvement in the interstate system for which it cannot receive proportionate reimbursement under the 1956 Federal Aid Highway Act, as amended, if upon final determination by the United States bureau of public roads of the cost of relocation of a utility relocation necessitated by the construction or improvement of a public highway in the interstate system, the bureau of public roads shall finally determine the cost of relocation to be not reimbursable to the state from federal funds or to be less than the amount reimbursed to the utility by the commission, the utility so reimbursed shall repay to the commission the difference between the amount so reimbursed to the utility and the cost of relocation finally determined by the bureau of public roads.

**History:** 1953 Comp., § 55-7-26, enacted by Laws 1959, ch. 310, § 4.

## ANNOTATIONS

**Bracketed material.** — The bracketed material in Subsection A was inserted by the compiler for purposes of clarity; it was not enacted by the legislature and is not a part of the law.

**"United States bureau of public roads".** — The former United States bureau of public roads, referred to in Subsection D, became the federal highway administration pursuant to 49 U.S.C. § 104. However, that section was repealed in 1994 as part of the revision of Title 49. The reference should now be to the department of transportation.

**1956 Federal Aid Highway Act.** — The Federal Aid Highway Act of 1956, referred to in Subsection D, is codified as 23 U.S.C. § 101 et seq.

**Constitutionality of provisions.** — The reimbursable provisions of Laws 1959, ch. 310 (67-8-15 to 67-8-21 NMSA 1978), and particularly ch. 310, § 4 (67-8-18 NMSA 1978), are unconstitutional. 1959-60 Op. Att'y Gen. No. 60-59. But see notes to 67-8-15 NMSA

1978. See also, State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

**Scope of reimbursable relocations.** — All relocations necessitated by improvements of public highways in the interstate system, as defined by the 1956 Federal Aid Highway Act, must be reimbursed by the state of New Mexico provided that the relocations do not fall within any of the exceptions listed under 67-8-18B NMSA 1978. 1967 Op. Att'y Gen. No. 67-56.

**Section refers only to** relocations necessitated by improvements of public highways in the interstate system as defined in the 1956 Federal Aid Highway Act, as amended. Therefore, relocations of utilities necessitated by improvements of public highways in the federal aid primary system or the federal aid secondary system, as defined by the 1956 Federal Aid Highway Act, are not proper subjects for reimbursement. 1967 Op. Att'y Gen. No. 67-56.

**Alternative writ of mandamus is made absolute** in proceeding by city to require state highway commission [state transportation commission] to reimburse it for relocations of water and sewer lines, made necessary by reason of construction of federal aid highways on the interstate and primary system. State ex rel. City of Albuquerque v. Lavender, 69 N.M. 220, 365 P.2d 652 (1961).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 278.

Constitutionality of state legislation to reimburse public utilities for cost of relocating their facilities because of highway construction, conditioned upon federal reimbursement of the state under the terms of Federal Aid Highway Act, 75 A.L.R.2d 419.

39A C.J.S. Highways § 27.

### **67-8-19. Procedure; appeal.**

A. All hearings held pursuant to this section shall be public and upon not less than fifteen days' written notice of the time, place and purpose of the hearing to each utility whose services or facilities may be affected and to each municipality in which any part of the proposed highway improvement is to be located. Hearings may be held before the commission, any member or any representative designated by it and at the place as is designated in the notice.

B. A record of the testimony shall be taken at the hearing and a transcript furnished to anyone upon request and payment of the cost.

C. The findings and orders shall be in writing and a copy served upon each party.

D. The commission may promulgate rules to govern its proceedings pursuant to this section.

E. A party aggrieved by an order may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 55-7-27, enacted by Laws 1959, ch. 310, § 5; 1998, ch. 55, § 80; 1999, ch. 265, § 81.

## ANNOTATIONS

**Cross references.** — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

**The 1998 amendment**, effective September 1, 1998, inserted "; appeal" in the section heading; in Subsection A, substituted "pursuant to this section" for "hereunder", substituted "days" for "days", and deleted "thereof" following "member"; in Subsection B, deleted "thereof" following "transcript" and "cost"; in Subsection C, deleted "thereof" following "copy" and "thereto" following "party"; in Subsection D, substituted "pursuant to this section" for "hereunder"; rewrote Subsection E; and deleted Subsection F, relating to any party aggrieved by the order or decision of the district court.

**The 1999 amendment**, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection E.

**Compiler's notes.** — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 156.

### 67-8-20. Nonapplicability of act.

A. This act [67-8-15 to 67-8-21 NMSA 1978] shall not apply to any relocation of facilities for a public highway project which is sufficiently advanced that prior to the effective date hereof a relocation in specific terms shall have been required by a relocation notice given to or otherwise formally required of a utility by the commission or under its authority.

B. This act shall not apply to any taking or damaging of property for which the utility is entitled to compensation pursuant to the constitution of this state or the United States or pursuant to any binding agreement inuring to the utility's benefit.

**History:** 1953 Comp., § 55-7-28, enacted by Laws 1959, ch. 310, § 6.

### 67-8-21. Municipally or county owned utilities; special districts; reimbursement for cost of relocation.

A. Under the provisions of this section, the commission shall reimburse cities, towns, villages and counties for cost of relocation of municipally or county owned utility facilities where relocation is required because of the construction or repair of any public state highway or interstate system in the city or county, town or village, provided only that the governing body of the municipality or county shall have adopted and filed with the commission its resolution electing to receive reimbursement of its costs of relocation pursuant to this section in lieu of Section 67-8-18 NMSA 1978 and of any other statute of this state that may provide the same or similar reimbursement relief to cities, towns, villages and counties with respect to relocations in the interstate system.

B. Notwithstanding any other provision of Sections 67-8-15 through 67-8-21 NMSA 1978, the commission may pay the cost of relocation of utilities owned by special districts, counties or municipalities located within the right of way of public highways on the state highway system when the relocation is required by the state highway and transportation department, provided that the special district, county or municipality can demonstrate, pursuant to rules promulgated by the commission, that the special district, county or municipality is financially unable to pay the cost of relocation. As used in this section, "special district" means any single or multipurpose district organized or that may be organized as a local public body of this state for the purpose of constructing and furnishing any urban-oriented service that another political subdivision of the state is authorized to perform, including but not limited to the services of water for domestic, commercial or industrial uses, sewage, garbage, refuse collection and recreation, but excluding the functions or services of drainage, irrigation, reclamation, soil and water conservation or flood control.

**History:** 1953 Comp., § 55-7-29, enacted by Laws 1959, ch. 310, § 7; 1994, ch. 103, § 1; 1995, ch. 217, § 1.

## ANNOTATIONS

**Cross references.** — For powers of municipalities, see 3-60-26 and 3-60A-10 NMSA 1978.

For Relocation Assistance Act, see Chapter 42, Article 3 NMSA 1978.

**The 1994 amendment**, effective July 1, 1994, redesignated the previously undesignated paragraph as Subsection A, and in the subsection, substituted "the" for "such" preceding "municipality," substituted "67-8-18 NMSA 1978" for "4 hereof" and substituted "that" for "which" following "any other statute of this state"; and added Subsection B.

**The 1995 amendment**, effective July 16, 1995, inserted "or county" in the section heading and in three places in Subsection A; in Subsection A, inserted "and counties" in two places and substituted "public state highway or interstate system" for "public highway of the interstate system"; inserted "counties or municipalities" near the

beginning and "county or municipality" in two places in the first sentence of Subsection B; and made minor stylistic changes throughout the section.

**Severability clauses.** — Laws 1959, ch. 310, § 9, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 278.

Constitutionality of state legislation to reimburse public utilities for cost of relocating their facilities because of highway construction, conditioned upon federal reimbursement of the state under the terms of Federal Aid Highway Act, 75 A.L.R.2d 419.

39A C.J.S. Highways § 29.

### **67-8-22. Remaining in rest areas and similar facilities; penalty.**

A. No person shall remain, or willfully allow any property under his control to remain, in any publicly owned and controlled rest and recreation area or sanitary or tourist information facility, which area or facility is located immediately adjacent to a public highway and is intended for use by persons travelling the highway, for more than twenty-four hours in any three-day period, unless otherwise provided by law.

B. The state highway department shall provide for posting of all areas and facilities to which Subsection A of this section applies. The notice to be posted shall read:

"NOTICE

Remaining in this area or facility for more than twenty-four hours is a violation of law subject to a fine of not more than one hundred dollars (\$100)."

C. Any person violating any provision of Subsection A of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100).

**History:** 1953 Comp., § 55-7-30, enacted by Laws 1973, ch. 121, § 1.

### **67-8-23. Additional cooperative agreements funding.**

The department shall expend an additional two million dollars (\$2,000,000) in the sixty-eighth and subsequent fiscal years, over and above amounts expended in the sixty-seventh fiscal year, to assist municipalities, school districts and counties through cooperative agreements for the construction or improvement of public highways and public school parking areas.

**History:** 1978 Comp., § 67-8-28, enacted by Laws 1979, ch. 166, § 14.



## ANNOTATIONS

**Severability clauses.** — Laws 1979, ch. 166, § 17, provides for the severability of the act if any part or application thereof is held invalid.

## ARTICLE 9

### Scenic, Historical and Other State Highways

#### 67-9-1. [Scenic highway from Santa Fe to Las Vegas; establishment; route.]

There is hereby established a public wagon road from the city limits of Santa Fe, in the county of Santa Fe, to the city limits of Las Vegas, county of San Miguel, which said road shall be constructed over the most feasible route through or near the canon of the Santa Fe river from the courthouse in the city of Santa Fe, county of Santa Fe, state of New Mexico, over the mountain range at the most practicable place to the east of said city and from thence on the route which may be most practicable, as well as most direct, to the courthouse in Las Vegas, in the county of San Miguel in the state of New Mexico.

**History:** Laws 1903, ch. 56, § 1; Code 1915, § 2716; C.S. 1929, § 64-1610; 1941 Comp., § 58-801; 1953 Comp., § 55-8-1.

## ANNOTATIONS

**Compiler's notes.** — Laws 1917, ch. 38, § 25, is a repealing clause which provides that Laws 1917, ch. 38, found principally in Articles 3 and 4 of this chapter, shall not be construed as repealing Code 1915, §§ 2707 to 2718, the provisions of which are presently compiled as 67-9-1 to 67-9-6 NMSA 1978.

#### 67-9-2. [El Camino Real; establishment; route.]

There is hereby established a public highway through the state of New Mexico, to be known as "El Camino Real," which said highway shall have for its northern terminus a point in the Raton mountains on the state line between Colorado and New Mexico, where the old Barlow and Sanderson stage road, known as the "Santa Fe Trail" crossed the state line, running thence in a southerly direction and following the old Santa Fe Trail as nearly as practicable through the city of Raton, the town of Cimarron, to the village of Rayado; thence to the town of Ocate; thence to the town of Mora; thence to the city of Las Vegas; thence following the route of the highway established by Chapter 56 of the Session Laws of 1903, and known as the Scenic Route to Santa Fe, the capital of the state of New Mexico; thence in a southerly direction via the town of Cerrillos to San Pedro; thence to the city of Albuquerque by the most feasible and picturesque route; thence south, crossing the Rio Grande at the town of Barelás, through the counties of Bernalillo, Valencia and Socorro, through the towns of Los Lunas, Belén, Socorro, San Antonio, San Marcial, to Engle; thence in a southerly

direction across the Jornada del Muerto to a point near old Fort Selden; thence in a southerly direction, upon the high lands adjacent to the valley of the lower Rio Grande, reaching the towns of Dona Ana, Las Cruces and Mesilla Park, to the place known as Anthony, on the state line between the state of New Mexico and the state of Texas.

**History:** Laws 1905, ch. 7, § 1; Code 1915, § 2707; C.S. 1929, § 64-1601; 1941 Comp., § 58-802; 1953 Comp., § 55-8-2.

## **ANNOTATIONS**

**Meaning of "Chapter 56".** — The term "Chapter 56 of the Session Laws of 1903" refers to Laws 1903, ch. 56, the provisions of which are compiled as 67-9-1 NMSA 1978.

### **67-9-3. [Construction and maintenance by cities and towns.]**

In incorporated cities and towns along said public highway, the municipal authorities shall construct and maintain said public highway.

**History:** Laws 1905, ch. 7, § 7; Code 1915, § 2713; C.S. 1929, § 64-1607; 1941 Comp., § 58-803; 1953 Comp., § 55-8-3.

### **67-9-4. [Bridges and culverts; timber, stone or concrete.]**

So far as practicable all bridges and culverts along said public highway shall be constructed of timber, stone or concrete, and no structural iron shall be used in the construction of any bridge except where absolutely necessary.

**History:** Laws 1905, ch. 7, § 8; Code 1915, § 2714; C.S. 1929, § 64-1608; 1941 Comp., § 58-804; 1953 Comp., § 55-8-4.

### **67-9-5. [Monuments; convict labor.]**

At suitable points along said public highway, and at places of historic interest, there shall be erected stone monuments commemorative thereof, which said monuments shall be erected by labor of penitentiary convicts.

**History:** Laws 1905, ch. 7, § 9; Code 1915, § 2715; C.S. 1929, § 64-1609; 1941 Comp., § 58-805; 1953 Comp., § 55-8-5.

### **67-9-6. Survey for western extension of [El] Camino Real.**

The state transportation commission is hereby authorized to cause a survey to be made for the purpose of determining the most feasible route for the establishment and location of a western extension of El Camino Real from a point at or near the town of

Los Lunas in the county of Valencia, running thence in a northwesterly direction to the Indian town of Laguna; thence passing through or near the towns of Cubero, Grants, or San Rafael and Blue Water, in the county of Valencia and Fort Wingate and Gallup in the county of McKinley to a point on the boundary line between New Mexico and Arizona near the town of St. Michaels.

The commission is further authorized and directed to select, locate and lay out the western extension.

**History:** Laws 1913, ch. 25, § 1; Code 1915, § 2717; C.S. 1929, § 64-1611; 1941 Comp., § 58-806; 1953 Comp., § 55-8-6; 2003, ch. 142, § 81.

#### **ANNOTATIONS**

**Bracketed material.** — The bracketed material in the section heading was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**The 2003 amendment,** effective July 1, 2003, added the section heading; and substituted "state transportation commission" for "state highway commission".

#### **67-9-7. Highways; United States route 66; dual designation.**

All remaining portions of former United States route 66 under state highway and transportation department jurisdiction that are currently used in New Mexico shall be designated as "New Mexico Route 66".

**History:** Laws 1999, ch. 194, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1999, ch. 194 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature.

#### **67-9-8. Temporary provision; highways; United States route 66; signs.**

The state highway and transportation department shall conduct an inventory of all current New Mexico state highway designation signs on former United States route 66 and add a second designation sign reading "New Mexico Route 66", contingent upon funding pursuant to the federal Transportation Equity Act for the 21st Century, the National Scenic Byways Program and other sources. The state highway and transportation department, working with the New Mexico route 66 association and the New Mexico route 66 scenic byway coordinator in the economic development department, shall add the secondary designation "New Mexico Route 66" to all official maps of the state of New Mexico and shall complete its survey and addition of all signs

prior to January 1, 2001 in celebration of the seventy-fifth anniversary of United States route 66.

**History:** Laws 1999, ch. 194, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 1999, ch. 194 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature.

**Compiler's notes.** — The federal Transportation Equity Act for the 21st Century was enacted June 9, 1998, as Public Law 105-178 and is compiled throughout the U.S. Code.

The National Scenic Byways Program may be found in Title 23 of the U.S. Code.

## ARTICLE 10 Toll Roads, Bridges and Ferries

### 67-10-1. [Construction and operating corporations; certificate and plat; franchise; extension.]

That whenever any three or more persons, residents of this state, shall associate themselves together for the construction, operation and maintenance of any wagon road, wagon bridge or ferry in this state, under the provisions of this article, they shall file a certificate in addition to the articles and certificate now required by law, stating as near as possible the line or route and termini of such proposed toll wagon road, the name and place of the stream proposed to be crossed by such toll bridge or ferry, and with such certificate, must be filed by such corporation a plat or profile, with the county clerk of the county or counties in or through which such proposed toll road or ferry is to be built, constructed and maintained, which plat or profile shall show as near as possible the route of such proposed road and the place of constructing such bridge or ferry, showing in such certificate and plat or profile the distance along the stream on either side from said proposed bridge or ferry, proposed to be claimed as a franchise for such purposes, and from and after the time such certificate and plat or profile shall be filed as aforesaid, and after the same shall be presented to the board of county commissioners of any county in or through which the toll road, bridge or ferry is to be constructed, kept and maintained and the franchise therein claimed and allowed by the board of county commissioners as aforesaid, such corporation shall have the exclusive right, privilege and franchise so allowed by said board of commissioners, for the period of six months, and no longer, unless the board of county commissioners shall extend the time on petition in writing by the corporation so interested.

**History:** Laws 1891, ch. 44, § 1; C.L. 1897, § 1865; Code 1915, § 2719; C.S. 1929, § 64-1701; 1941 Comp., § 58-901; 1953 Comp., § 55-9-1.

## ANNOTATIONS

**Compiler's notes.** — In Laws 1891, ch. 44, § 1, "county clerk of the county or counties" read "clerk of the probate court of the county or counties."

**Meaning of "this article".** — The term "this article," referring to Code 1915, ch. LII, art. X, was inserted by the 1915 Code compilers for "this act," referring to Laws 1891, ch. 44. The provisions of both "this act" and "this article" are presently compiled as 67-10-1 to 67-10-4 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges §§ 618, 619, 623.

Grant of perpetual franchise, 2 A.L.R. 1105.

Effect of expiration of charter of turnpike or toll road company on title to road, 30 A.L.R. 206.

Duty and liability as to lighting bridge, 47 A.L.R. 355.

Power to collect tolls after expiration or forfeiture of charter, 47 A.L.R. 1288, 97 A.L.R. 477.

Liability as to construction and maintenance of toll bridges as respects heavy load, 68 A.L.R. 617.

Ferry facilities as within provision of statute in relation to local taxation of certain railroad property taxes, 80 A.L.R. 270.

State excise, privilege or franchise tax on ferry company, as affected by commerce clause, 105 A.L.R. 11, 139 A.L.R. 950.

Right of ferry company not having an exclusive franchise to protection against, or damages for, interference with its operations, property or plant by a competitor, 119 A.L.R. 456.

Duty as regards barriers for protection of automobile travel, 173 A.L.R. 626.

Municipality's power to lease or sublet ferries, 47 A.L.R.3d 19.

11 C.J.S. Bridges § 45; 36A C.J.S. Ferries § 13; 90 C.J.S. Turnpikes and Toll Roads § 14.

## **67-10-2. Rates and tolls; appeals.**

A corporation may, after the completion of a wagon road or any part thereof and after the completion of a bridge or ferry for and by the traveling public, apply by petition in writing to the board of county commissioners of the county in or through which the road, bridge or ferry is or has been constructed, for rates, prices and tolls to be charged and collected from the traveling public using and traveling on the toll road, bridge or ferry, which petition shall state facts in reference to a road, bridge or ferry as will be sufficient to inform the board of county commissioners as to enable the board of county commissioners to fix the rates, tolls and charges, equal and just between the corporation owning the road, bridge or ferry and the traveling public using the same, and the rates, tolls and charges so fixed shall remain the same for two years. At the expiration of each two years, the corporation shall petition as aforesaid for the fixing of the rates, tolls and charges by the board of county commissioners. In case the corporation is dissatisfied with the rates, tolls and charges fixed by the board, it may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1891, ch. 44, § 2; C.L. 1897, § 1866; Code 1915, § 2720; C.S. 1929, § 64-1702; 1941 Comp., § 58-902; 1953 Comp., § 55-9-2; Laws 1998, ch. 55, § 81; 1999, ch. 265, § 82.

### **ANNOTATIONS**

**Cross references.** — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

**The 1998 amendment,** effective September 1, 1998, rewrote the second and third sentences and made minor stylistic changes throughout the section.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in the last sentence.

**Compiler's notes.** — In Laws 1891, ch. 44, § 2, "county clerk of the county" read "clerk of the probate court of the county."

For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges § 620.

11 C.J.S. Bridges § 65 et seq.

**67-10-3. [Receipt of rates, tolls and charges; using tollway without payment; penalty.]**

That any such corporation so constructing, keeping and maintaining any such wagon road, bridge or ferry shall have power and authority to charge, receive and collect the rates, tolls and charges fixed, as aforesaid, from any person or persons, companies or corporations so using such road, bridge or ferry, and to prohibit any such persons from using the same until the rates, tolls and charges are paid or tendered; and any such persons using or attempting to use the same until the rates, tolls and charges are so paid or tendered shall be deemed guilty of a misdemeanor, and on conviction thereof before any justice of the peace [magistrate] having jurisdiction shall be fined in any sum, for each offense, not less than five dollars [(\$5.00)], nor more than ten dollars [(\$10.00)], said fine to go to the public school fund of the county.

**History:** Laws 1891, ch. 44, § 3; C.L. 1897, § 1867; Code 1915, § 2721; C.S. 1929, § 64-1703; 1941 Comp., § 58-903; 1953 Comp., § 55-9-3.

### ANNOTATIONS

**Bracketed material.** — The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges § 620.

11 C.J.S. Bridges § 65 et seq.

### **67-10-4. [Owners of toll road, bridge or ferry; liability in damages.]**

That the corporation and the individual owners of any such wagon road, bridge or ferry shall be liable in damages to any person so using the same, for any injuries to person or property caused by the neglect, fault or omission to keep said road, bridge or ferry in good and safe condition, which damages may be recovered by law by any court having jurisdiction of the amount in controversy.

**History:** Laws 1891, ch. 44, § 4; C.L. 1897, § 1868; Code 1915, § 2722; C.S. 1929, § 64-1704; 1941 Comp., § 58-904; 1953 Comp., § 55-9-4.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 158; 40 Am. Jur. 2d Highways, Streets and Bridges §§ 625, 627.

Contributory negligence of one injured because of lack or insufficiency of lights, 47 A.L.R. 358.

Ferry operator's duty as regards automobiles or their occupants, 82 A.L.R. 798.

Liability for negligence of public body or political subdivision operating toll bridge, 43 A.L.R.2d 550.

Measure and elements of damages for injury to bridge, 31 A.L.R.5th 171.

11 C.J.S. Bridges § 60.

## **ARTICLE 11**

### **Controlled-Access Facilities**

#### **67-11-1. Definition of a controlled-access facility.**

As used in this act [67-11-1 to 67-11-10 NMSA 1978], "controlled-access facility" means a highway or street especially designed for through traffic and over, from or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways open to use by all customary forms of street and highway traffic or they may be parkways from which trucks, busses and other commercial vehicles shall be excluded.

**History:** 1953 Comp., § 55-10-1, enacted by Laws 1957, ch. 234, § 1.

#### **ANNOTATIONS**

**Purpose and nature of provisions.** — The Access Condemnation Statute (67-11-1 to 67-11-10 NMSA 1978) is merely enabling legislation, designed to permit the highway commission to meet standards required by federal law, and is permissive, not mandatory. *State ex rel. State Hwy. Comm'n v. Danfelser*, 72 N.M. 361, 384 P.2d 241 (1963), cert. denied, 375 U.S. 969, 84 S. Ct. 487, 11 L. Ed. 2d 416 (1964).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 178, 179, 181, 182.

39A C.J.S. Highways § 141.

#### **67-11-2. Authority of state transportation commission.**

The state transportation commission is authorized and directed to do those things essential to plan, acquire by reasonable purchase or condemnation and construct a section or a part of a state or federally designated highway as a freeway or controlled access highway or to make any existing state or federally designated highway a freeway or a controlled-access highway.



**History:** 1953 Comp., § 55-10-2, enacted by Laws 1957, ch. 234, § 2; 2003, ch. 142, § 82.

### ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission" in the section heading and the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 32, 34, 207.

40 C.J.S. Highways § 179.

### **67-11-3. Agreement to reroute streets or county highways.**

The state transportation commission is authorized and directed to enter into an agreement with the authority exercising jurisdiction over the street or highway and, in accordance with the terms of this agreement, when essential, to close any street or highway or to reroute such street or highway over and under or to reroute to a connection with the freeway or controlled-access highway.

**History:** 1953 Comp., § 55-10-3, enacted by Laws 1957, ch. 234, § 3; 2003, ch. 142, § 83.

### ANNOTATIONS

**Cross references.** — For highway bypasses or relocation projects, consent of persons affected required, see 67-3-61 NMSA 1978.

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 130 to 137.

40 C.J.S. Highways § 243.

### **67-11-4. Design of controlled-access facility.**

The highway authorities of the state or of any county, city, town or village are authorized to so design any controlled-access facility and to so regulate, restrict or prohibit access as to best serve the traffic for which such facility is intended. In this connection such highway authorities are authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbing, central dividing sections or other physical separations, or by designating such separate roadways by signs, markers, stripes and the proper lane for such traffic by appropriate

signs, markers, stripes and other devices. No person shall have right of ingress or egress to, from or across controlled-access facilities to or from abutting lands except at such designated points at which access may be specified.

**History:** 1953 Comp., § 55-10-4, enacted by Laws 1957, ch. 234, § 4.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 70.

### **67-11-5. Acquisition of property and property rights.**

For the purposes of Chapter 67, Article 11 NMSA 1978, the state transportation commission alone or in agreement with any county, city, town or village may acquire private or public property and property rights for controlled-access facilities and service roads, including rights of access, air, view and light, by purchase or condemnation in the same manner as such units are authorized by law to acquire such property or property rights in connection with highways and streets within their respective jurisdictions. All property rights acquired under the provisions of Chapter 67, Article 11 NMSA 1978 shall be in fee simple except, in circumstances where fee simple cannot be obtained, an appropriate easement in perpetuity shall be acceptable. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof or service road in connection therewith, the state transportation commission, alone or in agreement with any county, city, town or village highway authority may, in its discretion, acquire an entire lot, block or tract of land if, by so doing, the interests of the public will be best served even though the entire lot, block or tract is not immediately needed for the right of way proper.

**History:** 1953 Comp., § 55-10-5, enacted by Laws 1957, ch. 234, § 5; 2003, ch. 142, § 84.

### ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "Chapter 67, Article 11 NMSA 1978" for "this act"; and substituted "state transportation commission" for "state highway commission".

**Public property taken for public purposes** by commission must be compensated for under provisions for alternative procedure in eminent domain (42-2-1 to 42-2-16 NMSA 1978). State ex rel. State Hwy. Comm'n v. Board of County Comm'rs, 72 N.M. 86, 380 P.2d 830 (1963).

**Occupation and use of city park lands.** — The commission may not occupy and use city park lands for highway purposes without the payment of compensation to the city. State ex rel. State Hwy. Comm'n v. City of Albuquerque, 67 N.M. 383, 355 P.2d 925 (1960).

**County courthouse and hospital lands.** — The county must be compensated where commission takes county hospital and courthouse land and uses it for highway purposes. State ex rel. State Hwy. Comm'n v. Board of County Comm'rs, 72 N.M. 86, 380 P.2d 830 (1963).

**Access by highway abutters.** — Abutters have a right of access to the public roads system, but it does not necessarily follow that they have a right of direct access to the main-traveled portions thereof. Circuity of travel, as long as it is not unreasonable, and any loss in land value by reason of the diversion of express traffic, are noncompensable. State ex rel. State Hwy. Comm'n v. Danfelser, 72 N.M. 361, 384 P.2d 241 (1963), cert. denied, 375 U.S. 969, 84 S. Ct. 487, 11 L. Ed. 2d 416 (1964).

**Effect of filing condemnation of access suit.** — The filing of the suit which had for one of its purposes the condemnation of access was in effect an admission by plaintiff that the taking was not by way of the police power and it was not error for the trial court to insist that the case be tried on the same theory and not to permit an amendment raising a theory of regulation of ingress. State ex rel. State Hwy. Comm'n v. Weatherly, 67 N.M. 97, 352 P.2d 1010 (1960).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 8.

Abutting owner's right to damages or other relief for loss of access because of limited access to highway or street, 43 A.L.R. 1072.

Power to directly regulate or prohibit abutter's access to street or highway, 73 A.L.R.2d 652.

39A C.J.S. Highways § 141.

## **67-11-6. Preference of condemnation cases.**

Court proceedings necessary to acquire property or property rights for purposes of this act [67-11-1 to 67-11-10 NMSA 1978] shall take precedence over all other causes not involving the public interest in all courts, to the end that the provision of controlled-access facilities may be expedited.

**History:** 1953 Comp., § 55-10-6, enacted by Laws 1957, ch. 234, § 6.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges § 625.

## **67-11-7. New or existing facilities; elimination of grade crossings.**

The state highway commission, alone, or in agreement with any county, city, town or village may designate and establish controlled-access highways as new and additional facilities or may designate and establish existing streets or highways as included within a controlled-access facility. The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade or controlled-access facilities with existing state and county roads and city or town or village streets, by grade separation or service road, or by closing off such roads and streets at the right-of-way boundary line of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade. No city, town or village street, county or state highway or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the state highway commission. Such consent and approval shall be given only if the public interest shall be served thereby.

**History:** 1953 Comp., § 55-10-7, enacted by Laws 1957, ch. 234, § 7.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 56 to 59.

39A C.J.S. Highways § 96.

### **67-11-8. Authority of local units to enter into agreements.**

The highway authorities of the state, city, county, town or village are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this act [67-11-1 to 67-11-10 NMSA 1978].

**History:** 1953 Comp., § 55-10-8, enacted by Laws 1957, ch. 234, § 8.

### **67-11-9. Commercial enterprises or activities.**

Commercial enterprises or activities may be conducted, permitted or authorized on department-owned land or land leased to or from the department, not including interstate highway rights of way, but including controlled-access facilities; or land owned or leased to or from the state, a county, city, town or village highway authority or by any other governmental agency for the purpose of providing goods and services to the public, including gasoline service stations or other commercial establishments that may be built on department-owned land or the property acquired for or in connection with the controlled-access facilities. In connection with the development of any department-owned land, including a controlled-access facility, the state, county, city, town or village highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain and vacate local service roads and streets or to designate as local

service roads and streets any existing road or street in such manner as to facilitate the establishment and operation of competitive gasoline service stations and other commercial enterprises on private property abutting the service roads and streets. The state transportation commission is authorized to exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled-access facilities under the terms of Chapter 67, Article 11 NMSA 1978. The local service roads and streets shall be of appropriate design and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the proper authority.

**History:** 1953 Comp., § 55-10-9, enacted by Laws 1957, ch. 234, § 9; 2003, ch. 142, § 85; 2005, ch. 122, § 2.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission"; and substituted "Chapter 67, Article 11 NMSA 1978" for "this act".

**The 2005 amendment**, effective June 17, 2005, permits commercial enterprises or activities to be conducted on property of the department of transportation to provide goods and services to the public.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 253.

40 C.J.S. Highways § 244.

### **67-11-10. Unlawful use of controlled-access facilities; penalties.**

A. It is unlawful for any person:

(1) to drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on controlled-access facilities; or

(2) to make a left turn or a semicircular or u-turn except through an opening provided for that purpose in the dividing curb section, separation or line; or

(3) to drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation, section or line; or

(4) to drive any vehicle into the controlled-access facility from a local service road except through an opening provided for that purpose in the dividing curb or dividing section or dividing line which separates such service road from the controlled-access facility proper.

B. Any person who violates any of the provisions of this section is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one hundred dollars (\$100) nor less than five dollars (\$5.00) or by imprisonment in the county jail for not more than ninety days nor less than five days, or by both fine and imprisonment in the discretion of the judge.

**History:** 1953 Comp., § 55-10-10, enacted by Laws 1957, ch. 234, § 10.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 40 Am. Jur. 2d Highways, Streets and Bridges §§ 604, 605.

40 C.J.S. Highways §§ 244, 248.

## ARTICLE 12

### Highway Beautification

#### 67-12-1. Short title.

This act [67-12-1 to 67-12-14 NMSA 1978] may be cited as the "Highway Beautification Act."

**History:** 1953 Comp., § 55-11-1, enacted by Laws 1966, ch. 65, § 1.

### ANNOTATIONS

**Constitutionality of State Highway Beautification Act.** — See National Adv. Co. v. State ex rel. New Mexico State Hwy. Comm'n, 91 N.M. 191, 571 P.2d 1194 (1977).

**Law reviews.** — For note, "Estoppel Applied Against the State," see 10 N.M.L. Rev. 501 (1980).

#### 67-12-2. Definitions.

As used in the Highway Beautification Act [67-12-1 NMSA 1978]:

A. "interstate system" means that portion of the national system of interstate and defense highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to Title 23, United States Code;

B. "primary system" means that portion of connected main highways located within this state as may now or hereafter be officially so designated by the commission and approved pursuant to Title 23, United States Code;

C. "commission" means the state transportation commission;

D. "outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other object that is designed, intended or used to advertise or inform, any part of which is located within six hundred sixty feet of the nearest edge of the right of way and is visible from the main-traveled way of the interstate or primary systems or those located beyond six hundred sixty feet of the right of way, located outside of urban areas, visible from the main-traveled way of the system and erected with the purpose of their message being read from such main-traveled way;

E. "safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right of way of the interstate or primary systems;

F. "information center" means a site established and maintained at a safety rest area for the purpose of informing the public of places of interest within the state and providing other information the commission considers desirable;

G. "junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled or wrecked automobiles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material;

H. "automobile graveyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts;

I. "junkyard" means any establishment or place of business maintained, used or operated for storing, keeping, buying or selling junk or for the maintenance or operation of an automobile graveyard, any portion of which is located within one thousand feet of the nearest edge of the right of way of the interstate or primary systems, and it includes garbage dumps and sanitary fills; and

J. "urban area" means an area including and adjacent to a municipality or other urban place having a population of five thousand or more, as determined by the latest available federal census, within boundaries to be fixed by the commission, subject to any necessary approval by any federal agency, department or personnel.

**History:** 1953 Comp., § 55-11-2, enacted by Laws 1966, ch. 65, § 2; 1971, ch. 108, § 1; 1975, ch. 193, § 1; 2003, ch. 142, § 86.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission" in Subsections C and J.

### **67-12-3. Public policy.**

In order to promote public safety, health, welfare, convenience and enjoyment of public travel, to protect the public investment in public highways and to preserve and enhance the scenic beauty of lands bordering public highways, it is the public policy of this state to regulate the erection and maintenance of outdoor advertising and the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems in accordance with the Highway Beautification Act [67-12-1 NMSA 1978]. The legislature finds that regulation of outdoor advertising and junkyards is for a highway purpose.

**History:** 1953 Comp., § 55-11-3, enacted by Laws 1966, ch. 65, § 3.

### **ANNOTATIONS**

**Act meets constitutionality test.** — The Highway Beautification Act meets the three-pronged test used to determine whether a time, place and manner restriction is valid: the act's restrictions on plaintiffs' exercise of their freedom of speech is justified without reference to the content of the regulated speech, its restrictions on plaintiffs' freedom of speech serve a significant governmental interest and the act leaves open ample alternative channels for communication of the information. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

### **67-12-4. Outdoor advertising prohibited; exceptions.**

A. Outdoor advertising shall not be erected or maintained except:

(1) directional and other official signs and notices authorized or required by law, including, but not limited to, signs and notices pertaining to houses of worship, natural wonders and scenic and historic attractions;

(2) signs, displays and devices advertising the sale or lease of property upon which they are located;

(3) signs, displays and devices advertising activities conducted on the property upon which they are located, provided that the bisection of a parcel of land by a highway right-of-way acquisition shall not in itself be construed as converting the property into more than one parcel;

(4) signs, displays and devices located in areas which are zoned as industrial or commercial under authority of law;

(5) signs, displays and devices located within six hundred sixty feet of the nearest edge of the right of way, in unzoned industrial or commercial areas as defined by regulations promulgated by the commission, provided that no area shall be



considered to be an unzoned commercial or industrial area unless and until a regulation defining the area as unzoned commercial or industrial is promulgated by the commission; and

(6) signs lawfully in existence on October 22, 1965, determined by the commission, subject to any necessary federal approval, to be landmark signs of historic or artistic significance worthy of preservation including signs on farm structures or natural surfaces.

B. All outdoor advertising shall conform with standards and specifications, shall bear permits and have paid therefor permit fees, as required by the Highway Beautification Act [67-12-1 NMSA 1978] and regulations promulgated pursuant thereto or authorized thereby, except that permits shall not be required or fees paid for outdoor advertising included in Paragraphs (1), (2) and (3) of Subsection A of this section.

C. Notwithstanding this section, any outdoor advertising that was lawfully in existence on the effective date of the Highway Beautification Act and has continued to so exist may remain in place until the outdoor advertising is acquired by the commission or condemnation in relation thereto is commenced by the commission, whichever first occurs, but only if and so long as all provisions of Subsection B of this section are complied with.

**History:** 1953 Comp., § 55-11-4, enacted by Laws 1966, ch. 65, § 4; 1967, ch. 140, § 1; 1971, ch. 108, § 2; 1975, ch. 174, § 1; 1975, ch. 193, § 2; 2003, ch. 142, § 87.

## ANNOTATIONS

**The 2003 amendment**, effective July 1, 2003, deleted "state highway" preceding "commission" in Paragraph A(6).

**Regulation deemed proper exercise of police power.** — The regulation of outdoor advertising along interstate and primary highways is a reasonable and proper exercise of the police power. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Act does not abridge freedom of speech.** — The New Mexico Highway Beautification Act, does not abridge freedom of speech in violation of the United States and New Mexico constitutions. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Highway Beautification Act meets three-pronged test** used to determine whether a time, place and manner restriction is valid: the act's restrictions on plaintiffs' exercise of their freedom of speech is justified without reference to the content of the regulated speech, its restrictions on plaintiffs' freedom of speech serve a significant governmental interest and the act leaves open ample alternative channels for communication of the

information. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Evidence of great business loss needed to rebut presumption.** — Where the plaintiffs introduced no evidence that any of their stores, which availed themselves of on-premise or unzoned commercial or industrial area signs after other off-premise signs had been removed, had suffered a great loss of business, they failed to rebut the presumption that the Highway Beautification Act provides adequate means for plaintiffs to exercise their freedom of speech. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Outdoor advertising devices erected in violation of act.** — Outdoor advertising devices erected after the effective date of the Highway Beautification Act and prior to the 1971 amendments which do not qualify under Subsection A(1) through (4) of this section were erected in violation of the act. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Signs are public nuisances when they fail to qualify** under this section and when they fail to comply with the Highway Beautification Act's permit provisions. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

## **67-12-5. Outdoor advertising; regulations; permits.**

A. The commission may promulgate regulations concerning:

(1) the definition of unzoned industrial or commercial areas adjacent to the interstate and primary systems;

(2) the removal of outdoor advertising so required or authorized under the Highway Beautification Act [67-12-1 NMSA 1978];

(3) permits for the erection and maintenance of outdoor advertising; and

(4) standards and specifications pertaining to outdoor advertising, including, but not limited to, construction, maintenance, spacing, lighting, size and location.

B. Regulations promulgated by the commission under this section shall be consistent with the public policy of this state as declared in the Highway Beautification Act and national standards promulgated pursuant to Title 23, United States Code.

C. The commission shall establish and collect uniform fees for the issuance of permits for outdoor advertising. The fees shall not be more than the actual cost to the commission of enforcement and administration of this act, or five dollars (\$5.00) per year, whichever is greater, for each sign, display and device. All fees so collected shall be paid to the state treasurer for credit to the state road fund.

D. Any permit fee payable for the years 1966 through 1971 inclusive shall be deemed timely paid if, but only if, the fee is received by the commission prior to July 1, 1971. For the year 1972 and every year thereafter, the permit fee shall be deemed timely paid if, said fee is received by the commission on or before the first day of the year for which said fee is being paid. Failure of timely payment of the permit fee for any outdoor advertising except those included in Subsections A (1), A (2) and A (3) of Section 67-12-4 NMSA 1978 shall render the outdoor advertising subject to removal by the commission without any compensation whatsoever and at the expense of the owner of the outdoor advertising.

**History:** 1953 Comp., § 55-11-5, enacted by Laws 1966, ch. 65, § 5; 1967, ch. 140, § 2; 1971, ch. 108, § 3.

## ANNOTATIONS

**Regulation deemed proper exercise of police power.** — The regulation of outdoor advertising along interstate and primary highways is a reasonable and proper exercise of the police power. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Provisions not arbitrary or capricious.** — The Highway Beautification Act's permit provisions are not arbitrary or capricious and they are reasonably necessary in order for the state highway department to ensure compliance with the act's provisions. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Signs are public nuisances when they fail to qualify** under 67-12-4A NMSA 1978 and when they fail to comply with the Highway Beautification Act's permit provisions. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Waiver of Subsection D by state highway department.** — The state highway department's acceptance of late permit applications and permit fees and the issuance of the permits constitutes a waiver by the department of Subsection D of this section. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

Governmental liability for compensation or damages to advertiser arising from obstruction of public view of sign or billboard on account of growth of vegetation in public way, 21 A.L.R.4th 1309.

Validity and construction of zoning regulations relating to illuminated signs, 30 A.L.R.5th 549.

### **67-12-6. Outdoor advertising; acquisition; compensation; removal.**

A. The commission may acquire by agreement or condemnation all outdoor advertising and property rights pertaining thereto. The commission may so remove the outdoor advertising if at the time of the acquisition:

- (1) the outdoor advertising bears the requisite permit, if any;
- (2) the owner of the outdoor advertising has timely paid all permit fees, past and present, if any, required in connection with the erection and maintenance thereof;
- (3) the outdoor advertising conforms with standards, specifications and requirements contained in regulations promulgated by the commission; and
- (4) the outdoor advertising was lawfully in existence on the effective date of the Highway Beautification Act and has continued to so exist, or was lawfully erected subsequent to the effective date. For the purpose of this paragraph, any outdoor advertising in existence on or after November 6, 1978, that was erected prior to November 18, 1971 under any permit or conditional permit issued by the state highway department shall be considered to be lawfully erected. For all purposes the effective date of the New Mexico Highway Beautification Act shall be March 15, 1971.

The condemnation shall be exercised by eminent domain in the manner provided by law, and each interested party shall have the right to a separate trial as to the respective interests involved.

B. Whenever outdoor advertising and property rights pertaining thereto are acquired by the commission pursuant to Subsection A of this section:

- (1) the owner of the outdoor advertising shall be paid just compensation by the commission equal to the fair market value of the outdoor advertising which is to be deemed a trade fixture; and
- (2) the owner of the land upon which the outdoor advertising is located shall be paid just compensation equal to the value of his right to have the outdoor advertising erected and maintained on the land.

C. The right to compensation as provided in Subsection B of this section shall not be affected solely by the failure of any outdoor advertising to conform to standards,

specifications and requirements contained in regulations promulgated by the commission relating to any subject other than permits or permit fees unless the commission has given notice by certified mail to the owner of the land upon which the outdoor advertising is located, and to the owner of the outdoor advertising if his name appears thereon, advising of the failure to conform and ordering that the outdoor advertising be made to so conform or be removed within thirty days from the date of such notice. If the failure to conform is corrected within the thirty days, then the failure to conform shall be deemed cured for all purposes; if, however, the defect is not corrected within the thirty days, the commission may thereafter remove the outdoor advertising at the expense of the owner of the outdoor advertising without any compensation whatsoever. This subsection specifically does not apply in any manner to permit fees, and no notice whatsoever shall be required in connection with the permit fees.

D. Compensation shall not include any element of damages which is not subject to federal aid participation under the federal Highway Beautification Act of 1965, as has been or may be hereafter amended or superseded, or otherwise.

E. In any case where outdoor advertising has been removed under the Highway Beautification Act [67-12-1 NMSA 1978], and the removal is compensable under that act, but the commission has not paid just compensation or instituted condemnation proceedings therefor, the owner of the outdoor advertising, or the owner of the land upon which it is located, or both, may bring actions against the commission as provided in Section 42-1-23 NMSA 1978, for recovery of such compensation.

F. All outdoor advertising other than that meeting all the requirements of Subsection A of this section is declared to be a public nuisance and in contravention of law. Therefore and otherwise, the commission may remove or cause the removal of all outdoor advertising other than that meeting all the requirements of Subsection A of this section which removal shall be without any compensation whatsoever and at the expense of the owner of the outdoor advertising.

G. Removal of outdoor advertising by or at the request of the commission, its agents or employees in compliance with the Highway Beautification Act does not subject such removal or the persons performing it to criminal prosecution or give rise to any liability to any person or entity for the injury, loss or destruction of any property which occurs in connection with the removal.

**History:** 1953 Comp., § 55-11-6, enacted by Laws 1966, ch. 65, § 6; 1967, ch. 140, § 3; 1971, ch. 108, § 4; 1975, ch. 193, § 3; 1981, ch. 371, § 1.

## ANNOTATIONS

**The 1981 amendment** divided the former language in the introductory paragraph of Subsection A into two sentences and substituted "The commission may so" for "and" and "the" for "said" following "of" and deleted "the outdoor advertising" following "if" in the second sentence therein, added the last two sentences in Subsection A(4), added

"the outdoor advertising" at the beginning of Paragraphs (1) and (3) and of the first sentence in Paragraph (4) of Subsection A, added "if any" at the end of Subsection A(1), added "the owner of the outdoor advertising" at the beginning of, and inserted "if any" in Subsection A(2), substituted "the" for "said" following "to" in the first sentence in Subsection A(4) and deleted "said" preceding "thirty days, then" in the next to last sentence in Subsection C.

**Compiler's notes.** — The effective date of the Highway Beautification Act is May 19, 1966.

Section 42-1-23 NMSA 1978, referred to near the end of Subsection E, was repealed by Laws 1981, ch. 125, § 62. For present similar provisions, see 42A-1-29 NMSA 1978.

**Federal Highway Beautification Act.** — The federal Highway Beautification Act of 1965, referred to in this section, appears as 23 U.S.C. §§ 131, 135, 136 and 139.

**Regulation deemed proper exercise of police power.** — The regulation of outdoor advertising along interstate and primary highways is a reasonable and proper exercise of the police power. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Enforcement of Highway Beautification Act does not violate just compensation clauses** of the United States and New Mexico constitutions. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Law reviews.** — For note, "Estoppel Applied Against the State," see 10 N.M.L. Rev. 501 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

Eminent domain: compensability of loss of visibility of owner's property, 7 A.L.R.5th 113.

## **67-12-7. Outdoor advertising; safety rest areas; information centers.**

In order to provide information in the specific interest of the traveling public, the commission may authorize outdoor advertising at safety rest areas and at information centers.

**History:** 1953 Comp., § 55-11-7, enacted by Laws 1966, ch. 65, § 7.

### **ANNOTATIONS**

**Regulation deemed proper exercise of police power.** — The regulation of outdoor advertising along interstate and primary highways is a reasonable and proper exercise of the police power. *Stuckey's Stores, Inc. v. O'Cheskey*, 93 N.M. 312, 600 P.2d 258 (1979), appeal dismissed, 446 U.S. 930, 100 S. Ct. 2145, 64 L. Ed. 2d 783 (1980).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges § 288.

**67-12-8. Leases, franchises or concessions to individuals for private commercial operation of tourist information centers prohibited; penalty.**

A. The state highway department or any lessee of highway department property shall not grant any lease, sublease, franchise or concession to any private person, corporation, association, partnership or firm for the purpose of operating any commercial tourist information center or similar tourist facility on lands owned or controlled by the state, without prior approval of the legislative finance committee.

B. Any lease, sublease, franchise or concession in violation of this section is void, and any person authorizing or executing such lease, sublease, franchise or concession on behalf of the state highway department or its lessee is guilty of a petty misdemeanor and, in addition to any §1 other penalty prescribed by law, shall be removed from public office.

**History:** 1953 Comp., § 55-11-7.1, enacted by Laws 1969, ch. 60, § 1.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 253, 254.

40 C.J.S. Highways § 244.

**67-12-9. Junkyards; license required.**

A. No person shall establish, operate or maintain a junkyard, without first obtaining a junkyard license from the commission. The commission shall establish and collect uniform fees for the issuance of junkyard licenses. The fee shall not be more than the actual cost to the commission of enforcement and administration of the Highway Beautification Act [67-12-1 NMSA 1978], or ten dollars (\$10.00) per year per junkyard, whichever is greater. The fees shall be paid to the state treasurer for credit to the state road fund.

B. No junkyard license shall be issued for the establishment, operation or maintenance of a junkyard except for junkyards:

(1) screened by natural objects, plantings, fences or other appropriate means so as not to be visible from the main-traveled way of the interstate or primary systems, or otherwise removed from sight, all in conformity with regulations relating thereto promulgated by the commission, if any; or

(2) located within areas zoned for industrial use under authority of law; or

(3) located within unzoned industrial areas as determined by actual land uses and defined by regulations promulgated by the commission; provided that no area shall be deemed to be an unzoned industrial area unless and until the commission has promulgated regulations defining same.

C. Nothing herein to the contrary withstanding, no junkyard lawfully in existence on the effective date of the Highway Beautification Act, which has continued to so exist and has had timely paid therefor all license fees required by the Highway Beautification Act shall be denied a junkyard license, if proper application is made and the requisite fee tendered therefor, until such junkyard has been screened or otherwise removed from sight by the commission at its expense.

D. Any fee for a junkyard license payable for the years 1966 through 1971 inclusive, shall be deemed timely paid if, but only if, the fee is received by the commission prior to July 1, 1971. For the year 1972 and every year thereafter, the license fee shall be deemed timely paid if, but only if, said fee is received by the commission on or before the first day of the year for which said fee is being paid. Failure of timely payment of said fee shall render the junkyard subject to removal, disposal and abatement by the commission without any compensation whatsoever, and at the cost of the owner thereof.

**History:** 1953 Comp., § 55-11-8, enacted by Laws 1966, ch. 65, § 8; 1971, ch. 108, § 5.

### **67-12-10. Junkyards; screening; acquisition; removal; compensation.**

A. The commission may screen, at its expense, any junkyard located within one thousand feet of the nearest edge of the right-of-way of the interstate and primary systems and visible from the main-traveled way thereof, if the commission considers such screening feasible and the junkyard:

(1) was lawfully in existence on the effective date of the Highway Beautification Act [67-12-1 NMSA 1978], and has continued to so exist, or the junkyard lawfully came §1 into existence subsequent thereto under circumstances whereby screening or removal from sight were not required by law; and

(2) has had timely paid therefor all license fees, past and present, required in connection with the establishment, operation and maintenance thereof.



B. If the commission does not consider such screening economical or feasible due to the topography of the land or otherwise, it may require the relocation, removal or disposal of the junkyard or junk thereon located by negotiation or condemnation, if the junkyard meets the requirements of Paragraphs (1) and (2) of Subsection A.

C. Whenever relocation, removal or disposal is required by the commission pursuant to Subsection B:

(1) the owner of the junkyard shall be paid just compensation therefor by the commission, which shall include, but not be limited to, acquisition costs, leasehold value and moving costs; and

(2) the owner of the land upon which the junkyard is located shall be paid just compensation equal to the value of his right to have the junkyard established, operated and maintained on the land.

D. Compensation shall not include any element of damages which is not subject to federal aid participation by virtue of the federal Highway Beautification Act of 1965, as has been or may hereafter be amended or superseded, or otherwise.

E. In any case where a junkyard has been removed, relocated or disposed of, pursuant to the Highway Beautification Act, and such removal is compensable under it, but the commission has not paid just compensation or instituted condemnation proceedings therefor, the owner of the junkyard or the owner of the land upon which it is located, or both, may bring action against the commission as provided in Section 42-1-23 NMSA 1978, for recovery of such compensation.

F. The commission may remove, relocate or dispose of, or cause the removal, relocation or disposal of all junkyards other than those described in Subsections A and B hereof, without any compensation whatsoever and at the expense of the owner of the junkyard.

G. Removal, relocation or disposal of junkyards by or at the request of the commission, its agents or employees in compliance with the Highway Beautification Act does not subject such removal or the persons performing same to criminal prosecution or give rise to any liability to any person or entity for the injury, loss or destruction of any property which occurs in connection with the said removal.

H. When the commission determines that it is in the best interest of the state, it may acquire such land or interest in land as is necessary to provide adequate screening for junkyards.

**History:** 1953 Comp., § 55-11-9, enacted by Laws 1966, ch. 65, § 9; 1967, ch. 140, § 4; 1971, ch. 108, § 6.

## ANNOTATIONS

**Highway Beautification Act.** — The federal Highway Beautification Act is codified as 23 U.S.C. §§ 131, 135, 136, and 139.

### **67-12-11. Junkyards; abatement of nuisance.**

The establishment, operation or maintenance of any junkyard contrary to the provisions of the Highway Beautification Act [67-12-1 NMSA 1978] is a public nuisance. In addition to all other remedies and powers granted to the commission by the Highway Beautification Act, the commission may cause the public nuisance to be abated, by application to the district court of the county in which the subject junkyard is located, or otherwise as provided by law.

**History:** 1953 Comp., § 55-11-10, enacted by Laws 1966, ch. 65, § 10; 1971, ch. 108, § 7.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39A C.J.S. Highways § 143.

### **67-12-12. Powers of commission.**

The commission may:

A. promulgate regulations it deems necessary to implement and enforce the Highway Beautification Act [67-12-1 NMSA 1978]; and

B. enter into agreements with the secretary of commerce pursuant to Title 23, United States Code, relating to the control of outdoor advertising and junkyards in areas adjacent to the interstate and primary systems, and to take action in the name of the state to comply with the terms of the agreements.

**History:** 1953 Comp., § 55-11-11, enacted by Laws 1966, ch. 65, § 11.

#### **ANNOTATIONS**

**Cross references.** — For Scenic Highway Zoning Act not to derogate powers under this act, see 67-13-16 NMSA 1978.

### **67-12-13. Construction of act.**

Nothing in the Highway Beautification Act [67-12-1 NMSA 1978] affects the provisions of any lawful ordinance or regulation which is more restrictive than the Highway Beautification Act.

**History:** 1953 Comp., § 55-11-12, enacted by Laws 1966, ch. 65, § 12; 1971, ch. 108, § 8.

## ANNOTATIONS

**Severability clauses.** — Laws 1971, ch. 108, § 10, provides for the severability of the act if any part or application thereof is held invalid.

### **67-12-14. Acquisition of land for scenic beauty.**

A. The commission may acquire and improve land necessary for the restoration, preservation and enhancement of scenic beauty within and adjacent to the interstate and primary systems, including acquisition for publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the right-of-way and reasonably necessary to accommodate the traveling public.

B. The interest in land acquired and maintained under this section may be the fee simple or any lesser interest determined by the commission to be reasonably necessary to accomplish the purposes of the Highway Beautification Act [67-12-1 NMSA 1978]. The acquisition may be by gift, agreement, purchase, exchange, condemnation or otherwise. Acquisition through condemnation shall be in accordance with Sections 42-2-1 through 42-2-21 NMSA 1978.

C. Acquisition of any land under this section is for highway purpose.

**History:** 1953 Comp., § 55-11-14, enacted by Laws 1966, ch. 65, § 14.

## ANNOTATIONS

**Severability clauses.** — Laws 1966, ch. 65, § 17, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 89, 168.

### **67-12-15. Tree plantings along medians and public rights-of-way.**

The commission shall, to the maximum extent practicable and with due consideration for safety, seek to arrange for tree plantings along all medians and public rights-of-way. The commission and the director of the forestry division of the energy, minerals and natural resources department shall coordinate efforts to arrange for tree plantings funded from the conservation planting revolving fund along medians and public rights-of-way.

**History:** Laws 1991, ch. 18, § 1.

## **ARTICLE 13**

### **Scenic Highway Zoning**

### **67-13-1. Short title.**

This act [67-13-1 to 67-13-16 NMSA 1978] may be cited as the "Scenic Highway Zoning Act."

**History:** 1953 Comp., § 55-14-1, enacted by Laws 1973, ch. 17, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 89, 168.

### **67-13-2. Legislative declaration.**

It is declared as a matter of legislative determination that:

A. the powers and duties provided in the Scenic Highway Zoning Act [67-13-1 NMSA 1978] will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants of New Mexico;

B. the operation of zoning ordinances and agreements authorized in the Scenic Highway Zoning Act is in the public interest and constitutes a part of the established and permanent policy of the state;

C. the scenic highway zones hereby authorized will be a special benefit to the property within and adjacent to them;

D. the notice provided in the Scenic Highway Zoning Act for each hearing and action to be taken is reasonably calculated to inform any person of interest in any proceedings hereunder which may directly and adversely affect his legally protected interests; and

E. for the accomplishment of these purposes, the provisions of the Scenic Highway Zoning Act shall be broadly construed.

**History:** 1953 Comp., § 55-14-2, enacted by Laws 1973, ch. 17, § 2.

### **67-13-3. Definitions.**

As used in the Scenic Highway Zoning Act [67-13-1 NMSA 1978]:

A. "board" means a board of county commissioners;

B. "highway" means any United States highway, state highway or any combination of such highways used for vehicular traffic;

C. "person" means any human being, association, partnership, firm or corporation, excluding a public body and excluding the federal government;

D. "public body" means the state of New Mexico or any agency, instrumentality or corporation thereof, or any municipality, school district or other district or any other political subdivision of the state, excluding the federal government; and

E. "real property" means:

(1) land, including land under water;

(2) buildings, structures, fixtures and improvements on land;

(3) any property appurtenant to or used in connection with land; and

(4) every estate, interest, privilege, easement, franchise and right in land, legal or equitable, including without limiting the generality of the foregoing, rights-of-way, terms for years and liens and charges or encumbrances by way of judgment or otherwise, and the indebtedness secured by such liens.

**History:** 1953 Comp., § 55-14-3, enacted by Laws 1973, ch. 17, § 3.

#### **67-13-4. Creation of scenic highway zones.**

The board of county commissioners of any county, through which any highways extend, which highways have been designated by a joint memorial of both houses of the legislature as being a scenic road, may establish or amend by ordinance a scenic highway zone, provided such ordinance is enacted or amended by the unanimous vote of the entire board of county commissioners.

**History:** 1953 Comp., § 55-14-4, enacted by Laws 1973, ch. 17, § 4.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 83 Am. Jur. 2d Zoning and Planning §§ 2, 3.

Authority of zoning commission to impose, as condition of allowance of special zoning exception, permit or variance, requirements as to highway and traffic changes, 49 A.L.R.3d 492.

101 C.J.S. Zoning § 11.

#### **67-13-5. Boundaries of scenic highway zones.**

The boundaries of a scenic highway zone are limited to a strip of real property five hundred feet wide on each side of the right-of-way of any highways established as a scenic highway zone by ordinance of the county.

**History:** 1953 Comp., § 55-14-5, enacted by Laws 1973, ch. 17, § 5.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 83 Am. Jur. 2d Zoning and Planning §§ 164, 169.

101 C.J.S. Zoning § 5.

### **67-13-6. Board powers; delegation allowed.**

All powers, rights, privileges and duties vested in or imposed upon county commissioners shall be exercised and performed by the board; provided, that the exercise of any and all executive, administrative and ministerial powers may be, by the board, delegated and redelegated to officers and employees of the county.

**History:** 1953 Comp., § 55-14-6, enacted by Laws 1973, ch. 17, § 6.

### **67-13-7. Decision of board final.**

The action and decision of the board as to all matters passed upon it in relation to any action, matter or thing provided herein shall be final.

**History:** 1953 Comp., § 55-14-7, enacted by Laws 1973, ch. 17, § 7.

### **67-13-8. Administrative powers of board.**

The board may make and pass resolutions, regulations, ordinances and orders not repugnant to the provisions of the Scenic Highway Zoning Act [67-13-1 NMSA 1978], necessary or proper for the government and management of the affairs of a scenic highway zone, for the execution of the powers vested in the board and for carrying into effect the provisions of the Scenic Highway Zoning Act.

**History:** 1953 Comp., § 55-14-8, enacted by Laws 1973, ch. 17, § 8.

### **67-13-9. Zoning authority.**

A. For the purpose of promoting the health, safety and the general welfare, and for the purpose of historic preservation, a county commission is a scenic highway zoning authority, with all of the powers provided for a municipal zoning authority under Sections 3-21-1 through 3-21-26 NMSA 1978 of the Municipal Code as modified by the

provisions of the Scenic Highway Zoning Act [67-13-1 NMSA 1978], which provisions shall control, within a scenic highway zone and may through its ordinance power regulate the reasonable location and use of buildings, structures and real property.

B. The scenic highway regulations and restrictions must be in accordance with a comprehensive plan and be designed to achieve the purposes stated in Subsection A of this section, and encourage the most appropriate use of real property within the area of a scenic highway zone.

**History:** 1953 Comp., § 55-14-9, enacted by Laws 1973, ch. 17, § 9.

### **67-13-10. Zoning; regulations and restrictions; public hearings required; notice.**

A. A county, within its jurisdiction, shall provide for the manner in which scenic highway zoning regulations and restrictions are determined, established, enforced, amended, supplemented and repealed.

B. No proposed scenic highway zoning regulation or restriction shall become effective, be amended, supplemented or repealed until after a public hearing at which all parties in interest and citizens shall have an opportunity to be heard. Bilingual notice of the date, time and place of the public hearing shall be published for two consecutive weeks at least fifteen days prior to the date of the hearing, in a newspaper of general circulation within the respective county. The notice shall contain, in addition to the date, time and place of the hearing, the title of the ordinance, a summary of its contents and a statement as to the time and place where copies of the ordinance may be obtained and where a display of zoning maps may be studied.

C. Whenever a change in zoning is proposed, notice of the public hearing on the ordinance shall be published as required by the preceding subsection and in addition, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the county assessor, of lands or lots within the area proposed to be changed and which are within three hundred feet, excluding right-of-way, of the area proposed to be changed.

D. If any owner of real property included in the area proposed for a change in zoning, protests in writing the proposed change, the proposed change in zoning will not become effective unless the change is approved by the unanimous vote of the entire board of county commissioners.

**History:** 1953 Comp., § 55-14-10, enacted by Laws 1973, ch. 17, § 10.

### **67-13-11. Appeals; grounds; stay of proceedings.**

A. The board shall provide, by resolution, the procedure to be followed in considering appeals allowed by this section. A record shall be made of all proceedings.

B. Any aggrieved person or any public body affected by a decision of an administrative officer, in the enforcement of the Scenic Highway Zoning Act [67-13-1 NMSA 1978], or any ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the board. An appeal shall stay all proceedings in furtherance of the action appealed unless the officer from whom the appeal is taken certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of the board.

C. When an appeal alleges that there is an error in any order, requirement, decision or determination by an administrative official or any board in the enforcement of the Scenic Highway Zoning Act or any ordinance, resolution, rule or regulation adopted pursuant to these sections, the board, by a majority vote of the quorum present, may:

(1) authorize, in appropriate cases and subject to appropriate conditions and safeguards, special exceptions to the terms of the zoning ordinance or resolution:

(a) which are not contrary to the public interest;

(b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and

(c) so that the spirit of the zoning ordinance is observed and substantial justice done; or

(2) in conformity with the Scenic Highway Zoning Act:

(a) reverse any order, requirement, decision or determination of an administrative official;

(b) decide in favor of the appellant; or

(c) make any change in any order, requirement, decision or determination of an administrative official.

**History:** 1953 Comp., § 55-14-11, enacted by Laws 1973, ch. 17, § 11.

### **67-13-12. Zoning; petition for review; restraining order.**

A. A person aggrieved by a decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The appeal shall not stay the decision appealed from, but the court may, on application, grant a restraining order.



**History:** 1953 Comp., § 55-14-12, enacted by Laws 1973, ch. 17, § 12; 1998, ch. 55, § 82; 1999, ch. 265, § 83.

## ANNOTATIONS

**The 1998 amendment,** effective September 1, 1998, deleted "; time limit" from the section heading, and rewrote Subsection A.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

### **67-13-13. Zoning enforcement.**

A. The Scenic Highway Zoning Act [67-13-1 NMSA 1978], and any ordinance adopted pursuant to it, shall be enforced by the board in the same manner as municipal ordinances are enforced under Sections 3-21-8 through 3-21-11 NMSA 1978 of the Municipal Code.

B. In addition, if any building or structure is erected, constructed, reconstructed, altered, extensively repaired or converted, or any structure, building or real property is used in violation of the Scenic Highway Zoning Act, or any ordinance adopted pursuant thereto, the board may institute any appropriate action or proceedings to:

- (1) prevent such unlawful erection, construction, reconstruction, alteration, extensive repair, conversion or use;
- (2) restrain, correct or abate the violation;
- (3) prevent the occupancy of such building, structure or real property; or
- (4) prevent any illegal act, conduct, business or use in or about such premises.

C. The ordinances, rules and regulations, together with any officially adopted zoning map of the scenic highway zone, shall be filed in the office of the county clerk and shall be made available for examination by any citizen.

**History:** 1953 Comp., § 55-14-13, enacted by Laws 1973, ch. 17, § 13.

### **67-13-14. Conflicts between zoning regulations and other laws.**

If any other statute or regulation or any local ordinance of any county or municipality is applicable to any premises within the boundaries of the scenic highway zone, the provisions of the existing statute, regulation or local ordinance shall govern within the geographical boundaries of the county or municipality. If any other statute or regulation

or any local county or municipal ordinance is applicable to any real property within the boundaries of the scenic highway zone, the provisions shall govern which require:

- A. the lower height of buildings or a lesser number of stories;
  - B. the greater percentage of land to be left unoccupied;
  - C. the greater size of open space or use not requiring a structure or building;
- or
- D. higher standards for scenic and historic values.

**History:** 1953 Comp., § 55-14-14, enacted by Laws 1973, ch. 17, § 14.

### **67-13-15. Authority to contract.**

A board may contract for staff assistance and the service of another body, if the other body is a:

- A. state agency;
- B. federal agency; or
- C. planning or zoning commission of a county or municipality within the boundaries of the scenic highway zone.

**History:** 1953 Comp., § 55-14-15, enacted by Laws 1973, ch. 17, § 15.

### **67-13-16. Application of act.**

Nothing in the Scenic Highway Zoning Act [67-13-1 NMSA 1978] shall be construed to derogate from any powers of the state transportation commission under the Highway Beautification Act [67-12-1 NMSA 1978] or the powers of the commission relating to the construction, repair or maintenance of highways or to require any act or omission on the part of the commission that is inconsistent with federal or state laws, regulations or policies. Nothing in the Scenic Highway Zoning Act shall be construed so as to affect or limit in any way any nonconforming use in existence on the effective date of the Scenic Highway Zoning Act or any ordinance adopted pursuant thereto.

**History:** 1953 Comp., § 55-14-16, enacted by Laws 1973, ch. 17, § 16; 2003, ch. 142, § 88.

## **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission"; and substituted "affect" for "effect" in the last sentence.

**Severability clauses.** — Laws 1973, ch. 17, § 17, provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 14**

### **Federal Exemptions from Removal of Signs on Federal-Aid Highways**

#### **67-14-1. Declaration of policy.**

Notwithstanding any other provision of law, the state of New Mexico hereby finds and declares that the removal of certain directional signs, displays and devices, in certain specified areas, lawfully erected under state law in force at the time of their erection, which do not conform to the requirements of Subsection (c) of 23 U.S.C. 131, which provide directional information about goods and services in the interest of the traveling public, and which were in existence on May 6, 1976, may work a substantial economic hardship in such defined areas.

**History:** 1953 Comp., § 55-7-7.1, enacted by Laws 1977, ch. 66, § 1.

#### **ANNOTATIONS**

**Law reviews.** — For note, "The State and Federal Quandary Over Billboard Controls," see 19 Nat. Resources J. 711 (1979).

#### **67-14-2. Definitions.**

As used in this act [67-14-1 to 67-14-3 NMSA 1978], "motorist services directional signs" means signs giving directional information about goods and services in the interest of the traveling public, including but not limited to:

- A. places of public lodging;
- B. places where food is served to the public on a regular basis;
- C. places where automotive fuel or emergency automotive repair services, including truck stops, are regularly available to the public;
- D. educational institutions;
- E. places of religious worship;

- F. public or private recreation areas, including campgrounds, resorts and attractions, natural wonders, wildlife and waterfowl refuges and nature trails;
- G. plays, concerts and fairs;
- H. antique shops and curio shops; and
- I. agricultural products in a natural state, including vegetables and fruit.

**History:** 1953 Comp., § 55-7-7.2, enacted by Laws 1977, ch. 66, § 2.

### **67-14-3. Exemption procedures.**

The state transportation commission, upon receipt of a declaration, petition, resolution, certified copy of an ordinance or other clear direction from a board of county commissioners or governing body of a municipality, provided that such resolution is not in conflict with an existing statute or ordinance, that removal of motorist services directional signs would cause an economic hardship in a defined area, shall forward such declaration, resolution or finding to the secretary for inclusion as a defined hardship area qualifying for exemption pursuant to 23 U.S.C. 131(o). Any such declaration or resolution submitted to the state transportation commission shall further find that such motorist services directional signs provide directional information about goods and services in the interest of the traveling public and shall request the retention in such specified areas by the state of such directional motorist services signs as defined in Sections 67-14-1 through 67-14-3 NMSA 1978. The state transportation commission shall thereupon comply with all regulations issued by the federal highway administration necessary for application for the exemption provided in 23 U.S.C. 131(o), provided such motorist services directional signs were lawfully erected under state law at the time of their erection and were in existence on May 5, 1976. Any costs incurred by the state transportation commission in complying with the requirements of this section may be passed on to the appropriate petitioners or the owners of the signs seeking exemption.

**History:** 1953 Comp., § 55-7-7.3, enacted by Laws 1977, ch. 66, § 3; 2003, ch. 142, § 89.

### **ANNOTATIONS**

**The 2003 amendment**, effective July 1, 2003, substituted "state transportation commission" for "state highway commission"; and substituted "Sections 67-14-1 through 67-14-3 NMSA 1978" for "this act".

**Compiler's notes.** — Subsection 23 U.S.C. 131(o), provides that the secretary of transportation may approve certain requests by the state to retain directional signs, displays, etc., in existence on the date of enactment of the subsection (May 5, 1976)

when the state demonstrates that such signs are in the public interest and their removal would work economic hardship in their defined area. See also 67-14-1 NMSA 1978.

## **ARTICLE 15**

### **Clean Highways**

#### **67-15-1. Short title.**

This act [67-15-1 to 67-15-4 NMSA 1978] may be cited as the "Clean Highways Act."

**History:** 1953 Comp., § 55-11A-1, enacted by Laws 1977, ch. 271, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of highway user for injuries resulting from failure to remove or protect against material spilled from vehicle onto public street or highway, 34 A.L.R.4th 520.

#### **67-15-2. Purpose of act; legislative findings.**

A. The purpose of the Clean Highways Act [67-15-1 NMSA 1978] is to accomplish litter control throughout this state by delegating to the state highway department, and providing funds therefor, the authority to conduct a permanent and continuous program to control and remove litter from the roads and highways of this state to the maximum extent possible.

B. The legislature finds that the rapid population growth of New Mexico, the ever-increasing mobility of its people and the large number of annual visitors using the public roads and highways of this state have created a litter problem of major proportions along the roads and highways, constituting a hazard to the safety and health of the citizens of this state and constituting a blight upon the natural beauty of this land.

C. The legislature further finds that there is urgent need to initiate and carry out some form of effective litter control that in its implementation does not place excessive burdens upon the consumers or businesses of this state.

**History:** 1953 Comp., § 55-11A-2, enacted by Laws 1977, ch. 271, § 2.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 74, 87, 113.

### **67-15-3. State highway department; enforcement and administration duties.**

The state highway department shall:

A. establish within the department an office of highway litter control. Such office shall be charged with the administration and enforcement of the Clean Highways Act [67-15-1 NMSA 1978] and shall supervise designated personnel within each of the highway district offices who shall implement litter control programs within that district; and

B. institute through the office of highway litter control a continuous and aggressive litter control program on the roads and highways of this state which shall include:

(1) the hiring of special litter removal crews composed of unemployed, underemployed and young persons to regularly police litter from the roads and highways of this state and the rights-of-way of such roads and highways; provided, that in employing such persons the department shall give strong consideration to the unemployed and underemployed levels in each highway district;

(2) initiate and supervise litter removal and collection programs by civic groups, youth organizations and summer vacation students and to provide a method of reimbursement to such groups and persons based on the number of pounds of such litter removed from the roads and highways, and to assist such removal whenever possible by the use of available highway department vehicles;

(3) the design and installation of appropriate signs along the roads and highways urging the traveling public to observe proper litter control;

(4) the design and furnishing of litter control bags for the traveling public bearing a statewide litter symbol and a statement of the penalties provided by law for littering; such bags to be distributed at rest stops, ports of entry and other suitable places where the traveling public has access; and

(5) the providing of additional litter control receptacles at appropriate places along the roads and highways of this state and for the regular and periodic removal and collection of litter from such receptacles.

**History:** 1953 Comp., § 55-11A-3, enacted by Laws 1977, ch. 271, § 3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 39 Am. Jur. 2d Highways, Streets and Bridges §§ 74, 87, 113.

## **67-15-4. State highway department; additional powers.**

The state highway department may:

A. enter into agreements with counties, municipalities and communities of this state and provide a program of grants on a matching basis to carry out appropriate litter control programs along state highways within such county, municipality or community; and

B. adopt rules and regulations necessary to carry out the provisions of the Clean Highways Act [67-15-1 NMSA 1978].

**History:** 1953 Comp., § 55-11A-4, enacted by Laws 1977, ch. 271, § 4.

## **ARTICLE 16 Litter Control and Beautification**

### **67-16-1. Short title.**

This act [67-16-1 to 67-16-14 and 31-20-6 NMSA 1978] may be cited as the "Litter Control and Beautification Act".

**History:** Laws 1985, ch. 23, § 1.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

**Meaning of "this act".** — The term "this act" refers to Laws 1985, ch. 23, which is presently compiled as 67-16-1 to 67-16-14 and 31-20-6 NMSA 1978.

### **67-16-2. Legislative findings; purpose; intent.**

A. The legislature finds that the proliferation and accumulation of litter discarded throughout the state constitutes a public nuisance and damages the economy of the state by making it less attractive to tourists and newcomers. There is a need to anticipate, plan for and accomplish effective litter control through a state-coordinated plan of education, control, prevention, recycling and elimination.

B. The purpose of the Litter Control and Beautification Act [67-16-1 NMSA 1978] is to accomplish litter control by vesting in the department authority to eliminate litter from the state to the maximum practical extent. The department shall aid in establishing a statewide keep America beautiful system program. The department shall cooperate with

cities, counties and other departments of state government in developing a statewide litter and solid waste reduction program.

C. The Litter Control and Beautification Act is intended to add to and coordinate existing litter control and removal efforts, except as specifically stated in that act.

**History:** Laws 1985, ch. 23, § 2; 1989, ch. 10, § 1.

## ANNOTATIONS

**The 1989 amendment,** effective June 16, 1989, substituted "damages" for "may damage" and inserted "recycling" in the first sentence in Subsection A, and made minor stylistic changes in Subsection B.

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

**Litter Control and Beautification Act.** — See 67-16-1 NMSA 1978 and notes thereto.

### 67-16-3. Definitions.

As used in the Litter Control and Beautification Act [67-16-1 NMSA 1978]:

- A. "keep America beautiful system" means a comprehensive program to improve waste handling practices and the control of litter;
- B. "keep New Mexico beautiful, incorporated" is the statewide organization that is the official clearinghouse for beautification projects in the state;
- C. "council" means the litter control council;
- D. "department" means the tourism department;
- E. "litter" means weeds, graffiti and all waste material, including disposable packages or containers, but not including the waste of the primary processes of mining, logging, sawmilling or farming;
- F. "person" means an individual, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary or representative or group of individuals or entities of any kind;
- G. "public place" means an area that is used or held out for use by the public, whether owned or operated by public or private interests; and



H. "recycling" means the collection, separation or processing and return to the economic mainstream of raw materials or products that would otherwise become solid waste.

**History:** Laws 1985, ch. 23, § 3; 1989, ch. 10, § 2; 1993, ch. 275, § 1; 2001, ch. 140, § 1.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, inserted " 'system'" in Subsection A, inserted " ', incorporated'" in Subsection B, and "and transportation" in Subsection D, and rewrote Subsection H, which read: " 'sold or manufactured within the state' or 'sales of the business within the state' means all sales by retailers engaged in business within the state and all sales of products for use and consumption within the state in the case of manufacturers and wholesalers".

**The 1993 amendment**, effective June 18, 1993, inserted "weeds, graffiti and" in Subsection E.

**The 2001 amendment**, effective April 2, 2001, substituted "tourism department" for "state highway and transportation department" in Subsection D.

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

### 67-16-4. Litter control council.

There is created the "litter control council". The governor shall appoint the members of the council. The governor shall appoint one member of the council representing the public at large and one member representing each of the following, except where otherwise provided:

- A. keep New Mexico beautiful, incorporated, two members;
- B. mayors of keep America beautiful system cities;
- C. city managers;
- D. the New Mexico broadcasters' association;
- E. newspapers;
- F. the league of women voters;
- G. the New Mexico soft drink association;

- H. the New Mexico hotel and motel association;
- I. the New Mexico grocers association;
- J. the New Mexico liquor wholesalers association;
- K. the New Mexico retail liquor dealers association;
- L. garden clubs;
- M. the New Mexico municipal league;
- N. the New Mexico association of counties;
- O. the New Mexico retail association;
- P. the New Mexico public interest research group;
- Q. environmental organizations, three members;
- R. agricultural organizations;
- S. the association of commerce and industry of New Mexico;
- T. the New Mexico home builders association;
- U. the New Mexico automotive dealers association;
- V. local keep America beautiful system programs;
- W. the New Mexico motor carriers' association;
- X. the New Mexico restaurant association, incorporated; and
- Y. recycle New Mexico, incorporated.

In addition, the secretaries of energy, minerals and natural resources, tourism, highway and transportation, the chief of the New Mexico state police division of the public safety department and the director of the environmental improvement division of the health and environment department [department of environment], or their designees, shall serve. The appointed members shall serve terms of two years, provided that one-half of the original appointees shall serve one-year terms. The council shall include representatives from the public and private sectors who have a direct interest in implementing the purposes of the Litter Control and Beautification Act [67-16-1 NMSA 1978]. The council shall meet at least quarterly to conduct its business. The council shall select from its members a seven-person executive committee.

Notwithstanding the provisions of the Per Diem and Mileage Act [10-8-1 NMSA 1978], the public members of the council and the executive committee shall not receive any compensation or reimbursement in connection with their duties.

**History:** Laws 1985, ch. 23, § 4; 1989, ch. 10, § 3; 1991, ch. 21, § 40.

## ANNOTATIONS

**Bracketed material.** — The bracketed reference to the department of environment was inserted by the compiler, as Laws 1991, ch. 25, § 4 enacts 9-7A-4 NMSA 1978, which establishes the department of environment and provides that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment. The bracketed material was not enacted by the legislature and is not part of the law.

**The 1989 amendment,** effective June 16, 1989, in the undesignated introductory paragraph added the present first sentence and substituted "the members of the council" for "a thirty-member 'litter control council' " in the second sentence, inserted "incorporated" in Subsection A, inserted "system" in Subsections B and V, made minor stylistic changes in Subsections D and S, substituted "grocers" for "food dealers" in Subsection I, inserted "liquor" in Subsection K, substituted "retail" for "retailers" in Subsection O, inserted "New Mexico" in Subsection P, inserted "association" in Subsection T, added Subsections X and Y, and substituted all of the language of the first sentence of the last undesignated paragraph following "secretaries of" for "natural resources, economic development and tourism and transportation and the chief highway administrator or their designees, shall serve".

**The 1991 amendment,** effective March 27, 1991, deleted "economic development and" preceding "tourism" in the first sentence of the final paragraph.

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

### **67-16-5. Litter control coordinator.**

The department shall appoint a litter control coordinator to coordinate the activities of the council within three months after the effective date of the Litter Control and Beautification Act [67-16-1 NMSA 1978].

**History:** Laws 1985, ch. 23, § 5.

## ANNOTATIONS

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

**Effective date of the Litter Control and Beautification Act.** — The effective date of the Litter Control and Beautification Act is July 1, 1985.

### **67-16-6. Rules and regulations.**

In addition to its other powers and duties, the department shall adopt rules and regulations necessary to carry out the provisions of the Litter Control and Beautification Act pursuant to the State Rules Act [14-4-1 NMSA 1978].

**History:** Laws 1985, ch. 23, § 6.

#### **ANNOTATIONS**

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

### **67-16-7. Measurement and evaluation.**

The department shall document and report on an annual basis the effectiveness and impact of council-sponsored litter control and beautification programs through the following:

A. evaluate and report on all governmental entities and keep New Mexico beautiful, incorporated projects and activities funded by the council. The photometric index technique shall be a part of this report in communities where appropriate and available;

B. evaluate and report on the placement and management of litter receptacles placed on state property as funded by the Litter Control and Beautification Act [67-16-1 NMSA 1978]; and

C. investigate and report on the feasibility, appropriateness and cost of a statewide photometric index or other technique for the evaluation of highway litter.

**History:** 1978 Comp., § 67-16-7, enacted by Laws 1989, ch. 10, § 4.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1989, ch. 10, § 4 repeals former 67-16-7 NMSA 1978, as enacted by Laws 1988, ch. 23, § 7, relating to collection and survey of litter,

and enacts the above section, effective June 16, 1989. For provisions of former section, see 1988 Cumulative Supplement.

### **67-16-8. Contracting with other agencies.**

The department shall have authority to contract with other state and local government agencies for services and personnel reasonably necessary to carry out the provisions of the Litter Control and Beautification Act [67-16-1 NMSA 1978].

**History:** Laws 1985, ch. 23, § 8; 1989, ch. 10, § 5; 2001, ch. 140, § 2.

#### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, substituted the present catchline for "Enforcement" and added "The" at the beginning of the section.

**The 2001 amendment**, effective April 2, 2001, deleted "having law enforcement powers" following "local government agencies".

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

### **67-16-9. Litter receptacles; placement.**

The department shall establish reasonable guidelines for the number, placement and maintenance of receptacles in cooperation with the persons in control of any property that is open to the public. The department shall consider, among other public places, the public highways of the state, all parks, campgrounds, trailer parks, drive-in restaurants, construction sites, gasoline service stations, shopping centers, retail store parking lots, parking lots of industrial and business firms, marinas, boating areas, public and private piers, beaches and bathing areas. Litter receptacles shall be maintained in a manner to prevent overflow or spillage from the receptacles.

**History:** Laws 1985, ch. 23, § 9; 2001, ch. 140, § 3.

#### **ANNOTATIONS**

**The 2001 amendment**, effective April 2, 2001, inserted "the department" preceding "shall consider" in the second sentence.

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

### **67-16-10. Litter bag.**

The council shall design and produce a litter bag bearing the state anti-litter symbol, Dusty Roadrunner, and a statement of the penalties prescribed for littering. Litter bags shall be distributed by the motor vehicle division of the taxation and revenue department and the department of game and fish at no charge at the time and place of the issuance of licenses or renewal thereof. The state may provide litter bags at no charge to tourists and visitors at points of entry into the state. The council may establish a distribution system with the aid of private industry.

**History:** Laws 1985, ch. 23, § 10; 2001, ch. 140, § 4.

### **ANNOTATIONS**

**The 2001 amendment,** effective April 2, 2001, substituted "taxation and revenue department" for "transportation department" in the second sentence.

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

### **67-16-11. Responsibility for removal of litter from receptacles.**

The responsibility for removal of litter from receptacles placed at parks, beaches, campgrounds, trailer parks and other public places shall remain upon those state and local agencies now performing litter removal services. The removal of litter on private property used by the public shall remain the duty of the owner or operator of the private property.

**History:** Laws 1985, ch. 23, § 11.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

### **67-16-12. Further duties of department.**

A. The department shall:

(1) serve as the coordinating agency between various industry and business organizations seeking to aid in the anti-litter effort;

(2) cooperate with all local governments to accomplish coordination of local anti-litter efforts;

(3) encourage voluntary local anti-litter campaigns seeking to focus the attention of the public on programs to control and remove litter;

(4) encourage voluntary recycling programs and aid in identifying programs and available markets for recycled materials;

(5) apply for funds available from any other source for use in the administration of the Litter Control and Beautification Act [67-16-1 NMSA 1978];

(6) adopt rules to enter into contracts for making either direct or matching grants with other state agencies, cities or counties or with an Indian nation, tribe or pueblo government for the purpose of promoting local keep America beautiful system programs; and

(7) aid in the adoption and enforcement of model anti-litter statutes and ordinances and improve state and local litter control programs.

B. The department shall also allocate funds appropriated to it from the litter control and beautification fund according to the following formula:

(1) no more than fifteen percent of the fees received in a year for operating expenses directly related to the administration of the council, including:

(a) research, development and implementation of a statewide evaluation system;

(b) professional services provided to the state by representatives of keep America beautiful, incorporated; and

(c) the promotion of and encouragement of private recycling efforts for all recyclable items;

(2) no more than twenty percent of the fees received in a year to purchase litter bags and receptacles and to conduct a public awareness and media campaign to include brochures, literature and educational materials, production of public service announcements and other expenses relating to public relations;

(3) no more than fifty percent of the fees received in a year to local governments to establish and help continue local keep America beautiful system programs;

(4) no more than sixty percent of the fees received in a year to local governments to establish a summer youth employment program to aid in litter control and beautification projects; and

(5) no more than ten percent of fees received in a year to keep New Mexico beautiful, incorporated to further beautification and educational programs.

**History:** Laws 1985, ch. 23, § 12; 1989, ch. 10, § 6; 1993, ch. 275, § 2; 2001, ch. 140, § 5.

### ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, substituted "system programs" for "systems program" in Subsection A(6); redesignated former Subsection A(8) as present Subsection B, made minor stylistic changes in the introductory paragraphs of Subsection B, substituted all of the language of Subsection B(1) beginning with "operating expenses" for "associated operating expenses", added all of the language of Subsection B(2) following "receptacles", inserted "system" in Subsection B(3), in Subsection B(4) substituted "sixty" for "fifty" and inserted "and beautification", and inserted "incorporated" in Subsection B(5).

**The 1993 amendment**, effective June 18, 1993, substituted "cities, counties or Indian nation, tribe or pueblo government" for "cities or counties" in Subsection A(6).

**The 2001 amendment**, effective April 2, 2001, substituted "appropriated to it from the litter control and beautification fund" for "generated by the Litter Control and Beautification Act in Subsection B".

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.

### **67-16-13. Repealed.**

### ANNOTATIONS

**Repeals.** — Laws 2001, ch. 140, § 7 repeals 67-16-13 NMSA 1978, as enacted by Laws 1985, ch. 23, § 13, regarding the reimbursement of the transportation department for expenses incurred in implementing the Litter Control and Beautification Act, effective April 2, 2001. For provisions of former section, see 1997 Replacement Pamphlet.

### **67-16-14. Litter control and beautification fund; created; beautification fee.**

The "litter control and beautification fund" is created in the state treasury. The beautification fee of fifty cents (\$.50) per registration year imposed pursuant to Section 66-6-6.2 NMSA 1978, collected from the registration fee of vehicles registered pursuant to Section 66-3-1 NMSA 1978 or the Motor Transportation Act [65-1-1 NMSA 1978], shall be deposited in the fund. All income earned on the fund shall be credited to the fund. The fund is appropriated to the department for the purpose of carrying out the



provisions of the Litter Control and Beautification Act [67-16-1 NMSA 1978]. The money in the fund shall not revert at the end of any fiscal year.

**History:** Laws 1985, ch. 23, § 14; 1993, ch. 275, § 3; 2002, ch. 16, § 2.

### **ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "fifty cents (\$.50)" for "thirty cents (\$.30)" near the end of the first sentence.

**The 2002 amendment,** effective March 4, 2002, rewrote the section heading, which read: "Beautification Fees"; deleted the former first sentence of the section, all of whose provisions, except the creation of the litter control and beautification fund, now appear in 66-6-6.2 NMSA 1978; and added the present first sentence of the section.

**Severability clauses.** — Laws 1985, ch. 23, § 16 provides for the severability of the act if any part or application thereof is held invalid.

**Compiler's notes.** — Laws 1985, ch. 23, § 17, which had provided for the repeal of Chapter 67, Article 16 NMSA 1978 effective July 1, 1989, was repealed by Laws 1989, ch. 10, § 7, effective June 16, 1989.