CHAPTER 11
INTERGOVERNMENTAL AGREEMENTS AND AUTHORITIES

ARTICLE 1
JOINT POWERS AGREEMENTS

11-1-1. Short title.

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

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

ANNOTATIONS

Cross references. - For the Planning District Act, see 4-58-1 to 4-58-6 NMSA 1978.

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

11-1-2. Definitions.

As used in the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978]:

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

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

C. "bonds" means revenue bonds;

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

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

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

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

ANNOTATIONS

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

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

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

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

If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting parties may be located outside this state; provided, however, nothing contained in this Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] shall authorize any state officer, board, commission, department or any other state agency, institution or authority, or any county, municipality, public corporation or public district to make any agreement without the approval of the secretary of finance and administration as to the terms and conditions thereof. Joint

powers agreements approved by the secretary of finance and administration shall be reported to the state board of finance at its next regularly scheduled public meeting. A list of the approved agreements shall be filed with the office of the state board of finance and made a part of the minutes.

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

ANNOTATIONS

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

Generally. - Formerly, this was the only statutory section which gave the state board of finance specific control (now held by the secretary of finance and administration) over a corporation which was authorized to operate a gas public utility system, and which was jointly owned and jointly controlled by three cities. Other than those financial matters which might possibly come before the board of finance, the major item concerning the corporation which was subject to the control of the state board of finance was the joint powers agreement creating such corporation. 1966 Op. Att'y Gen. No. 66-7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The administering agency under any such agreement shall be considered under the provisions of this Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] as an entity separate from the parties to such agreement.

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

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

ANNOTATIONS

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

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

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978].

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

ANNOTATIONS

Scope of section. - This section goes no further than to provide that an official of a participating member of the joint project does not lose his privileges, immunities or benefits during the time that he is serving under the joint project. Thus, participation by

an official previously covered by the Public Employees Retirement Act does not remove him from continued participation in the retirement system, but it does nothing whatever to confer or transfer participation to other officials who are not so covered by the system. The conclusion reached in Op. Att'y Gen. No. 69-127 was unnecessarily broad and incorrect in its analysis of the statutes. Accordingly, the conclusion stated in Op. Att'y Gen. No. 69-127 is reversed. 1970 Op. Att'y Gen. No. 70-58.

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

In addition to other powers, any agency, commission or board provided for by a joint powers agreement pursuant to this Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] may issue revenue bonds to pay the cost and expenses of acquiring or constructing any structures, facilities or equipment necessary to effectuate the purposes of the agreement; provided, however, such authority shall be subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of this state.

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

ARTICLE 2
COMMISSION ON INTERGOVERNMENTAL COOPERATION

11-2-1. Commission on intergovernmental cooperation.

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

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

ANNOTATIONS

Repeals and reenactments. - Laws 1963, ch. 90, § 1, repeals 4-6-4, 1953 Comp., and enacts the above section.

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

It shall be the function of this commission:

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

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

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

(1) the adoption of compacts;

(2) the enactment of uniform or reciprocal statutes;

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

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

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

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

(7) any other suitable process;

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

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

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

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

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

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

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

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

ARTICLE 3
REGIONAL HOUSING AUTHORITIES

(Repealed by Laws 1994, ch. 132, § 31.)

11-3-1 to 11-3-6. Repealed.

ANNOTATIONS

Repeals. - Laws 1994, ch. 132, § 31 repeals §§ 11-3-1 to 11-3-6 NMSA 1978, as enacted by Laws 1967, ch. 196, §§ 1 to 6, and as last amended by Laws 1971, ch. 227, §§ 2 and 3, and Laws 1974, ch. 52, § 1, relating to the regional housing authorities, effective May 18, 1994. For provisions of former sections, see 1983 Replacement Pamphlet. For present comparable provisions, see Chapter 11, Article 3A NMSA 1978.

ARTICLE 3A
REGIONAL HOUSING LAW

11-3A-1. Short title.

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

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

ANNOTATIONS

Cross references. - For the Municipal Housing Law, see 3-45-1 NMSA 1978 et seq.

For the Urban Development Law, see 3-46-1 NMSA 1978 et seq.

For the Community Development Law, see 3-60-1 NMSA 1978 et seq.

For the Utility Supplement Act, see 27-6-1 NMSA 1978 et seq.

For the Mortgage Finance Authority Act, see 58-18-1 NMSA 1978 et seq.

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

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

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

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

It is declared that:

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

B. persons of low income are forced to reside in such unsanitary or unsafe accommodations;

C. within the state:

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

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

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

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

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

F. demolition, replanning, reconstruction or renovation of unsanitary or unsafe housing or acquisition of land to provide safe and sanitary dwellings for persons of low income are in the public interest and are essential state and local governmental functions requiring expenditures of public money; and

G. it is in the public interest that work on projects for demolition, planning, reconstruction, renovation or land acquisition for provision of safe and sanitary dwellings

for low-income people be started immediately in order to relieve the housing shortage that has reached emergency status, and it is a necessity that the Regional Housing Law [this article] be continued to relieve that emergency.

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

ANNOTATIONS

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

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

11-3A-3. Definitions.

As used in the Regional Housing Law [this article]:

A. "authority" means any regional housing authority or a nonprofit corporation created by an authority;

B. "bond" means any bond, note, interim certificate, debenture or other obligation issued by an authority pursuant to the Regional Housing Law;

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

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

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

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

structures, construction, reconstruction, alteration and repair of improvements or buildings or any other work performed to complete housing projects;

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

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

G. "obligee" means:

(1) a holder of bonds issued pursuant to the Regional Housing Law or a trustee for that bondholder;

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

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

H. "real property" includes all lands, including improvements and fixtures on the land, property of any nature appurtenant to or used in connection with the land and every estate, interest and right, legal or equitable, in the land, including terms for years and liens by way of judgment, mortgage or other instrument and the indebtedness secured by the lien; and

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

History: Laws 1994, ch. 132, § 3; 1995, ch. 191, § 3.

ANNOTATIONS

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

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

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

Seven regional housing authorities are created for the state of New Mexico. The respective areas of the seven regional housing authorities are coextensive with the boundaries of the seven housing regions created as follows:

A. Region No. 1 shall consist of the counties of Cibola, San Juan and McKinley;

B. Region No. 2 shall consist of the counties of Rio Arriba, Los Alamos, Taos, Colfax, Mora, Santa Fe and San Miguel;

C. Region No. 3 shall consist of the counties of Sandoval, Bernalillo, Valencia and Torrance;

D. Region No. 4 shall consist of the counties of DeBaca, Curry, Roosevelt, Union, Harding, Quay and Guadalupe;

E. Region No. 5 shall consist of the counties of Catron, Grant, Hidalgo and Luna;

F. Region No. 6 shall consist of the counties of Lincoln, Chaves, Otero, Eddy and Lea; and

G. Region No. 7 shall consist of the counties of Socorro, Sierra and Dona Ana.

History: Laws 1994, ch. 132, § 4.

ANNOTATIONS

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

11-3A-5. Jurisdiction.

A regional authority created by the Regional Housing Law [this article] shall operate within the area of its housing region, except for that portion of the area that lies within the territorial boundary of a municipality or county that has established an authority or housing agency. If by resolution the governing bodies of municipalities or counties that have established authorities or housing agencies consent to have the regional authority take action within the territory that would be excluded under this section, the regional authority may enlarge its jurisdiction to include the previously excluded territory. Any subsequent withdrawal of consent by resolution of a local public body or a municipal or county authority shall not prohibit the development and operation of any housing projects initiated in the city or county by the regional authority prior to the date of the

resolution withdrawing consent when there is a financial assistance contract in existence for the project with the state or federal government at the date of the withdrawal of consent except upon terms that are mutually agreed upon between the regional authority, the governing bodies of the cities or counties and the state or federal government.

History: Laws 1994, ch. 132, § 5; 1995, ch. 191, § 4.

ANNOTATIONS

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

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

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

A. The powers of each regional authority shall be vested in its board of commissioners as the board may be constituted, from time to time. The board of commissioners of the authority for each of the seven regions shall consist of seven commissioners who shall be residents of the region for which the authority is created and appointed by the governor. Appointments shall be for terms of four years or less and shall be made so that the terms of not more than two commissioners on each board expire on July 1 of each year. Vacancies shall be filled for the unexpired term. Commissioners shall serve until their successors have been appointed.

B. The members of the boards of commissioners may receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance. Each board of commissioners shall select a chairman and vice chairman from among its members. Each board may employ necessary agents and employees and set the salaries of the agents and employees. Each board may delegate to its agents or employees such duties as the board deems proper. A regional planning and development district, created pursuant to the Planning District Act [4-58-1 to 4-58-6 NMSA 1978], may provide technical staff for an authority. Four commissioners shall constitute a quorum of a board for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by an authority upon a vote of a majority of the commissioners present.

Each board shall organize itself at its annual meeting each even-numbered year. A board may authorize an authority to employ a secretary, who shall be executive director and who shall be removable only for cause, and technical experts and other officers, attorneys, agents and employees, permanent and temporary, as the authority requires; to determine employee and contractor qualifications, duties and compensation; and to delegate to one or more employees or contractors the powers or duties that the board deems proper.

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

History: Laws 1994, ch. 132, § 6; 1995, ch. 191, § 5; 1998, ch. 63, § 4.

ANNOTATIONS

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

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

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

11-3A-7. Powers.

A. Every authority may:

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

(2) purchase its bonds at a price of not more than the principal amount and the accrued interest. All bonds so purchased shall be canceled;

(3) lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and establish and revise the rents or lease charges; own, hold and improve real or personal property; purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal

property or any interest therein; acquire by the exercise of the power of eminent domain any real property; sell, lease, mortgage, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest in real or personal property; or procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof, including the power to pay premiums on the insurance;

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

(5) insure or provide for the insurance of any housing project of the authority against the risks that the authority may deem advisable;

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

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

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

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

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

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

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

C. Any two or more cities or authorities may join or cooperate with one another to exercise, either jointly or otherwise, any of their powers for the purpose of financing, including the provision of security for or the issuance of bonds, or contracting with respect to a housing project located within the area of operation of any one or more of the cities or authorities. A city or authority may prescribe and authorize by resolution another authority to act on its behalf to exercise, as its agent, any power granted to the city or authority pursuant to the provisions of the Regional Housing Law [this article]. The authorized authority may act in the name of the city, the authorizing authority or in its own name.

History: Laws 1994, ch. 132, § 7; 1995, ch. 191, § 6.

ANNOTATIONS

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

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

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

11-3A-8. Requirements respecting lease.

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

(1) the amount necessary in each year to pay the principal of and the interest on the bonds proposed to be issued to finance the housing project; and

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

B. The determinations and findings of the authority required to be made in this section shall be set forth in the proceedings under which the proposed bonds are to be issued.

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

(1) pay the principal of and interest on the bonds issued to finance the housing project;

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

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

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

ANNOTATIONS

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

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

11-3A-9. Nonprofit corporations.

Every authority, in addition to other powers conferred by the Regional Housing Law [this article], shall have, if authorized by resolution of its board, the power to create nonprofit corporations to carry out the powers and duties set forth in Section 11-3A-7 NMSA 1978. Such nonprofit corporations shall be subject to all of the duties and limitations imposed on the authority and its board of commissioners.

History: Laws 1994, ch. 132, § 9; 1995, ch. 191, § 8.

ANNOTATIONS

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

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

11-3A-10. Interested officers or employees.

No officer or employee of an authority shall acquire any direct or indirect interest in any housing project or in any property included or planned to be included in any housing project of the authority or in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project of the authority.

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

ANNOTATIONS

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

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

11-3A-11. Eminent domain.

In addition to the other purposes for which an authority may appropriate property, an authority shall have the right to acquire by the exercise of the power of eminent domain any real property that authority deems necessary for fulfilling the purposes of the Regional Housing Law [this article] after adopting a resolution declaring that the acquisition of the real property is necessary. An authority may exercise the power of eminent domain in the manner provided by Chapter 42A, Articles 1 and 3 NMSA 1978 or any other applicable provision of law. Title to property so acquired shall be taken in the name of the authority.

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

ANNOTATIONS

Cross references. - For Eminent Domain Code, see 42A-1-1 NMSA 1978 et seq.

The 1995 amendment, effective June 16, 1995, substituted "Chapter 42A, Articles 1 and 3 NMSA 1978 or" for "the laws of the state of New Mexico and acts amendatory thereof or supplementary thereto or it may exercise the power of eminent domain hereunder in the manner provided by any other applicable statutory provisions for the

exercise of the power of eminent domain" in the second sentence, and made minor stylistic changes throughout the section.

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

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

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

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

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

(1) pay, as they become due, the principal and interest on the bonds or other obligations of the authority issued under the Regional Housing Law [this article];

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

(3) fund operational reserves to secure the payment of its bonds as the authority deems appropriate; and

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

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

ANNOTATIONS

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

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

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

A. In the operation or management of housing projects or the sale of any property pursuant to the Regional Housing Law [this article], an authority shall:

(1) rent, lease or sell the dwelling accommodations in the housing project only to persons falling within the standards adopted by the authority;

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

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

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

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

ANNOTATIONS

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

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

11-3A-14. Bonds.

A. An authority shall have power to issue bonds from time to time in its discretion to finance in whole or in part the cost of the preparation, acquisition, purchase, lease, construction, reconstruction, improvement, alteration, extension or repair of any housing project or housing undertaking. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it pursuant to the provisions of the Regional Housing Law [this article]. In order to carry out the purposes

of the Regional Housing Law, an authority may issue, upon proper resolution, bonds on which the principal and interest are payable:

(1) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds; or

(2) exclusively from such income and revenues, together with grants and contributions from the federal government or other sources in aid of the project.

B. Neither the board of commissioners of an authority nor any person executing the bonds shall be liable personally on any bonds because the bonds were issued pursuant to the Regional Housing Law. The bonds issued under the provisions of the Regional Housing Law shall be payable solely from the sources provided in this section. The bonds shall not be a general obligation of the authority issuing them, the state or any local public body of this state, and they shall so state on their face. The bonds shall not constitute a debt or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction.

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

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, in Subsection A, substituted "housing project or housing undertaking" and "pursuant to the provisions of the Regional Housing Law" for "hereunder", and deleted "or projects" following "project" in Paragraphs (1) and (2); substituted "because the bonds were issued pursuant to the Regional Housing Law" for "by reason of the issuance thereof hereunder" in Subsection B; and made minor stylistic changes throughout the section.

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

11-3A-15. Form and sale of bonds; interest on certain obligations.

A. Bonds of an authority issued pursuant to the provisions of the Regional Housing Law [this article] shall be authorized by a resolution of the regional authority's board. The resolution, its trust indenture or the bonds to be issued shall set forth with regard to the bonds the date of issuance, the date of maturity, the rates of interest that the bonds will bear, the denominations, the form, either coupon or registered, the conversion or registration privileges, the rank or priority, the manner of execution, the medium and place of repayment and the terms of redemption, with or without premiums.

B. Obligations issued by an authority that are true loan obligations made to the farmers home administration of the United States department of agriculture or the department of housing and urban development may bear interest at a rate of interest not exceeding par.

C. The bonds shall be sold at not less than par at public sale held after notice published once at least five days prior to the sale in a newspaper having a general circulation in the authority and in a financial newspaper published in the city of New York, New York; provided that the bonds may be sold to the federal government at private sale at not less than par, and, in the event fewer than all of the bonds authorized in connection with any housing project are sold to the federal government, the balance of the bonds may be sold at private sale at not less than par at an interest cost to the authority that does not exceed the interest cost to the authority of the portion of the bonds sold to the federal government.

D. If an officer of an authority or any of its instrumentalities whose signature appears on bonds issued pursuant to the Regional Housing Law ceases to hold that office before the delivery of the bonds, the signature shall, nevertheless, be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to the Regional Housing Law shall be fully negotiable.

E. In any suit, action or proceedings involving the validity or enforceability of any bond of an authority or the security for the bonds, any bond reciting in substance that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed to have been issued for a housing project of that character, and the housing project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Regional Housing Law.

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

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote Subsection A; in Subsection C, deleted "San Francisco, California or in the city of" preceding "New York" and deleted "or projects" following "project"; in Subsection D, substituted the portion of the first sentence preceding "before delivery" for "In case any of the officers of the authority, the authority or any of its instrumentalities whose signatures appear on any bonds or coupons cease to be officers", substituted "the signature" for "such signatures" and "officer" for "officers"; and made minor stylistic changes throughout the section.

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

11-3A-16. Provisions of bonds and trust indentures.

In connection with the issuance of bonds pursuant to the Regional Housing Law [this article] or the incurring of obligations under leases made pursuant to the Regional Housing Law and in order to secure the payment of bonds or obligations, an authority, in addition to its other powers, shall have power:

A. to pledge all or any part of the gross or net rents, fees or revenues of a housing project, and to mortgage and otherwise encumber a housing project financed with the proceeds of such bonds, to which its rights then exist or may thereafter come into existence;

B. to covenant against pledging all or any part of the rents, fees and revenues, or against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease or otherwise dispose of any housing project or any part thereof; and to covenant regarding what other or additional debts or obligations may be incurred by it;

C. to covenant regarding the bonds to be issued, the issuance of bonds in escrow or otherwise and the use and disposition of the proceeds of the bonds; to provide for the replacement of lost, destroyed or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest accrued on the bonds; and to redeem the bonds, and to covenant for their redemption and to provide the terms and conditions of redemption;

D. to covenant, subject to the limitations contained in the Regional Housing Law, regarding the rents and fees to be charged in the operation of a housing project, the amount to be raised each year or other period of time by rents, fees and other revenues and regarding the use and disposition to be made of rents, fees and other revenues; to create or to authorize the creation of special funds for money held for construction or operating costs, debt service, reserves or other purposes; and to covenant regarding the use and disposition of the money held in such funds;

E. to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the bondholders shall consent to and the manner in which such consent may be given;

F. to covenant as to the use of any or all of its real or personal property acquired pursuant to the Regional Housing Law; and to covenant regarding the maintenance of such real and personal property, the replacement of that property, the insurance to be carried on that property and the use and disposition of insurance money;

G. to covenant regarding the rights, liabilities, powers and duties arising upon the breach by the regional authority of any covenant, condition or obligation; and to covenant regarding and prescribe events of default and terms and conditions upon which the declaration and its consequences may be waived;

H. to vest in a trustee or the holders of bonds issued pursuant to the Regional Housing Law, or any specified proportion of them, the right to enforce the payment of bonds or any covenants securing or relating to the bonds; to vest in a trustee the right, in the event of a default by the authority, to take possession of any housing project or part of a housing project and, so long as the authority continues in default, to retain possession and use, operate and manage the housing project, to collect the rents and revenues

arising from the housing project and to dispose of the money in accordance with the agreement of the authority and the trustee; to provide for the powers and duties of a trustee and to limit the liabilities of the trustee; and to provide the terms and conditions upon which the trustee or the holders of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to the bonds; and

I. to exercise all or any part or combination of the powers granted in this section; to make covenants other than and in addition to the covenants expressly authorized, of like or different character; and to make covenants that will tend to make the bonds more marketable, notwithstanding that the covenants or acts may not be enumerated in this section.

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

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, deleted "or projects" following "project" in Subsection D, substituted "the regional authority" for "it" in Subsection G, deleted "or trustees" following "trustee" three times in Subsection H, and made minor stylistic changes throughout the section.

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

11-3A-17. Construction of bond provisions.

The Regional Housing Law [this article] without reference to other statutes of the state shall constitute full authority for the authorization and issuance of bonds pursuant to that act. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval or in any way impedes or restricts the carrying out of the acts authorized by the provisions of the Regional Housing Law shall be construed as applying to any proceedings taken or acts performed pursuant to the Regional Housing Law.

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

ANNOTATIONS

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

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

11-3A-18. Certification of attorney general.

An authority may submit to the attorney general any bonds to be issued by it after all proceedings for the issuance of the bonds have been taken. Upon the submission of the bonds and record of the proceedings to the attorney general, it is the duty of the attorney general to examine and pass upon the validity of the bonds and the regularity of all proceedings in connection with the bonds. If the bonds and proceedings conform to the provisions of the Regional Housing Law [this article] and are otherwise regular in form and if the bonds when delivered and paid for will constitute binding and legal obligations enforceable according to the terms of the sale and issuance, the attorney general shall certify in substance upon the back of each of the bonds that it is issued in accordance with the constitution and laws of New Mexico.

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

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "the bonds and record of the proceedings" for "such proceedings" in the second sentence, and made minor stylistic changes throughout the section.

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

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

ANNOTATIONS

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

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

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

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

History: Laws 1994, ch. 132, § 22.

ANNOTATIONS

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

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

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

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

ANNOTATIONS

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

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

11-3A-24. Cooperation in undertaking housing projects.

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

ANNOTATIONS

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

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

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

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

History: Laws 1994, ch. 132, § 26.

ANNOTATIONS

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

11-3A-27. Housing bonds; legal investments; security; negotiable.

The state and all public officers, municipal corporations, political subdivisions and public bodies; all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business; all insurance companies, insurance associations and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees and other fiduciaries may legally invest sinking funds, money or other funds belonging to them or within their control in bonds or other

obligations issued pursuant to the Regional Housing Law [this article] or issued by any authority or agency in the United States, when the bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any of its agencies. Bonds and other obligations shall be authorized security for all public deposits and shall be fully negotiable in this state. It is the purpose of the Regional Housing Law to authorize any persons, firms, corporations, associations, political subdivisions, bodies and officers, public or private, to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension and trust funds and funds held on deposit, for the purchase of any bonds or other obligations of an authority. Any bonds or other obligations of an authority shall be authorized security for all public deposits and shall be fully negotiable in this state; provided, however, that nothing contained in the Regional Housing Law shall be construed as relieving any person, firm or corporation from any duty of exercising reasonable care in selecting securities.

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

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, deleted "public housing" preceding "authority or agency in the United States", substituted "of an authority" for "and that", added "of an authority" following "obligations" near the end of the section, and made minor stylistic changes throughout the section.

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

11-3A-28. Law controlling.

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

History: Laws 1994, ch. 132, § 28.

ANNOTATIONS

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

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

Regional Housing Authorities and boards of commissioners created and organized under the provisions of Sections 11-3-1 through 11-3-6 NMSA 1978 are perpetuated and shall continue to exist as Regional Housing Authorities under the Regional Housing

Law [this article]. Members of the boards of commissioners of Regional Housing Authorities appointed prior to the effective date of the Regional Housing Law shall continue to serve as members of boards of commissioners, until their terms expire and their successors are appointed and qualified pursuant to the provisions of the Regional Housing Law. All existing contracts and agreements of Regional Housing Authorities in effect on the effective date of the Regional Housing Law shall continue in effect under the provisions of the Regional Housing Law.

History: Laws 1994, ch. 132, § 29.

ANNOTATIONS

Compiler's notes. - The effective date of the Regional Housing Law is May 18, 1994.

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

ARTICLE 4
HOUSING AUTHORITY

(Repealed by Laws 1998, ch. 67, § 31.)

11-4-1 to 11-4-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1998, ch. 63, § 7, repeals 11-4-1 to 11-4-8 NMSA 1978, enacted by Laws 1975, ch. 102, §§ 1 to 8, and as last amended by Laws 1991, ch. 21, § 30 and Laws 1991, ch. 226, § 1, relating to the housing authority, effective July 1, 1998. For provisions of former sections, see 1997 Replacement Pamphlet. For transfer of the functions of the authority to the New Mexico mortgage finance authority, see 58-18-5.5 NMSA 1978.

ARTICLE 5
BICENTENNIAL GRANT-IN-AID

11-5-1. Short title.

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

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

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

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

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

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

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

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

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

ANNOTATIONS

Bracketed material. - The bracketed reference to the state parks division of the energy, minerals and natural resources department was inserted by the compiler; see 9-5A-6.1 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

Compiler's notes. - The New Mexico American revolution bicentennial commission, referred to in this section, was created by Laws 1973, ch. 249, § 2, which was compiled

as § 4-35-6, 1953 Comp. Section 4-35-6, 1953 Comp., was repealed by Laws 1977, ch. 246, § 70, effective March 31, 1978.

ARTICLE 6
NEW MEXICO COMMUNITY ASSISTANCE

11-6-1. Short title.

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

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

ANNOTATIONS

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

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

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

B. The legislature finds and declares that, to aid local communities in providing adequate, safe and sanitary services, a community assistance program is needed, particularly for those communities faced with rapid growth or loss of their tax base. A council should be created to review proposals submitted by political subdivisions and to allocate funding from several sources, including severance tax bonds as approved and issued by the state board of finance, community development block grants from the federal government and such other sources of funding as the legislature may specify from time to time for financing needed projects for local community infrastructure development.

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

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

ANNOTATIONS

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

Repeals and reenactments. - Laws 1984, ch. 5, § 2, repeals former 11-6-2 NMSA 1978, as amended by Laws 1983, ch. 298, § 1, and enacts the above section. For provisions of former section, see 1983 Replacement Pamphlet.

11-6-3. Definitions.

As used in the New Mexico Community Assistance Act:

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

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

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

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

(2) gathering data about the political subdivisions;

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

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

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

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

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

ANNOTATIONS

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

New Mexico Community Assistance Act. - See 11-6-1 NMSA 1978 and notes thereto.

11-6-3.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 298, § 5, repeals 11-6-3.1 NMSA 1978, including carbon dioxide in the definition of mineral for the New Mexico Community Assistance Act, effective April 7, 1983. See 11-6-6.1 NMSA 1978.

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

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

B. The council shall consist of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

The 1984 amendment substituted "development" for "assistance" in the section heading and in Subsection A and rewrote the rest of the section to the extent that a detailed comparison is impracticable. For provisions of this section as amended by Laws 1983, ch. 298, § 2, see the 1983 replacement pamphlet.

Secretary of health and environment. - Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the department of health and environment, and enacted new 9-7-4 NMSA 1978, relating to the department of health. Laws 1991, ch. 25 also enacted 9-7A-1 to 9-7A-14 NMSA 1978, relating to the department of the environment. The

reference to the secretary of health and environment in Paragraph B(3) should now be a reference to either the secretary of health or the secretary of environment. See 9-7-5 NMSA 1978 and 9-7A-5 NMSA 1978.

11-6-4.1. Regulations.

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

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

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

The 1984 amendment, in Subsection A, deleted "Prior to January 1, 1982" at the beginning of the introductory paragraph, inserted "New Mexico" in Paragraph (1),

inserted "assistance" in Paragraph (2), inserted present Paragraphs (6), (7), and (8) and redesignated former Paragraph (6) as present Paragraph (9).

New Mexico Community Assistance Act. - See 11-6-1 NMSA 1978 and notes thereto.

11-6-5. Powers of the council.

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

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

New Mexico Community Assistance Act. - See 11-6-1 NMSA 1978 and notes thereto.

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

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

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

B. develop and adopt, insofar as possible, a common application form and funding cycle for all state and federal grant or loan programs for local community infrastructure development, including but not limited to programs under the New Mexico Community Assistance Act, the Water Supply Construction Act [Chapter 75, Article 1 NMSA 1978], the development fund, any state or federal solid waste management program, the federal wastewater treatment construction grants program, any state wastewater treatment construction grant or loan programs and federal community development block grant funds;

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

D. administer federal community development block grant funds and all other federal and state grant or loan programs for local community infrastructure development for which the council has oversight responsibility or where such administration is not otherwise provided for by law; and

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

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

ANNOTATIONS

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

New Mexico Community Assistance Act. - See 11-6-1 NMSA 1978 and notes thereto.

Water Supply Construction Act. - The title of Chapter 75, Article 1 NMSA 1978, referred to in Subsection B, was changed from the Water Supply Construction Act to the Rural Infrastructure Act by Laws 1988, ch. 28, § 1.

11-6-6. Community assistance application requirements.

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

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

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

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

(4) estimates of cost of the proposed project;

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

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

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

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

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

B. After receipt of an application for a grant of funds, the division shall provide copies of the application to appropriate state agencies, who shall have fifteen working days to review the application and communicate their comments to the council. The division

shall also review all applications and submit its recommendations to the council. In deciding whether or not to approve assistance funds, the council except as provided by applicable federal law shall consider, but is not limited to:

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

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

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

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

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

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

ANNOTATIONS

The 1984 amendment substituted "council" for "authority" in Subsection A(7) and added Subsection A(9); in the introductory paragraph of Subsection B, substituted "division shall" for "council will" and "shall" for "will" following "who" and inserted "working" following "fifteen" in the first sentence, inserted the second sentence and substituted "approve" for "recommend approval of" and inserted "except as provided by applicable federal law" in the third sentence; substituted "for infrastructure development funding" for "impacted by mineral and energy development in New Mexico" in Subsection B(2); and rewrote former Subsections D and E as present Subsection D. For provisions of former Subsections D and E, as amended by Laws 1977, ch. 299, § 6, see 1983 Replacement Pamphlet.

11-6-6.1. Requirements.

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

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

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

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

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

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

ANNOTATIONS

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

The 1984 amendment rewrote Subsection B, deleting paragraph designations (1), (2) and (3), being the criteria to be used by the council in recommending a grant of funds, deleted former Subsection C, which read "Special consideration by the council shall be given to highway, road and street improvements," and added Subsections C, D, and E. For provisions of former Subsection B, as amended by Laws 1983, ch. 298, § 3, see the 1983 replacement pamphlet.

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

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

58 C.J.S. Mines and Minerals § 2.

11-6-6.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 298, § 5, repeals 11-6-3.1 NMSA 1978, relating to grants of funds to political subdivisions for studies of the impact of mineral and energy development, effective April 7, 1983.

11-6-7. Ownership.

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

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

11-6-8. Staff.

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

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

ANNOTATIONS

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

11-6-9. Assistance by state agencies.

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

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

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

ANNOTATIONS

New Mexico Community Assistance Act. - See 11-6-1 NMSA 1978 and notes thereto.

ARTICLE 6A
LOCAL DWI GRANT PROGRAM

11-6A-1. Short title.

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

History: Laws 1993, ch. 65, § 1.

11-6A-2. Definitions.

As used in the Local DWI Grant Program Act [this article]:

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

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

History: Laws 1993, ch. 65, § 2.

11-6A-3. Local DWI grant program; fund. (Effective until July 1, 2001.)

A. The division shall establish a local DWI grant program to make grants to municipalities or counties for new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism and alcohol abuse. Grants shall be awarded by the council pursuant to the advice and recommendations of the division.

B. The "local DWI grant fund" is created in the state treasury and shall be administered by the division. Two million dollars ($2,000,000) of liquor excise tax revenues distributed to the fund and all other money in the fund, other than money appropriated for DWI program distributions, are appropriated to the division to make grants to municipalities and counties upon council approval in accordance with the program established under the Local DWI Grant Program Act [11-6A-1 to 11-6A-5 and 11-6A-6 NMSA 1978]. An amount equal to the liquor excise tax revenues distributed annually to the fund less two million dollars ($2,000,000) is appropriated to the division to make DWI program distributions to counties upon council approval of programs in accordance with the provisions of the Local DWI Grant Program Act. No more than five percent of the two million dollars ($2,000,000) of liquor excise tax revenues distributed to the fund in any fiscal year shall be expended for administration of the grant program. Balances in the fund at the end of any fiscal year shall not revert to the general fund.

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

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

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

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

(4) shall make grants only to counties or municipalities in counties that have established a DWI planning council and adopted a county DWI plan or are parties to a multicounty DWI plan that has been approved pursuant to the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act [Chapter 43, Article 3 NMSA 1978] and only for programs, services or activities consistent with that plan.

D. The council shall use the criteria in Subsection C of this section to approve DWI programs, services or activities for funding through the county DWI program distribution.

History: Laws 1993, ch. 65, § 3; 1997, ch. 182, § 3; 1999, ch. 18, § 1.

ANNOTATIONS

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

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

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

11-6A-3. Local DWI grant program; fund. (Effective July 1, 2001.)

A. The division shall establish a local DWI grant program to make grants to municipalities or counties for new, innovative or model programs, services or activities to prevent or reduce the incidence of DWI, alcoholism and alcohol abuse. Grants shall be awarded by the council pursuant to the advice and recommendations of the division.

B. The "local DWI grant fund" is created in the state treasury and shall be administered by the division. Two million dollars ($2,000,000) of liquor excise tax revenues distributed to the fund and all other money in the fund, other than money appropriated in fiscal year

2002 for distribution pursuant to Subsection C of this section and money appropriated for DWI program distributions, are appropriated to the division to make grants to municipalities and counties upon council approval in accordance with the program established under the Local DWI Grant Program Act [11-6A-1 to 11-6A-5 and 11-6A-6 NMSA 1978]. An amount equal to the liquor excise tax revenues distributed annually to the fund less four million dollars ($4,000,000) in fiscal year 2002 and two million dollars ($2,000,000) in each fiscal year thereafter is appropriated to the division to make DWI program distributions to counties upon council approval of programs in accordance with the provisions of the Local DWI Grant Program Act. No more than one hundred thousand dollars ($100,000) of liquor excise tax revenues distributed to the fund in any fiscal year shall be expended for administration of the grant program. Balances in the fund at the end of any fiscal year shall not revert to the general fund.

C. In fiscal year 2002, two million dollars ($2,000,000) of the liquor excise tax revenues distributed to the local DWI grant fund is appropriated to the division for distribution to the following counties in the following amounts for funding of alcohol detoxification and treatment facilities:

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

(2) three hundred thousand dollars ($300,000) to class B counties with a population of more than ninety thousand but less than ninety-six thousand persons according to the 1990 federal decennial census.

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

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

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

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

(4) shall make grants only to counties or municipalities in counties that have established a DWI planning council and adopted a county DWI plan or are parties to a multicounty DWI plan that has been approved pursuant to Chapter 43, Article 3 NMSA 1978 and only for programs, services or activities consistent with that plan.

E. The council shall use the criteria in Subsection D of this section to approve DWI programs, services or activities for funding through the county DWI program distribution.

History: Laws 1993, ch. 65, § 3; 1997, ch. 182, § 3; 1999, ch. 18, § 1; 2000, ch. 83, § 2.

ANNOTATIONS

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

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

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

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

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

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

History: Laws 1993, ch. 65, § 4.

ANNOTATIONS

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

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

11-6A-6. Distribution of certain DWI grant program funds; approval of programs. (Effective until July 1, 2001.)

A. An amount equal to the liquor excise tax revenues distributed to the local DWI grant fund for the fiscal year less two million dollars ($2,000,000) shall be available for distribution in accordance with the formula in Subsection B of this section to each county for council-approved DWI programs, services or activities, provided that each county shall receive a minimum distribution of at least one-half of one percent of the money available for distribution.

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

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

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

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

D. No later than August 1 each year, each board of county commissioners seeking approval for the DWI program distribution pursuant to this section shall make application to the division for review and approval by the council for one or more local DWI programs, services or activities in the county. Application shall be made on a form and in a manner determined by the division. The council shall approve the programs eligible for funds no later than September 1 of each year. The division shall make the annual distribution to each county in quarterly installments on or before each October 10, January 10, April 10 and July 10, beginning in October 1997. The amount available for distribution quarterly to each county shall be the amount determined by applying the formula in Subsection B of this section to the amount of liquor excise tax revenues in the fund at the end of the month prior to the quarterly installment due date and after five hundred thousand dollars ($500,000) has been set aside for the DWI grant program.

E. If a county has no council-approved DWI program, service or activity or does not need the full amount of the available distribution, the unused money shall revert to the local DWI grant fund and may be used by the council for the local DWI grant program.

F. As used in this section:

(1) "alcohol-related injury crashes" means the average annual number of alcohol-related injury crashes during the period from January 1, 1993 through December 31, 1995, as determined by the traffic safety bureau of the state highway and transportation department; and

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

History: Laws 1997, ch. 182, § 2.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 182 § 5 makes the act effective on July 1, 1998.

11-6A-6. Distribution of certain DWI grant program funds; approval of programs. (Effective July 1, 2001.)

A. An amount equal to the liquor excise tax revenues distributed to the local DWI grant fund for the fiscal year less four million dollars ($4,000,000) in fiscal year 2002 and two million dollars ($2,000,000) in each fiscal year thereafter shall be available for distribution in accordance with the formula in Subsection B of this section to each county for council-approved DWI programs, services or activities; provided that each county shall receive a minimum distribution of at least one-half of one percent of the money available for distribution.

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

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

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

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

D. No later than August 1 each year, each board of county commissioners seeking approval for the DWI program distribution pursuant to this section shall make application to the division for review and approval by the council for one or more local DWI programs, services or activities in the county. Application shall be made on a form and in a manner determined by the division. The council shall approve the programs eligible for a distribution no later than September 1 of each year. The division shall make the annual distribution to each county in quarterly installments on or before each October 10, January 10, April 10 and July 10, beginning in October 1997. The amount available for distribution quarterly to each county shall be the amount determined by applying the formula in Subsection B of this section to the amount of liquor excise tax revenues in the local DWI grant fund at the end of the month prior to the quarterly installment due date and after five hundred thousand dollars ($500,000) has been set aside for the DWI grant program and, in fiscal year 2002, after the appropriation and distribution pursuant to Subsection C of Section 11-6A-3 NMSA 1978.

E. If a county has no council-approved DWI program, service or activity or does not need the full amount of the available distribution, the unused money shall revert to the local DWI grant fund and may be used by the council for the local DWI grant program.

F. As used in this section:

(1) "alcohol-related injury crashes" means the average annual number of alcohol-related injury crashes during the period from January 1, 1993 through December 31, 1995, as determined by the traffic safety bureau of the state highway and transportation department; and

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

History: Laws 1997, ch. 182, § 2; 2000, ch. 83, § 3.

ANNOTATIONS

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

Compiler's notes. - For version of this section effective until July 1, 2001, see 1997 Replacement Pamphlet.

ARTICLE 7
INTERSTATE COMPACT ON MENTAL HEALTH

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

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

THE INTERSTATE COMPACT ON MENTAL HEALTH

ARTICLE I

Findings and Purpose

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of

community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

Definitions

As used in this compact:

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

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

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

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

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

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

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

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

ARTICLE III

Eligibility and Transfer

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

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

C. No state shall be obliged to receive any patient sent under Subdivision B of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if the authorities so wish; and unless the receiving state shall agree to accept the patient.

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

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

ARTICLE IV

After-Care

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

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

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

ARTICLE V

Escape Notice

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

ARTICLE VI

Transporting

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

ARTICLE VII

Effect and Cost of Transfer

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

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

C. No provision of this compact alters or affects any internal relationships among the departments, agencies and officers of and in the government of a party state, or

between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

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

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

ARTICLE VIII

Guardian

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

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

ARTICLE IX

Criminals

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

deficiency, the person would be subject to incarceration in a penal or correctional institution.

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

ARTICLE X

Compact Administrator

A. Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed under the compact.

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

ARTICLE XI

Supplementary Agreements

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

ARTICLE XII

Entry into Force

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

ARTICLE XIII

Withdrawal

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

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

ANNOTATIONS

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

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

Pursuant to the Interstate Compact on Mental Health [11-7-1 NMSA 1978], the director of the behavioral health services division of the health and environment department [department of health] is designated as the compact administrator and, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement entered into by this state under the compact.

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

ANNOTATIONS

Bracketed material. - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the department of health and environment, and enacts a new 9-7-4 NMSA 1978, relating to the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

11-7-3. Supplementary agreements.

The compact administrator may enter into supplementary agreements with appropriate officials of other states under Articles VII and XI of the compact [11-7-1 NMSA 1978]. In

the event that the supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction the institution or facility is operated or whose department or agency will be charged with the rendering of the service.

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

11-7-4. Payments by administrator.

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

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

11-7-5. Notice of transfer.

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

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

ARTICLE 8
COMPACT FOR EDUCATION

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

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

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

ANNOTATIONS

Cross references. - For Western Regional Cooperation in Higher Education Compact, see Chapter 11, Article 10 NMSA 1978.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. The commission shall have a seal.

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

E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

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

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

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

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

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

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

11-8-5. Powers; Article IV.

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

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

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

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

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

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

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

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

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

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

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

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

11-8-7. Committees; Article VI.

A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact [11-8-1 to 11-8-11 NMSA 1978] and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee shall consist of governors, one-fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee: provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

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

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

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

11-8-8. Finance; Article VII.

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

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

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

D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

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

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

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

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

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

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

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

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

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

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

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

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

11-8-11. Filing of compact.

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

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

ANNOTATIONS

Saving clauses. - Laws 1967, ch. 16, § 294, provides that the act shall not affect the legal status of a school district in actions commenced before the effective date of the Public School Code (Laws 1967, ch. 16), provides that the adoption of the Public School Code shall not affect any substantive right, laws authorizing issuance of bonds, laws relating to ad valorem taxes, or the running of statutes of limitations at the time the code becomes effective and provides for the option to complete proceedings initiated under a law repealed.

Laws 1967, ch. 16, § 295, provides that reference in 22-11-1 to 22-11-45 NMSA 1978 to the Educational Retirement Act means the act of July 1, 1957 and laws amending or repealing, and provides that the Public School Code does not affect benefits to those

eligible pursuant to 73-12-34 to 73-12-91, 1953 Comp. (repealed). For present provisions, see 22-11-13 to 22-11-43 NMSA 1978.

Validating clauses. - Laws 1967, ch. 16, § 296, provides that school districts recognized by the state board as existing on the effective date of the Public School Code are validated and confirmed as existing school districts pursuant to the code.

Laws 1967, ch. 16, § 297, provides that a board of educational trustees of a school district within an H class county is validated as a local school board, and provides that existing school districts are validated as an existing "school district."

Reviving clauses. - Laws 1967, ch. 16, § 302, provides that if any provisions of 22-18-1 to 22-18-12 NMSA 1978, are held unconstitutional so that general obligation bonds may not be issued and sold, 73-8-20 to 73-8-51 (repealed, see 22-18-1 to 22-18-12, 22-19-1 to 22-19-16, 22-20-1 to 22-20-3 NMSA 1978), shall be revived and become effective immediately, and provides that if any of the provisions of 77-17-1 to 77-17-14, 1953 Comp., be held unconstitutional so that revenue bonds may not be issued, 73-8-52 to 73-8-64, 1953 Comp. (repealed, see 22-18-1 to 22-18-12, 22-19-1 to 22-19-16, 22-20-1 to 22-20-3 NMSA 1978), shall be revived and become effective immediately, provides that if any of the provisions of 77-18-4 to 77-18-12, 1953 Comp. (repealed), are held unconstitutional so that severance tax bonds may not be issued and sold, 73-36-1 to 73-36-7, 73-36-9, 1953 Comp. (repealed), shall be revived and become effective immediately. Sections 77-17-1 to 77-17-14, 1953 Comp., were, in fact, held unconstitutional in McKinley v. Alamagordo Mun. School Dist. Auth., 81 N.M. 196, 465 P.2d 79 (1969).

Severability clauses. - Laws 1967, ch. 16, § 299, provides for the severability of the act if any part or application thereof is held invalid.

Compiler's notes. - Laws 1967, ch. 16, § 300, provides that the Public School Code shall be liberally construed to carry out its provisions and purposes.

ARTICLE 9
WESTERN INTERSTATE NUCLEAR COMPACT

11-9-1. Western Interstate Nuclear Compact.

The Western Interstate Nuclear Compact is entered into with all other jurisdictions legally joining therein in a form substantially as follows:

WESTERN INTERSTATE NUCLEAR COMPACT

Article 1. Policy and purpose. - The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques

developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the west and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance and promotion from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the west and contribute to the individual and community well-being of the region's people.

Article 2. The board. - A. There is hereby created an agency of the party states to be known as the "western interstate nuclear board," hereinafter called the board. The board shall be composed of one member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

B. The board members of the party states shall each be entitled to one vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

C. The board shall have a seal.

D. The board shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

E. The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

F. The board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and

maintain or participate in such additional programs of employee benefits as may be appropriate.

G. The board may borrow, accept or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency or from any institution, person, firm or corporation.

H. The board may accept for any of its purposes and functions under this compact [11-9-1 NMSA 1978] any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state or the United States or any subdividion [subdivision] or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to Subsection G of this article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the board.

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

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

K. The board annually shall make to the governor of each party state a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

Article 3. Finances. - A. The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

B. Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

C. The board may meet any of its obligations in whole or in part with funds available to it under Article 2 H of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under Article 2 H hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

D. Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

E. The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the board.

F. The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board and duly designated representatives of governments contributing to the board's support.

Article 4. Advisory committees. - The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

Article 5. Powers. - The board shall have power to:

A. encourage and promote cooperation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields;

B. ascertain and analyze on a continuing basis the position of the west with respect to the employment in industry of nuclear and related scientific findings and technologies;

C. encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products and all other appropriate adaptations of scientific and technological advances and discoveries;

D. collect, correlate and disseminate information relating to the peaceful uses of nuclear energy, materials and products and other products and processes resulting from the application of related science and technology;

E. encourage the development and use of nuclear energy, facilities, installations and products as part of a balanced economy;

F. conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspects of:

(1) nuclear industry, medicine or education, or the promotion or regulation thereof;

(2) applying nuclear scientific advances or discoveries, and any industrial commercial or other processes resulting therefrom; and

(3) the formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto;

G. organize and conduct, or assist and cooperate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates;

H. undertake such nonregulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the west;

I. study industrial, health, safety and other standards, laws, codes, rules, regulations and administrative practices in or related to nuclear fields;

J. recommend such changes in, or amendments or additions to, the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states or their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions;

K. consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis;

L. consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields;

M. advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields;

N. cooperate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest;

O. act as licensee, contractor or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one or more other powers conferred upon the board by this compact;

P. prepare, publish and distribute, with or without charge, such reports, bulletins, newsletters or other materials as it deems appropriate;

Q. ascertain from time to time such methods, practices, circumstances and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to coordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents. The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact. Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall coordinate requests for aid pursuant to Article 6 of this compact and the furnishing of aid in response thereto. Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states. However, the plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances. From time to time, the board shall analyze the information gathered from reports of aid pursuant to Article 6 and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available;

R. prepare, maintain and implement a regional plan or regional plans for carrying out the duties, powers or functions conferred upon the board by this compact; and

S. undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful in connection with the fields covered by this compact.

Article 6. Mutual aid. - A. Whenever a party state, or any state or local governmental authorities therein, request [requests] aid from any other party state pursuant to this

compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

B. Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

C. No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

D. All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

E. Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such requests; provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

F. Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

Article 7. Supplementary agreements. - A. To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of Article 5 of this compact, any two or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes, its duration and the procedure for termination thereof or withdrawal therefrom, the method of financing and allocating the costs of the activity or project and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated

thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

B. Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

C. No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

D. The provisions to this article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake cooperative arrangements or projects.

Article 8. Other laws and relations. - Nothing in this compact shall be construed to:

A. permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force;

B. limit, diminish or otherwise impair jurisdiction exercise by the atomic energy commission, any agency successor thereto or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of congress; nor limit, diminish, affect or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor;

C. alter the relations between, and respective internal responsibilities of, the government of a party state and its subdivisions; or

D. permit or authorize the board to own or operate any facility, reactor or installation for industrial or commercial purposes.

Article 9. Eligible parties; entry into force and withdrawal. - A. Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming shall be eligible to become party to this compact.

B. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided, that it shall not become initially effective until enacted into law by five states.

C. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

D. Guam and American Samoa, or either of them, may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. However, such participation shall not include the furnishing or receipt of mutual aid pursuant to Article 6, unless that article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board unless it has become a full party to the compact.

Article 10. Severability and construction. - The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

History: 1953 Comp., § 4-34-1, enacted by Laws 1969, ch. 40, § 1.

ANNOTATIONS

States adopting compact. - States which have adopted the Western Interstate Nuclear Compact include: Alaska, Arizona, Colorado, Idaho, Nevada, Oregon, Utah, Washington and Wyoming.

11-9-2. Board members.

The member of the western interstate nuclear compact board shall be appointed by the governor. The alternate provided under Article 2 A of the compact [11-9-1 NMSA 1978] shall be designated by the member representing this state and shall serve at his pleasure.

History: 1953 Comp., § 4-34-2, enacted by Laws 1969, ch. 40, § 2.

11-9-3. Regulations.

Under Article 2 J of the compact [11-9-1 NMSA 1978], the western interstate nuclear board shall file copies of its bylaws and any amendments in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1953 Comp., § 4-34-3, enacted by Laws 1969, ch. 40, § 3.

ARTICLE 9A
LOW-LEVEL RADIOACTIVE WASTE

11-9A-1. Short title.

This act [11-9A-1 to 11-9A-3 NMSA 1978] may be cited as the "Rocky Mountain Low-Level Radioactive Waste Compact."

History: Laws 1983, ch. 20, § 1.

ANNOTATIONS

Law reviews. - For article, "The Never Ending Story: Low-Level Waste and the Exclusionary Authority of Noncompacting States," 30 Nat. Resources J. 65 (1990).

For article, "Collective Bads: The Case of Low-Level Radioactive Waste Compacts," see 34 Nat. Resources J. 563 (1994).

11-9A-2. Compact entered into.

The Rocky Mountain Low-Level Radioactive Waste Compact [11-9A-1 to 11-9A-3 NMSA 1978] is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT

ARTICLE 1

Findings and Purpose

A. The party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. Moreover, the party states find that the United States congress, by enacting the Low-Level Radioactive Waste Policy Act (P.L. 96-573), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

B. It is the purpose of the party states, by entering into an interstate compact, to establish the means for cooperative effort in managing low-level radioactive waste; to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities; to encourage reduction of the volume of low-level radioactive waste requiring disposal within the region; to restrict management within the region of low-level radioactive waste generated outside the region; to distribute the costs, benefits and obligations of low-level radioactive waste management equitably among the party states; and by these means to promote the health, safety and welfare of the residents within the region.

ARTICLE 2

Definitions

As used in this compact [11-9A-1 to 11-9A-3 NMSA 1978], unless the context clearly indicates otherwise:

A. "board" means the Rocky mountain low-level radioactive waste board;

B. "carrier" means a person who transports low-level waste;

C. "disposal" means the isolation of waste from the biosphere, with no intention of retrieval, such as by land burial;

D. "facility" means any property, equipment or structure used or to be used for the management of low-level waste;

E. "generate" means to produce low-level waste;

F. "host state" means a party state in which a regional facility is located or being developed;

G. "low-level waste" or "waste" means radioactive waste, other than:

(1) waste generated as a result of defense activities of the federal government or federal research and development activities;

(2) high-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel or solids into which any such liquid waste has been converted;

(3) waste material containing transuranic elements with contamination levels greater than ten nanocuries per gram of waste material;

(4) byproduct material as defined in Section 11 e. (2) of the Atomic Energy Act of 1954, as amended on November 8, 1978; or

(5) wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for minerals other than radium;

H. "management" means collection, consolidation, storage, treatment, incineration or disposal;

I. "operator" means a person who operates a regional facility;

J. "person" means an individual, corporation, partnership or other legal entity, whether public or private;

K. "region" means the combined geographical area within the boundaries of the party states; and

L. "regional facility" means a facility within any party state which either:

(1) has been approved as a regional facility by the board; or

(2) is the low-level waste facility in existence on January 1, 1982, at Beatty, Nevada.

ARTICLE 3

Rights, Responsibilities and Obligations

A. There shall be regional facilities sufficient to manage the low-level waste generated within the region. At least one regional facility shall be open and operating in a party state other than Nevada within six years after this compact becomes law in Nevada and in one other state.

B. Low-level waste generated within the region shall be managed at regional facilities without discrimination among the party states; provided, however, that a host state may close a regional facility when necessary for public health or safety.

C. Each party state which, according to reasonable projections made by the board, is expected to generate twenty percent or more in cubic feet, except as otherwise determined by the board, of the low-level waste generated within the region has an obligation to become a host state in compliance with Subsection D of this article.

D. A host state, or a party state seeking to fulfill its obligation to become a host state, shall:

(1) cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in Article 4 before allowing site preparation or physical construction to begin;

(2) ensure by its own law, consistent with any applicable federal law, the protection and preservation of public health and safety in the siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state;

(3) subject to the approval of the board, ensure that charges for management of low-level waste at the regional facilities within the state are reasonable;

(4) solicit comments from each other party state and the board regarding siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state and respond in writing to such comments;

(5) submit an annual report to the board which contains projections of the anticipated future capacity and availability of the regional facilities within the state, together with other information required by the board; and

(6) notify the board immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the board.

E. Once a party state has served as a host state, it shall not be obligated to serve again until each other party state having an obligation under Subsection C of this article has fulfilled that obligation. Nevada, already being a host state, shall not be obligated to serve again as a host state until every other party state has so served.

F. Each party state:

(1) agrees to adopt and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to packaging and transportation requirements and regulations. Such procedures shall include but are not limited to:

(a) periodic inspections of packaging and shipping practices;

(b) periodic inspections of waste containers while in the custody of carriers; and

(c) appropriate enforcement actions with respect to violations;

(2) agrees that after receiving notification from a host state that a person in the party state has violated packaging, shipping or transportation requirements or regulations, it shall take appropriate action to ensure that violations do not recur. Appropriate action may include but is not limited to the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected;

(3) may impose fees to recover the cost of the practices provided for in Paragraphs (1) and (2) of this subsection;

(4) shall maintain an inventory of all generators within the state that may have low-level waste to be managed at a regional facility; and

(5) may impose requirements or regulations more stringent than those required by this subsection.

ARTICLE 4

Board Approval of Regional Facilities

A. Within ninety days after being requested to do so by a party state, the board shall approve or disapprove a regional facility to be located within that state.

B. A regional facility shall be approved by the board if and only if the board determines that:

(1) there will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility; and

(2) the facility will have sufficient capacity to serve the needs of the region for a reasonable period of years.

ARTICLE 5

Surcharges

A. The board shall impose a "compact surcharge" per unit of waste received at any regional facility. The surcharge shall be adequate to pay the costs and expenses of the board in the conduct of its authorized activities and may be increased or decreased as the board deems necessary.

B. A host state may impose a "state surcharge" per unit of waste received at any regional facility within the state. The host state may fix and change the amount of the state surcharge subject to approval by the board. Money received from the state surcharge may be used by the host state for any purpose authorized by its own law, including but not limited to costs of licensure and regulatory activities related to the regional facility, reserves for decommissioning and long-term care of the regional facility and local impact assistance.

ARTICLE 6

The Board

A. The "Rocky mountain low-level radioactive waste board," which shall not be an agency or instrumentality of any party state, is created.

B. The board shall consist of one member from each party state. Each party state shall determine how and for what term its member shall be appointed, and how and for what term any alternate may be appointed to perform that member's duties on the board in the member's absence.

C. Each party state is entitled to one vote. A majority of the board constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the board is necessary for the board to take any action.

D. The board shall meet at least once a year and otherwise as its business requires. Meetings of the board may be held in any place within the region deemed by the board to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment shall be given with respect to any meeting; provided, however, that nothing in this subsection shall preclude the board from meeting in executive session when seeking legal advice from its attorneys or when discussing the employment, discipline or termination of any of its employees.

E. The board shall pay necessary travel and reasonable per diem expenses of its members, alternates and advisory committee members.

F. The board shall organize itself for the efficient conduct of its business. It shall adopt and publish rules consistent with this compact regarding its organization and procedures. In special circumstances the board, with unanimous consent of its members, may take actions by telephone; provided, however, that any action taken by telephone shall be confirmed in writing by each member within thirty days. Any action taken by telephone shall be noted in the minutes of the board.

G. The board may use for its purposes the services of any personnel or other resources which may be offered by any party state.

H. The board may establish its offices in space provided for that purpose by any of the party states or, if space is not provided or is deemed inadequate, in any space within the region selected by the board.

I. Consistent with available funds, the board may contract for necessary personnel services and may employ such staff as it deems necessary to carry out its duties. Staff shall be employed without regard for the personnel, civil service or merit system laws of any of the party states and shall serve at the pleasure of the board. The board may provide appropriate employee benefit programs for its staff.

J. The board shall establish a fiscal year which conforms to the extent practicable to the fiscal years of the party states.

K. The board shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the board shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the board.

L. The board shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

M. Upon legislative enactment of this compact, each party state shall appropriate seventy thousand dollars ($70,000) to the board to support its activities prior to the collection of sufficient funds through the compact surcharge imposed pursuant to Subsection A of Article 5 of this compact.

N. The board may accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source. The nature, amount and condition, if any, attendant upon any donation, grant or other resources accepted pursuant to this subsection, together with the identity of the donor or grantor, shall be detailed in the annual report of the board.

O. In addition to the powers and duties conferred upon the board pursuant to other provisions of this compact, the board:

(1) shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the board, including an annual report to be submitted by December 15;

(2) may assemble and make available to the governments of the party states and to the public through its members information concerning low-level waste management needs, technologies and problems;

(3) shall keep a current inventory of all generators within the region, based upon information provided by the party states;

(4) shall keep a current inventory of all regional facilities, including information on the size, capacity, location, specific wastes capable of being managed and the projected useful life of each regional facility;

(5) may keep a current inventory of all low-level waste facilities in the region, based upon information provided by the party states;

(6) shall ascertain on a continuing basis the needs for regional facilities and capacity to manage each of the various classes of low-level waste;

(7) may develop a regional low-level waste management plan;

(8) may establish such advisory committees as it deems necessary for the purpose of advising the board on matters pertaining to the management of low-level waste;

(9) may contract as it deems appropriate to accomplish its duties and effectuate its powers, subject to its projected available resources; but no contract made by the board shall bind any party state;

(10) shall make suggestions to appropriate officials of the party states to ensure that adequate emergency response programs are available for dealing with any exigency that might arise with respect to low-level waste transportation or management;

(11) shall prepare contingency plans, with the cooperation and approval of the host state, for management of low-level waste in the event any regional facility should be closed;

(12) may examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge;

(13) shall have the power to sue; and

(14) when authorized by unanimous vote of its members, may intervene as of right in any administrative or judicial proceeding involving low-level waste.

ARTICLE 7

Prohibited Acts and Penalties

A. It shall be unlawful for any person to dispose of low-level waste within the region, except at a regional facility; provided, however, that a generator who, prior to January 1, 1982, had been disposing of only his own waste on his own property may, subject to applicable federal and state law, continue to do so.

B. After January 1, 1986, it shall be unlawful for any person to export low-level waste which was generated within the region outside the region unless authorized to do so by the board. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(1) the economic impact of the export of the waste on the regional facilities;

(2) the economic impact on the generator of refusing to permit the export of the waste; and

(3) the availability of a regional facility appropriate for the disposal of the waste involved.

C. After January 1, 1986, it shall be unlawful for any person to manage any low-level waste within the region unless the waste was generated within the region or unless

authorized to do so both by the board and by the state in which said management takes place. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(1) the impact of importing waste on the available capacity and projected life of the regional facilities;

(2) the economic impact on the regional facilities; and

(3) the availability of a regional facility appropriate for the disposal of the type of waste involved.

D. It shall be unlawful for any person to manage at a regional facility any radioactive waste other than low-level waste as defined in this compact, unless authorized to do so both by the board and the host state. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(1) the impact of allowing such management on the available capacity and projected life of the regional facilities;

(2) the availability of a facility appropriate for the disposal of the type of waste involved;

(3) the existence of transuranic elements in the waste; and

(4) the economic impact on the regional facilities.

E. Any person who violates Subsection A or B of this article shall be liable to the board for a civil penalty not to exceed ten times the charges which would have been charged for disposal of the waste at a regional facility.

F. Any person who violates Subsection C or D of this article shall be liable to the board for a civil penalty not to exceed ten times the charges which were charged for management of the waste at a regional facility.

G. The civil penalties provided for in Subsections E and F of this article may be enforced and collected in any court of general jurisdiction within the region where necessary jurisdiction is obtained by an appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

H. Out of any civil penalty collected for a violation of Subsection A or B of this article, the board shall pay to the appropriate operator a sum sufficient in the judgment of the board to compensate the operator for any loss of revenue attributable to the violation. Such compensation may be subject to state and compact surcharges as if received in

the normal course of the operator's business. The remainder of the civil penalty collected shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

I. Any civil penalty collected for a violation of Subsection C or D of this article shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

J. Violations of Subsection A, B, C or D of this article may be enjoined by any court of general jurisdiction within the region where necessary jurisdiction is obtained in any appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

K. No state attorney general shall be required to bring any proceeding under any subsection of this article, except upon his consent.

ARTICLE 8

Eligibility, Entry Into Effect, Congressional Consent, Withdrawal, Exclusion

A. Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming are eligible to become parties to this compact. Any other state may be made eligible by unanimous consent of the board.

B. An eligible state may become a party state by legislative enactment of this compact or by executive order of its governor adopting this compact; provided, however, a state becoming a party by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless before such adjournment the legislature shall have enacted this compact.

C. This compact shall take effect when it has been enacted by the legislatures of two eligible states. However, Subsections B and C of Article 7 shall not take effect until congress has by law consented to this compact. Every five years after such consent has been given, congress may by law withdraw its consent.

D. A state which has become a party state by legislative enactment may withdraw by legislation repealing its enactment of this compact; but no such repeal shall take effect until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal; provided, however, this provision shall not apply to the existing facility in Beatty, Nevada.

E. A party state may be excluded from this compact by a two-thirds' vote of the members representing the other party states, acting in a meeting, on the ground that the state to be excluded has failed to carry out its obligations under this compact. Such an exclusion may be terminated upon a two-thirds' vote of the members acting in a meeting.

ARTICLE 9

Construction and Severability

A. The provisions of this compact shall be broadly construed to carry out the purposes of the compact.

B. Nothing in this compact shall be construed to affect any judicial proceeding pending on the effective date of this compact.

C. If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

History: Laws 1983, ch. 20, § 2.

ANNOTATIONS

Compiler's notes. - States adopting the Rocky Mountain Low-Level Radioactive Waste Compact include Colorado, Nevada, and Wyoming.

Low-Level Radioactive Waste Policy Act. - The provisions of the Low-Level Radioactive Waste Policy Act (P.L. 96-573), referred to in Subsection A of Article 1, which have been codified appear as 42 U.S.C. § 2021b et seq.

Atomic Energy Act of 1954. - Section 11 e. (2) of the Atomic Energy Act of 1954, as amended November 8, 1983, referred to in Subsection G(4) of Article 2, appears as 42 U.S.C. § 2014(e).

11-9A-3. Board member; alternate; appointment.

A. The governor shall appoint the New Mexico member of the Rocky mountain low-level radioactive waste board, who shall serve at the pleasure of the governor.

B. The board member may, with the approval of the governor, designate an alternate to represent New Mexico in the absence of the member.

History: Laws 1983, ch. 20, § 3.

ARTICLE 10
WESTERN REGIONAL COOPERATION IN HIGHER EDUCATION COMPACT

11-10-1. [Compact for Western Regional Cooperation in Higher Education.]

That the state of New Mexico does hereby ratify, approve and adopt the compact aforesaid, which is as follows:

THE COMPACT FOR WESTERN REGIONAL COOPERATION IN HIGHER EDUCATION

ARTICLE I

Whereas, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

Whereas, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

Whereas, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof:

Now, therefore, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and the territories [states] of Alaska and Hawaii do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territories hereby create the western interstate commission for higher education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to

sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The terms of each commissioner shall be four years; provided however that the first three commissioners shall be appointed as follows: one for two years, one for three years and one for four years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

ARTICLE VI

The commission shall elect from its number a chairman and a vice chairman, and may appoint, and at its pleasure dismiss or remove, such officers, agents and employees as may be required to carry out the purpose of this compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

The commission shall adopt a seal and by-laws and shall adopt and promulgate rules and regulations for its management and control.

The commission may elect such committees as it deems necessary for the carrying out of its functions.

The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The chairman may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

On or before the fifteenth day of January of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or his designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

ARTICLE VIII

It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate services and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

For this purpose the commission may enter into contractual agreements:

(a) with the governing authority of any educational institution in the region, or with any compacting state or territory, to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties; and

(b) with the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs and the long-range effects of the compact on higher education; and from time to time to prepare comprehensive reports on such research for presentation to the western governors' conference and to the legislatures of the compacting states and territories. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories, uniform legislation dealing with problems of higher education in the region.

For the purposes of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two years after written notice thereof by the governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

Unless such default shall be remedied within a period of two years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

Any such defaulting state may be reinstated by:

(a) performing all acts and obligations upon which it has heretofore defaulted; and

(b) application to and the approval by a majority vote of the commission.

History: 1978 Comp., § 11-10-1, enacted by Laws 1951, ch. 138, § 1.

ANNOTATIONS

Cross references. - For the Western Interstate Commission on Higher Education Loans for Service Act, see Chapter 21, Article 29 NMSA 1978.

Compiler's notes. - Laws 1951, ch. 138, was not compiled in the 1941 Comp. or the 1953 Comp.

11-10-2. [Notice of approval.]

Notice of approval of said compact shall be given by the governor of the state of New Mexico to the governors of the states of Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and the territories [states] of Alaska and Hawaii, and to the president of the United States.

History: 1978 Comp., § 11-10-2, enacted by Laws 1951, ch. 138, § 2.

ANNOTATIONS

Bracketed material. - The bracketed material in this section was inserted by the compiler since Alaska and Hawaii are now states and not merely territories. The bracketed material was not enacted by the legislature and is not a part of the law.

11-10-3. [Effective date.]

That ratification and approval of said compact by this state shall not be binding or obligatory until it shall have been likewise approved by the legislatures of the states of Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and the territories [states] of Alaska and Hawaii, and consented [to] by the Congress of the United States of America.

History: 1978 Comp., § 11-10-3, enacted by Laws 1951, ch. 138, § 3.

ANNOTATIONS

Bracketed material. - The bracketed material in this section was inserted by the compiler to correct apparent errors. The bracketed material was not enacted by the legislature and is not a part of the law.

ARTICLE 11
INTERSTATE MINING

(Repealed by Laws 1991, ch. 61, § 2.)

11-11-1 to 11-11-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1991, ch. 61, § 2, effective April 1, 1991, repeals 11-11-1 to 11-11-3 NMSA 1978, as enacted by Laws 1982, ch. 89, §§ 1 to 3, relating to the Interstate Mining Compact, effective on the first anniversary of the date that the governor of New Mexico gives notice to the governors of all other states that are members of the compact that New Mexico is withdrawing. Governor Bruce King notified the governors of the other states of the withdrawl by letter dated April 29, 1991, making the repeal effective April 29, 1992.

Temporary provisions. - Laws 1991, ch. 61, § 1, effective April 1, 1991, provides that the state shall remain liable after its withdrawal from the Interstate Mining Compact for any amounts incurred by or charged to the state during the time that the state was a party to the compact.

ARTICLE 12
INTERSTATE AGRICULTURAL GRAIN MARKETING

(Repealed by Laws 1997, ch. 21, § 1.)

11-12-1. [Repealed.]

ANNOTATIONS

Repeals. - Laws 1997, ch. 21, § 1 repeals 11-12-1 NMSA 1978, as enacted by Laws 1987, ch. 239, § 1, relating to the Interstate Compact on Agricultural Grain Marketing, effective June 20, 1997. For provisions of former section, see 1994 Replacement Pamphlet.

ARTICLE 13
INDIAN GAMING COMPACT

11-13-1. Indian gaming compact entered into.

The Indian Gaming Compact is enacted into law and entered into with all Indian nations, tribes and pueblos in the state legally joining in it by enactment of a resolution pursuant to the requirements of applicable tribal and federal law. The compact is enacted and entered into in the form substantially as follows:

"INDIAN GAMING COMPACT

INTRODUCTION

The State is a sovereign State of the United States of America, having been admitted to the Union pursuant to the Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310, and is authorized by its constitution to enter into contracts and agreements, including this Compact, with the Tribe;

The Tribe is a sovereign federally recognized Indian tribe and its governing body has authorized the officials of the Tribe to enter into contracts and agreements of every description, including this Compact, with the State;

The Congress of the United States has enacted the Indian Gaming Regulatory Act of 1988, 25 U.S.C. § § 2701-2721 (hereinafter "IGRA"), which permits Indian tribes to conduct Class III Gaming on Indian Lands pursuant to a tribal-state compact entered into for that purpose;

The Tribe owns or controls Indian Lands and by Ordinance has adopted rules and regulations governing Class III games played and related activities at any Gaming Facility;

The State and the Tribe, in recognition of the sovereign rights of each party and in a spirit of cooperation to promote the best interests of the citizens of the State and the members of the Tribe, have engaged in good faith negotiations recognizing and respecting the interests of each party and have agreed to this Compact.

NOW, THEREFORE, the State and the Tribe agree as follows:

TERMS AND CONDITIONS SECTION

SECTION 1. Purpose and Objectives.

The purpose and objectives of the State and the Tribe in making this Compact are as follows:

A. To evidence the good will and cooperative spirit between the State and the Tribe;

B. To continue the development of an effective government-to-government relationship between the State and the Tribe;

C. To provide for the regulation of Class III Gaming on Indian Lands as required by the IGRA;

D. To fulfill the purpose and intent of the IGRA by providing for tribal gaming as a means of generating tribal revenues, thereby promoting tribal economic development, tribal self-sufficiency, and strong tribal government;

E. To provide revenues to fund tribal government operations or programs, to provide for the general welfare of the tribal members and for other purposes allowed under the IGRA;

F. To provide for the effective regulation of Class III Gaming in which the Tribe shall have the sole proprietary interest and be the primary beneficiary; and

G. To address the State's interest in the establishment, by the Tribe, of rules and procedures for ensuring that Class III Gaming is conducted fairly and honestly by the owners, operators, employees and patrons of any Class III Gaming enterprise on Indian Lands.

SECTION 2. Definitions.

For purposes of this Compact, the following definitions pertain:

A. "Class III Gaming" means all forms of gaming as defined in 25 U.S.C. § 2703(8), and 25 C.F.R. § 502.4.

B. "Compact" means this compact between the State and the Tribe.

C. "Gaming Enterprise" means the tribal entity created and designated by the Tribe as having authority to conduct Class III Gaming pursuant to this Compact.

D. "Gaming Facility" means the buildings or structures in which Class III Gaming is conducted on Indian Lands.

E. "Gaming Machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of

any consideration, is available to play or operate a game, whether the payoff is made automatically from the Gaming Machine or in any other manner.

F. "Indian Lands" means:

1. all lands within the exterior boundaries of the Tribe's reservation and its confirmed grants from prior sovereigns; or

2. any other lands title to which is either held in trust by the United States for the exclusive benefit of the Tribe or a member thereof or is held by the Tribe or a member thereof subject to restrictions against alienation imposed by the United States, and over which the Tribe exercises jurisdiction and governmental authority, but not including any land within the boundaries of a municipality that is outside of the boundaries of the Tribe's reservation or confirmed Spanish grant, as those boundaries existed on October 17, 1988.

G. "Key Employee" means that term as defined in 25 CFR Section 502.14.

H. "Management Contract" means a contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

I. "Management Contractor" means any person or entity that has entered into a Management Contract with the Tribe.

J. "Ordinance" means the gaming ordinance and any amendments thereto adopted by the Tribal Council of the Tribe.

K. "Primary Management Official" means that term as defined in 25 CFR Section 502.19.

L. "State" means the State of New Mexico.

M. "State Gaming Representative" means that person designated by the gaming control board pursuant to the Gaming Control Act [60-2E-1 to 60-2E-60 NMSA 1978] who will be responsible for actions of the State set out in the Compact. The representative will be the single contact with the Tribe and may be relied upon as such by the Tribe. If the State Legislature enacts legislation to establish an agency of the State, such agency may assume the duties of the State Gaming Representative.

N. "Tribal Gaming Agency" means the tribal governmental agency which will be identified to the State Gaming Representative as the agency responsible for actions of the Tribe set out in the Compact. It will be the single contact with the State and may be relied upon as such by the State.

O. "Tribe" means any Indian Tribe or Pueblo located within the State of New Mexico entering into this Compact as provided for herein.

SECTION 3. Authorized Class III Gaming.

The Tribe may conduct, only on Indian Lands, subject to all of the terms and conditions of this Compact, any or all forms of casino-style gaming, including but not limited to slot machines and other forms of electronic gaming devices; all forms of poker, blackjack and other casino-style card games, both banked and unbanked; roulette; craps; keno; wheel of fortune; pai gow; and other games played in casino settings; and any form of a lottery.

Subject to the foregoing, the Tribe shall establish, in its discretion, by tribal law, such limitations as it deems appropriate on the number and type of Class III Gaming conducted, the location of Class III Gaming on Indian Lands, the hours and days of operation, and betting and pot limits, applicable to such gaming.

SECTION 4. Regulation of Class III Gaming.

A. Tribal Gaming Agency. The Tribal Gaming Agency will assure that the Tribe will:

1. operate all Class III Gaming pursuant to this Compact, tribal law, the IGRA and other applicable Federal law;

2. provide for the physical safety of patrons in any Gaming Facility;

3. provide for the physical safety of personnel employed by the gaming enterprise;

4. provide for the physical safeguarding of assets transported to and from the Gaming Facility and cashier's cage department;

5. provide for the protection of the property of the patrons and the gaming enterprise from illegal activity;

6. participate in licensing of primary management officials and key employees of a Class III Gaming enterprise;

7. detain persons who may be involved in illegal acts for the purpose of notifying law enforcement authorities; and

8. record and investigate any and all unusual occurrences related to Class III Gaming within the Gaming Facility.

B. Regulations. Without affecting the generality of the foregoing, the Tribe shall adopt laws:

1. prohibiting participation in any Class III Gaming by any person under the age of twenty-one (21);

2. prohibiting the employment of any person in Class III Gaming activities who is under the age of twenty-one (21) or who has not been licensed in accordance with Section 5, herein;

3. requiring the Tribe to take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938, the federal Occupational Safety and Health Act of 1970, and any other federal laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

4. requiring that on any construction project involving any Gaming Facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;

5. prohibiting the Tribe, the Gaming Enterprise and a Management Contractor from discriminating in the employment of persons to work for the gaming Enterprise or in the Gaming Facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap;

6. providing to all employees of a gaming establishment employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers' compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable state programs;

7. providing a grievance process for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

8. permitting State Department of Environment inspectors to inspect Gaming Facilities' food service operations during normal Gaming Facility business hours to assure that standards and requirements equivalent to the State's Food Service Sanitation Act [Chapter 25, Article 1 NMSA 1978] are maintained;

9. prohibiting a gaming enterprise from cashing any paycheck or any type of government assistance check, including Social Security, AFDC, pension and other similar checks, for any patron;

10. prohibiting a gaming enterprise from extending credit by accepting IOUs or markers from its patrons;

11. requiring that odds be posted on each electronic and electromechanical gaming device;

12. requiring that automatic teller machines on Gaming Facility premises be programmed so that the machines will not accept cards issued by the State to AFDC recipients for access to AFDC benefits;

13. providing that each electronic or electromechanical gaming device in use at the Gaming Facility must pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%);

14. providing that no later than ninety days after this Compact takes effect, all gaming machines on the premises of the Gaming Facility will be connected to a central computerized reporting and auditing system on the Gaming Facility premises, which shall collect on a continual basis the activity of each gaming machine in use at the Gaming Facility, and that such data shall be electronically accessible to the State Gaming Representative upon entry of appropriate security codes;

15. enacting provisions that:

(a) prohibit an employee of the Gaming Facility from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the Gaming Facility;

(b) require Gaming Facility employees that dispense, sell, serve or deliver alcoholic beverages to attend Alcohol Server Education Classes similar to those classes provided for in the New Mexico Liquor Control Act; and

(c) purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars ($1,000,000) per incident and two million dollars ($2,000,000) aggregate per policy year;

16. prohibiting alcoholic beverages from being sold, served, delivered or consumed in that part of a Gaming Facility where gaming is allowed;

17. requiring the gaming enterprise to spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gamblers and for the prevention of compulsive gambling;

18. governing any Management Contract regarding its Class III Gaming activity such that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;

19. prohibiting the operation of any Class III Gaming for at least four (4) consecutive hours daily, Mondays through Thursdays (except federal holidays);

20. prohibiting a Tribal Gaming Enterprise and the Tribe from providing, allowing, contracting to provide or arranging to provide alcoholic beverages, food or lodging for

no charge or at reduced prices at a Gaming Facility or lodging facility as an incentive or enticement for patrons to game; and

21. prohibiting the Tribe, the Tribal Gaming Agency or a Management Contractor from contributing directly, or through an agent, representative or employee, revenue from a Gaming Enterprise owned by the Tribe, or anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by the State's Campaign Reporting Act [1-19-25 to 1-19-36 NMSA 1978].

The Tribal Gaming Agency will provide true copies of all tribal laws and regulations affecting Class III Gaming conducted under the provisions of this Compact to the State Gaming Representative within thirty (30) days after the effective date of this Compact, and will provide true copies of any amendments thereto or additional laws or regulations affecting gaming within thirty (30) days after their enactment (or approval, if any).

C. Audit and Financial Statements. The Tribal Gaming Agency shall require all books and records relating to Class III Gaming to be maintained in accordance with generally accepted accounting principles. All such books and records shall be retained for a period of at least six (6) years from the date of creation. Not less than annually, the Tribal Gaming Agency shall require an audit and a certified financial statement covering all financial activities of the gaming enterprise by an independent certified public accountant licensed by the State. The financial statement shall be prepared in accordance with generally accepted accounting principles and shall be submitted to the Tribal Gaming Agency within one hundred twenty (120) days of the close of the Tribe's fiscal year. Copies of the financial statement and the audit shall be furnished to the State Gaming Representative and the state treasurer by the Tribal Gaming Agency within one hundred twenty days of the agency's receipt of the documents. The Tribe will maintain the following records for not less than six (6) years:

1. revenues, expenses, assets, liabilities and equity for each Gaming Facility;

2. daily cash transactions for each Class III Gaming activity at each Gaming Facility, including but not limited to transactions relating to each gaming table bank, game dropbox and gaming room bank;

3. all markers, IOUs, returned checks, hold check or other similar credit instruments;

4. individual and statistical game records (except card games) to reflect statistical drop and statistical win; for electronic, computer, or other technologically assisted games, analytic reports which show the total amount of cash wagered and the total amount of prizes won;

5. contracts, correspondence and other transaction documents relating to all vendors and contractors;

6. records of all tribal gaming enforcement activities;

7. audits prepared by or on behalf of the Tribe; and

8. personnel information on all Class III Gaming employees or agents, including rotation sheets, hours worked, employee profiles and background checks.

D. Violations. The agents of the Tribal Gaming Agency shall have unrestricted access to the Gaming Facility during all hours of Class III Gaming activity, and shall have immediate and unrestricted access to any and all areas of the Gaming Facility for the purpose of ensuring compliance with the provisions of this Compact and the Ordinance. The agents shall report immediately to the Tribal Gaming Agency any suspected violation of this Compact, the Ordinance, or regulations of the Tribal Gaming Agency by the gaming enterprise, Management Contractor, or any person, whether or not associated with Class III Gaming.

E. State Gaming Representative.

1. Upon written request by the State to the Tribe, the Tribe will provide information on primary management officials, key employees and suppliers, sufficient to allow the State to conduct its own background investigations, as it may deem necessary, so that it may make an independent determination as to the suitability of such individuals, consistent with the standards set forth in Section 5, hereinafter. The Tribe shall consider any information or recommendations provided to it by the State as to any such person or entity, but the Tribe shall have the final say with respect to the hiring or licensing of any such person or entity.

2. Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements, the State Gaming Representative authorized in writing by the Governor of the State or by legislation duly enacted by the State Legislature shall have the right to inspect a Gaming Facility, Class III Gaming activity, and all records relating to Class III Gaming (including those set forth in Section 5, hereinafter) of the Tribe, subject to the following conditions:

(a) with respect to public areas of a Gaming Facility, at any time without prior notice during normal Gaming Facility business hours;

(b) with respect to private areas of a Gaming Facility not accessible to the public, at any time during normal Gaming Facility business hours, immediately after notifying the Tribal Gaming Agency and Gaming Facility of his or her presence on the premises and presenting proper identification, and requesting access to the non- public areas of the Gaming Facility. The Tribe, in its sole discretion, may require an employee of the Gaming Facility or the Tribal Gaming Agency to accompany the State Gaming Representative at all times that the State Gaming Representative is on the premises of a Gaming Facility, but if the Tribe imposes such a requirement, the Tribe shall require

such an employee of the Gaming Facility or the Tribal Gaming Agency to be available at all times for such purposes;

(c) with respect to inspection and copying of all management records relating to Class III Gaming, at any time without prior notice between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding official holidays. The reasonable costs of copying will be borne by the State; and

(d) whenever the State Gaming Representative, or his designee, enters the premises of the Gaming Facility for any such inspection, such Representative, or designee, shall identify himself to security or supervisory personnel of the Gaming Facility.

3. Gaming Enterprise and gaming operations information that is provided to the State Gaming Representative shall be considered public information and subject to the Inspection of Public Records Act. Trade secrets, information relating to security and surveillance systems, cash handling and accounting procedures, building layout, gaming machine payouts, investigations into alleged violations of laws or regulations, personnel records and proprietary information regarding the gaming enterprise of the Tribe, Class III Gaming conducted by the Tribe, or the operation thereof, shall not be deemed public records as a matter of state law, and shall not be disclosed to any member of the public, without the prior written approval of a duly authorized representative of the Tribe. These prohibitions shall not be construed to prohibit:

(a) the furnishing of any information to a law enforcement or regulatory agency of the Federal Government;

(b) the State from making known the names of persons, firms, or corporations conducting Class III Gaming pursuant to the terms of this Compact, locations at which such activities are conducted, or the dates on which such activities are conducted;

(c) publishing the terms of this Compact;

(d) disclosing information as necessary to audit, investigate, prosecute or arbitrate violations of this Compact or other applicable laws or to defend suits against the State; and

(e) complying with subpoenas or court orders issued by courts of competent jurisdiction.

4. To the fullest extent allowed by State law, the Tribe shall have the right to inspect State records concerning all Class III Gaming conducted by the Tribe; the Tribe shall have the right to copy such State records, with the Tribe bearing the reasonable cost of copying.

5. For every year or part thereof in which the Tribe is actually engaged in Class III Gaming hereunder, the Tribe shall reimburse the State for the costs the State incurs in carrying out any functions authorized by the terms of this Compact. All calculations of

amounts due shall be based upon the operations of the Gaming Enterprise on the final day of operation of each quarter of the calendar year. Payments due the State shall be made no later than the twenty-fifth day of the month following the end of a quarter to the State Treasurer for deposit into the General Fund of the State ("State General Fund"). The amount of the regulatory fee each quarter shall be the sum of six thousand two hundred fifty dollars ($6,250) per Gaming Facility plus three hundred dollars ($300) per gaming machine plus seven hundred fifty dollars ($750) per gaming table or device other than a Gaming Machine. These amounts shall increase by five percent (5%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

6. In the event the State believes that the Tribe is not administering and enforcing the regulatory requirements set forth herein, it may invoke the procedures set forth in Section 7 of this Compact.

F. The Tribe shall comply with all applicable provisions of the Bank Secrecy Act, P.L. 91-508, October 26, 1970, 31 U.S.C. §§ 5311-5314, and all reporting requirements of the Internal Revenue Service.

SECTION 5. Licensing Requirements.

A. License Required. The Gaming Facility operator (but not including the Tribe), including its principals, primary management officials, and key employees, the Management Contractor and its principals, primary management officials, and key employees (if the Tribe hires a Management Contractor); any person, corporation, or other entity that has supplied or proposes to supply any gaming device to the Tribe or the Management Contractor; and any person, corporation or other entity providing gaming services within or without a Gaming Facility, shall apply for and receive a license from the Tribal Gaming Agency before participating in any way in the operation or conduct of any Class III Gaming on Indian Lands.

B. License Application. Each applicant for a license shall file with the Tribal Gaming Agency a written application in the form prescribed by the Tribal Gaming Agency, along with the applicant's fingerprint card, current photograph and the fee required by the Tribal Gaming Agency.

1. The following Notice ("Privacy Act Notice") shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

"In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. §§ 2701-2721. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming enterprise. The information will be used by members and staff of the Tribal Gaming Agency and the National Indian Gaming Commission who have need for the information in the performance of their official duties. The information may be

disclosed to appropriate federal, tribal, state, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when, pursuant to a requirement by a Tribe, or the National Indian Gaming Commission, the information is relevant to the hiring or firing of an employee, the issuance or revocation of a gaming license or investigations of activities while associated with a Tribe or a gaming enterprise. Failure to consent to the disclosures indicated in this Notice will result in a Tribe being unable to hire you in a primary management official or key employee position with a tribal gaming enterprise.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply an SSN may result in errors in processing your application."

2. Existing principals, key employees and primary management officials shall be notified, in writing, that they shall either:

(a) complete a new application form that contains a Privacy Act Notice; or

(b) sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that Notice.

3. The following Notice ("False Statement Notice") shall be placed on the application form for a principal, key employee or a primary management official before that form is filled out by an applicant:

"A false statement on any part of your application may be grounds for not hiring you or for firing you after you begin work. Also, you may be punished by fine or imprisonment. See 18 U.S.C. § 1001."

4. The Tribal Gaming Agency shall notify, in writing, existing principals, key employees and primary management officials that they shall either:

(a) complete a new application form that contains a False Statement Notice; or

(b) sign a statement that contains the False Statement Notice.

5. The Tribal Gaming Agency shall request from each applicant, and from each principal, primary management official and key employee of each applicant, all of the following information:

(a) full name, other names used (oral or written), Social Security Number(s), birth date, place of birth, citizenship, gender and all languages spoken or written;

(b) currently, and for the previous ten (10) years, business and employment positions held, ownership interests in those businesses, business and residence addresses and driver's license numbers; provided, that any applicant who is a principal, primary management official, key employee, Management Contractor, manufacturer or supplier

of gaming devices, and/or a person providing gaming services, must provide such information currently, and from the age of eighteen (18);

(c) the names and current addresses of at least three (3) personal references, including one (1) personal reference who was acquainted with the applicant during each period of residence listed in Paragraph B.5.(b) of this section;

(d) current business and residence telephone numbers;

(e) a description of any existing and previous business relationships with a Tribe, including ownership interests in those businesses, and a description of any potential or actual conflict of interests between such businesses and a Tribe;

(f) a description of any existing and previous business relationships in the gaming industry, including, but not limited to, ownership interests in those businesses;

(g) the name and address of any licensing or regulatory agency with which the applicant has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(h) for each felony for which there is an ongoing prosecution or a conviction, the charge, the date of the charge, the name and address of the court involved and the disposition, if any;

(i) for each misdemeanor for which there is an ongoing prosecution or conviction (excluding minor traffic violations), the charge, the date of the charge, the name and address of the court involved and the disposition, if any;

(j) for each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is not otherwise listed pursuant to Paragraph B.5.(h) or B.5.(i) of this section, the criminal charge, the date of the charge, the name and address of the court involved and the disposition, if any;

(k) the name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, as an applicant, principal, primary management official or key employee, and whether or not such license or permit was granted;

(l) a current photograph;

(m) fingerprints, which shall be taken by officers of the tribal police department or by another law enforcement agency and forwarded directly to the tribal police department. Pursuant to a Memorandum of Understanding between the Tribe and the National Indian Gaming Commission ("Commission"), tribal police officers shall forward the fingerprint cards directly to the Commission;

(n) the fee required by the Tribal Gaming Agency; and

(o) any other information the Tribal Gaming Agency deems relevant.

C. Background Investigations.

1. Upon receipt of a completed application and required fee for licensing, the Tribal Gaming Agency shall conduct or cause to be conducted a background investigation to ensure that the applicant is qualified for licensing.

2. Background checks of applicants will be performed pursuant to the following procedures:

(a) The Tribal Gaming Agency will provide applications to potential applicants upon request and shall collect and maintain the applications.

(b) Pursuant to a Memorandum of Understanding between the Tribe and the Commission, tribal police officers will collect fingerprints from all applicants and forward the fingerprint cards directly to the Commission. The Commission will obtain a criminal history record from the Federal Bureau of Investigation on each applicant and forward such information to the Tribal Gaming Agency.

(c) The Tribal Gaming Agency shall investigate the information provided in the applications. This investigation shall include:

(1) contacting persons or entities identified in the application and verifying by written or oral communication that the information contained in the application is accurate;

(2) interviewing a sufficient number of knowledgeable people, such as former employers, partners, business associates, and others referred to in the application, to provide a basis for the Tribal Gaming Agency to make a determination concerning whether the applicant meets applicable eligibility requirements;

(3) reviewing relevant financial records of the applicant for the three (3) years preceding the application; and

(4) contacting any state, federal or other government agency that is referred to in the application.

(d) The Tribal Gaming Agency shall document any information it obtains that calls into question whether the applicant would meet the eligibility requirements under the Ordinance. The Tribal Gaming Agency shall then document in detail the disposition of these problem areas, indicating the follow-up investigations performed on the problem areas and the result of such investigations.

(e) The Tribal Gaming Agency will review the results of the investigation. This review will include a determination as to the scope of the investigation and whether sufficient information was obtained and verified. If such information is found not sufficient, the Tribal Gaming Agency will perform additional investigations.

(f) Once the investigation is complete, the Tribal Gaming Agency will decide whether the applicant meets the eligibility criteria under the Ordinance.

3. In conducting a background investigation, the Tribal Gaming Agency and its agents shall keep confidential the identity of each person interviewed in the course of the investigation.

4. Within twenty (20) days of the receipt of a completed application for licensing, and upon request of an applicant, the Tribal Gaming Agency may issue a temporary license to the applicant, unless the background investigation undertaken discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant are apparent on the face of the application. The temporary license shall become void and be of no effect upon either:

(a) the issuance of the license;

(b) the issuance of a notice of denial; or

(c) ninety (90) days after the temporary license is issued, whichever occurs first.

5. The Tribal Gaming Agency shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility or suitability of an applicant, or a principal, key employee or primary management official of an applicant, for employment or involvement in a gaming enterprise. After such consultation, the Tribal Gaming Agency shall either issue a license or deny the application. If the Tribal Gaming Agency determines that employment or involvement of the applicant poses a threat to the public interest or to the effective regulation of Class III Gaming or creates or enhances dangers of unsuitable, unfair or illegal practices, methods or activities in the conduct of Class III Gaming, the Tribal Gaming Agency shall deny the application.

6. The Tribal Gaming Agency shall retain the right to conduct additional background investigations of any person required to be licensed at any time while the license is valid.

D. Procedure for Forwarding Applications and Reports. Procedures for forwarding applications and investigative reports to the Commission and State Gaming Representative:

1. When a key employee or primary management official begins work at a gaming enterprise authorized by this Compact, the Tribal Gaming Agency shall forward to the

Commission and the State Gaming Representative a completed application for employment.

2. The Tribal Gaming Agency shall forward the report referred to in Paragraph D.4. of this section to the Commission and the State Gaming Representative within sixty (60) days after an employee begins work, or within sixty (60) days of the approval of this Compact by the Secretary of the Interior.

3. A key employee or primary management official who does not have a license shall not be employed after ninety (90) days.

4. The Tribal Gaming Agency shall prepare and forward to the Commission and the State Gaming Representative a report on each background investigation ("Investigative Report"). An Investigative Report shall include all of the following:

(a) steps taken in conducting the background investigation;

(b) results obtained;

(c) conclusions reached; and

(d) the basis for those conclusions.

5. The Tribal Gaming Agency shall submit with the Investigative Report a copy of the eligibility determination made under Paragraph C.5. of this section.

6. If a license is not issued to an applicant, the Tribal Gaming Agency shall notify the Commission and the State Gaming Representative.

7. With respect to principals, key employees and primary management officials, the Tribal Gaming Agency shall retain applications for employment and Investigative Reports (if any) for no less than three (3) years from the date of termination of employment.

E. Granting a Gaming License.

1. If within thirty (30) days after it receives an Investigative Report, neither the Commission nor the State Gaming Representative has notified the Tribal Gaming Agency that it has an objection to the issuance of a license pursuant to a license application filed by a principal, key employee or primary management official, the Tribal Gaming Agency may issue a license to such applicant.

2. The Tribal Gaming Agency shall respond to any request for additional information from the Commission or the State Gaming Representative concerning a principal, key employee or primary management official who is the subject of an Investigative Report. Such a request shall suspend the thirty-day (30-day) period under Paragraph E.1. of

this section until the Commission or the State Gaming Representative receives the additional information; however, in no event shall a request for additional information by the State Gaming Representative extend the thirty-day (30-day) period under Paragraph E.1. of this section for a total period of more than sixty (60) days from the date the State Gaming Representative received the Investigative Report.

3. If, within the thirty-day (30-day) period described above, the Commission or the State Gaming Representative provides the Tribal Gaming Agency with a statement itemizing objections to the issuance of a license to a principal, key employee or primary management official for whom the Tribal Gaming Agency has provided an application and Investigative Report, the Tribal Gaming Agency shall reconsider the application, taking into account the objections itemized by the Commission and/or the State Gaming Representative, and make a final decision whether to issue a license to such applicant.

F. Management Contract.

1. If the Tribe chooses to enter into a Management Contract, the Tribal Gaming Agency shall require that all principals, primary management officials and key employees of the Management Contractor be licensed.

2. The Tribe may enter into a Management Contract only if the Management Contract:

(a) provides that all Class III Gaming covered by the Management Contract will be conducted in accordance with the IGRA, the Ordinance and this Compact;

(b) enumerates the responsibilities of each of the parties for each identifiable function, including:

(1) maintaining and improving the Gaming Facility;

(2) providing operating capital;

(3) establishing operating days and hours;

(4) hiring, firing, training and promoting employees;

(5) maintaining the gaming enterprise's books and records;

(6) preparing the gaming enterprise's financial statements and reports;

(7) paying for the services of the independent auditor engaged pursuant to 25 C.F.R. § 571.12;

(8) hiring and supervising security personnel;

(9) providing fire protection services;

(10) setting an advertising budget and placing advertising;

(11) paying bills and expenses;

(12) establishing and administering employment practices;

(13) obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

(14) complying with all applicable provisions of the Internal Revenue Code of 1986, as amended;

(15) paying the cost of public safety services; and

(16) if applicable, supplying the Commission with all information necessary for the Commission to comply with the National Environmental Policy Act of 1969;

(c) provides for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) include an adequate system of internal controls;

(2) permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) be susceptible to audit;

(4) permit the calculation and payment of the Management Contractor's fee; and

(5) provide for the allocation of operating expenses or overhead expenses among the Tribe, the Management Contractor and any other user of a shared Gaming Facility and services;

(d) requires the Management Contractor to provide the Tribe, not less frequently than monthly, verifiable financial reports or all information necessary to prepare such reports;

(e) requires the Management Contractor to provide immediate access to the Gaming Facility, including its books and records, by appropriate officials of the Tribe, who shall have:

(1) the right to verify the daily gross revenues and income from the gaming enterprise; and

(2) access to any other gaming-related information the Tribe deems appropriate;

(f) provides for a minimum guaranteed monthly payment to the Tribe in a sum certain that has preference over the retirement of development and construction costs;

(g) provides an agreed upon maximum dollar amount for the recoupment of development and construction costs;

(h) provides for a term not to exceed the period allowed by the IGRA;

(i) details the method of compensating and reimbursing the Management Contractor. If a Management Contract provides for a percentage fee, such fee shall be either:

(1) not more than thirty percent (30%) of the net revenues of the gaming enterprise if the Chairman of the Commission determines that such percentage is reasonable considering the circumstances; or

(2) not more than forty percent (40%) of the net revenues if the Chairman of the Commission is satisfied that the capital investment required and income projections for the gaming enterprise require the additional fee;

(j) provides the grounds and mechanisms for modifying or terminating the Management Contract;

(k) contains a mechanism to resolve disputes between:

(1) the Management Contractor and customers, consistent with the procedures in the Ordinance;

(2) the Management Contractor and the Tribe; and

(3) the Management Contractor and the gaming enterprise employees;

(l) indicates whether and to what extent contract assignments and subcontracting are permissible;

(m) indicates whether and to what extent changes in the ownership interest in the Management Contract require advance approval by the Tribe; and

(n) states that the Management Contract shall not be effective unless and until it is approved by the Chairman of the Commission, date of signature of the parties notwithstanding.

3. The Tribe shall not enter into any Management Contract if the Tribal Gaming Agency determines that the Management Contractor or any principal, primary management official or key employee of the Management Contractor is not licensed or is ineligible to be licensed.

G. Confidentiality of Records. Any and all background Investigative Reports on employees or contractors, supporting documents acquired or generated in connection therewith, and any other Investigative Reports or documents acquired or generated in the course of investigations performed by the Tribe or the Tribal Gaming Agency, that are provided to the State Gaming Representative or any other agency or official of the State by the Tribal Gaming Agency or the Tribe pursuant to the provisions of this Compact, shall not be deemed public records of the State and shall not be disclosed to any member of the public without the prior express written authorization of an authorized representative of the Tribe; provided, that nothing herein shall preclude any State agency or official from providing information to a federal agency or official having responsibility relative to Indian Gaming or from compliance with any valid order of a court having jurisdiction.

SECTION 6. Providers of Class III Gaming Equipment or Devices or Supplies.

A. Within thirty (30) days after the effective date of this Compact, if it has not already done so, the Tribal Gaming Agency will adopt standards for any and all Class III Gaming equipment, devices or supplies to be purchased, leased or otherwise acquired by the Tribe after the effective date of this Compact for use in any Gaming Facility, which standards shall be at least as strict as the comparable standards applicable to Class III Gaming equipment, devices or supplies within the State of Nevada. Any and all Class III Gaming equipment, devices or supplies acquired by the Tribe after the date of this Compact shall meet or exceed the standards thereby adopted, and any and all Class III Gaming equipment, devices or supplies used by the Tribe in its Gaming Facilities as of the effective date of this Compact shall be upgraded or replaced, if necessary, so as to comply with such standards, by no later than one (1) year after the effective date of this Compact.

B. Prior to entering into any future lease or purchase agreement for Class III Gaming equipment, devices or supplies, the Tribe shall obtain sufficient information and identification from the proposed seller or lessor and all persons holding any direct or indirect financial interest in the lessor or the lease/purchase agreement to permit the Tribe to license those persons in accordance with Section 5, hereof.

C. The seller, lessor, manufacturer or distributor shall provide, assemble and install all Class III Gaming equipment, devices or supplies in a manner approved and licensed by the Tribe.

SECTION 7. Dispute Resolution.

A. In the event either party believes that the other party has failed to comply with or has otherwise breached any provision of this Compact, such party may invoke the following procedure:

1. The party asserting noncompliance shall serve written notice on the other party. The notice shall identify the specific Compact provision believed to have been violated and

shall specify the factual and legal basis for the alleged noncompliance. The notice shall specifically identify the date, time and nature of the alleged noncompliance. Representatives of the State and Tribe shall thereafter meet within thirty (30) days in an effort to resolve the dispute.

2. In the event an allegation by the complaining party is not resolved to the satisfaction of such party within ninety (90) days after service of the notice set forth in Paragraph A.1. of this section, the complaining party may serve upon the other party a notice to cease conduct of the particular game(s) or activities alleged by the complaining party to be in noncompliance. Upon receipt of such notice, the responding party may elect to stop the game(s) or activities specified in the notice or invoke arbitration and continue the game(s) or activities pending the results of arbitration. The responding party shall act upon one of the foregoing options within thirty (30) days of receipt of notice from the complaining party.

3. Arbitration under this authority shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association, except that the arbitrators shall be attorneys who are licensed members in good standing of the State Bar of New Mexico or of the bar of another state. The State will select one arbitrator, the Tribe a second arbitrator, and the two so chosen shall select a third arbitrator. If the third arbitrator is not chosen in this manner within ten (10) days after the second arbitrator is selected, the third arbitrator will be chosen in accordance with the rules of the American Arbitration Association.

4. All parties shall bear their own costs of arbitration and attorney fees.

5. The results of arbitration shall be enforceable by an action for injunctive or mandatory injunctive relief against the State and the Tribe in any court of competent jurisdiction. For purposes of any such action, the State and the Tribe acknowledge that any action or failure to act on the part of any agent or employee of the State or the Tribe, contrary to a decision of the arbitrators in an arbitration proceeding conducted under the provisions of this section, occurring after such decision, shall be wholly unauthorized and ultra vires acts, not protected by the sovereign immunity of the State or the Tribe.

B. Nothing in Subsection 7A. shall be construed to waive, limit or restrict any remedy that is otherwise available to either party to enforce or resolve disputes concerning the provisions of this Compact. Nothing in this Compact shall be deemed a waiver of the Tribe's sovereign immunity. Nothing in this Compact shall be deemed a waiver of the State's sovereign immunity.

SECTION 8. Protection of Visitors.

A. Liability to Visitors. The safety and protection of visitors to a Gaming Facility and uniformity and application of laws and jurisdiction of claims is directly related to and necessary for the regulation of Tribal gaming activities in this state. To that end, the general civil laws of New Mexico and concurrent civil jurisdiction in the State courts and

the Tribal courts shall apply to a visitor's claim of liability for bodily injury or property damage proximately caused by the conduct of the Gaming Enterprise and:

1. occurring at a Gaming Facility, other premises, structures, on grounds or involving vehicles and mobile equipment used by a Gaming Enterprise;

2. arising out of a condition at the Gaming Facility or on premises or roads and passageways immediately adjoining it;

3. occurring outside of the Gaming Facility but arising from the activities of the Gaming Enterprise;

4. as a result of a written contract that directly relates to the ownership, maintenance or use of a Gaming Facility or when the liability of others is assumed by the Gaming Enterprise; or

5. on a road or other passageway on Indian lands while the visitor is traveling to or from the Gaming Facility.

B. Insurance Coverage for Claims Required. The Gaming Enterprise shall maintain in effect policies of liability insurance insuring the Tribe, its agents and employees against claims, demands or liability for bodily injury and property damages by a visitor arising from an occurrence described in Subsection A of this section. The policies shall provide bodily injury and property damage coverage in an amount of a least one million dollars ($1,000,000) per person and ten million dollars ($10,000,000) per occurrence. The Tribe shall provide the State Gaming Representative annually a certificate of insurance showing that the Tribe, its agents and employees are insured to the required extent and in the circumstances described in this section.

C. Limitation on Time to Bring Claim. Claims brought pursuant to the provisions of this section must be commenced by filing an action in court or a demand for arbitration within three years of the date the claim accrues.

D. Specific Waiver of Immunity. The Tribe, by entering into this Compact and agreeing to the provisions of this section, waives its defense of sovereign immunity in connection with any claims for compensatory damages up to the amount of one million dollars ($1,000,000) per injured person and ten million dollars ($10,000,000) per occurrence asserted as provided in this section. This is a limited waiver and does not waive the tribe's immunity from suit for any other purpose. The Tribe shall ensure that a policy of insurance that it acquires to fulfill the requirements of this section shall include a provision under which the insurer agrees not to assert the defense of sovereign immunity on behalf of the insured.

E. Election by Visitor. A visitor having a claim described in this section may pursue that claim in the State court of general jurisdiction for such claims or the Tribal court or, at

the option of the visitor, may proceed to enforce the claim in binding arbitration. The visitor shall make a written election that is final and binding upon the visitor.

F. Arbitration. Arbitration shall be conducted pursuant to an election by a visitor as provided in Subsection E of this section as follows:

1. the visitor shall submit a written demand for arbitration to the Gaming Enterprise, by certified mail, return receipt requested;

2. the visitor and the Gaming Enterprise shall each designate an arbitrator within thirty (30) days of the date of receipt of the demand, and the two arbitrators shall select a third arbitrator;

3. the arbitration panel shall permit the parties to engage in reasonable discovery, and shall establish other procedures to ensure a full, fair and expeditious hearing on the claim; and

4. the award of the arbitration panel shall be final and binding.

G. Public Health and Safety. The Tribe shall establish for its Gaming Facility health, safety and construction standards that are at least as stringent as the current editions of the National Electrical Code, the Uniform Building Code, the Uniform Mechanical Code, the Uniform Fire Code and the Uniform Plumbing Code, and any and all Gaming Facilities or additions thereto constructed by the Tribe hereafter shall be constructed and all facilities shall be maintained so as to comply with such standards. Inspections will be conducted with respect to these standards at least annually. If the State Gaming Representative requests sufficiently in advance of an annual inspection, the State Gaming Representative may be present during such inspection. The Tribe agrees to correct any deficiencies noted in such inspections within a time agreed upon between the State and Tribe. The Tribal Gaming Agency will provide copies of such inspection reports to the State Gaming Representative, if requested to do so in writing.

SECTION 9. Effective Date. This Compact shall be effective immediately upon the occurrence of the last of the following:

A. execution by the Tribe's Governor after approval of the Tribal Council;

B. execution by the Governor of the State;

C. approval by the Secretary of the Interior; and

D. publication in the Federal Register.

The Governor is authorized to execute compacts with an individual Tribe that has also entered into revenue-sharing agreements and has passed resolutions described herein,

in substantially the same form as set forth herein. Upon signature by the Governor and the Tribe, the Compact shall be transmitted to the Secretary of the Interior for approval.

SECTION 10. Criminal Jurisdiction.

A. The Tribe and the State acknowledge that under the provisions of § 23 of the IGRA, especially that portion codified at 18 U.S.C. § 1166(d), jurisdiction to prosecute violations of State gambling laws made applicable by that section to Indian country is vested exclusively within the United States, unless the Tribe and the State agree in a compact entered into pursuant to the IGRA to transfer such jurisdiction to the State.

B. The Tribe and the State hereby agree that, in the event of any violation of any State gambling law on Indian Lands or any other crime against the Gaming Enterprise or any employee thereof or that occurs on the premises of the Tribal Gaming Facility, that is committed by any person who is not a member of the Tribe, the State shall have and may exercise jurisdiction, concurrent with that of the United States, to prosecute such person, under its laws and in its courts.

C. Immediately upon becoming aware of any such suspected crime by a nonmember of the Tribe, the Gaming Enterprise or the Tribal Gaming Agency shall notify the state attorney general and the district attorney for the district in which the Gaming Facility is located, supplying all particulars available to the tribal entity at the time. The Tribe agrees that its law enforcement and gaming agencies shall perform such additional investigation or take such other steps in furtherance of the investigation and prosecution of the violation as the district attorney may reasonably request, and otherwise cooperate fully with the district attorney and any state law enforcement agencies with respect to the matter, but once notice of a suspected violation has been given to the district attorney, the matter shall be deemed to be under the jurisdiction of the State (except that in the event of emergency circumstances involving a possible violation, the Tribe and its constituent agencies shall have the discretion to act as they see fit, and to call upon such other agencies or entities as they deem reasonable or necessary, in order to protect against any immediate threat to lives or property). The State may, in its discretion, refer the matter to federal authorities, but it shall notify the Tribal Gaming Agency upon doing so.

D. The State agrees that no less frequently than annually it will provide the Tribal Gaming Agency with a written report of the status and disposition of each matter referred to it under the provisions of this section that is still pending. In the event the district attorney to whom a matter is referred under the provisions of this section decides not to prosecute such matter, the district attorney shall promptly notify the Tribal Gaming Agency of such decision in writing. The Tribal Gaming Agency may in that event ask the attorney general of the state to pursue the matter.

E. The district attorney for the district in which the Gaming Facility is situated may decline to accept referrals of cases under the provisions of this section unless and until the Tribe has entered into a Memorandum of Understanding with the office of the district

attorney to which Memorandum of Understanding the United States Attorney for the District of New Mexico may also be a party addressing such matters as the specific procedures by which cases are to be referred, participation of the Tribal Gaming Agency and tribal law enforcement personnel in the investigation and prosecution of any such case, payments by the Tribe to the office of the district attorney to defray the costs of handling cases referred under the provisions of this section, and related matters.

SECTION 11. Binding Effect and Duration.

A. This Compact shall be binding upon the State and Tribe for a term of nine (9) years from the date it becomes effective and may renew for an additional period.

B. Before the date that is one (1) year prior to the expiration of the ten-year (10-year) initial term, and/or before the date that is one (1) year prior to the expiration of the renewal period, either party may serve written notice on the other of its desire to renegotiate this Compact.

C. In the event that either party gives written notice to the other of its desire to renegotiate this Compact pursuant to Subsection B. of this section, the Tribe may, pursuant to the procedures of the IGRA, request the State to enter into negotiations for a new compact governing the conduct of Class III Gaming. If the parties are unable to conclude a successor compact, this Compact shall terminate.

D. Notwithstanding the foregoing, at any time while this Compact remains in effect, either party may, by written notice to the other party, request reopening of negotiations with respect to any provision of this Compact, or with respect to any issue not addressed in the Compact, specifying such provision or issue in such notice. No such request shall be unreasonably refused, but neither party shall be required to agree to any change in the Compact, and no agreement to supplement or amend this Compact in any respect shall have any validity until the same shall have been approved in writing by the Tribe, the State and the Secretary of the Interior and notice of such approval published in the Federal Register.

E. The Tribe may operate Class III Gaming only while this Compact or any renegotiated compact is in effect.

SECTION 12. Notice to Parties.

Unless otherwise indicated, all notices, payments, requests, reports, information or demand that any party hereto may desire or may be required to give to the other party hereto, shall be in writing and shall be personally delivered or sent by first-class mail sent to the other party at the address provided in writing by the other party. Every notice, payment, request, report, information or demand so given shall be deemed effective upon receipt or, if mailed, upon receipt or the expiration of the third day following the day of mailing, whichever occurs first, except that any notice of change of

address shall be effective only upon receipt by the party to whom said notice is addressed.

SECTION 13. Entire Agreement.

This Compact is the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter hereof. Neither this Compact nor any provision herein may be changed, waived, discharged or terminated orally, but only by an instrument, in writing, signed by the Tribe and the State and approved by the Secretary of the Interior. This Compact shall not be amended without the express approval of the Tribe, the Governor of the State and the State Legislature.

SECTION 14. Filing of Compact with State Records Center.

Upon the effective date of this Compact, a copy shall be filed by the Governor with the New Mexico Records Center. Any subsequent amendment or modification of this Compact shall be filed with the New Mexico Records Center.

SECTION 15. Counterparts.

This Compact may be executed by the parties in any number of separate counterparts with the same effect as if the signatures were upon the same instrument. All such counterparts shall together constitute one and the same document."

History: Laws 1997, ch. 190, § 1.

ANNOTATIONS

Cross references. - For criminal offenses relating to gambling, see Chapter 30, Article 19 NMSA 1978.

For the Indian Gaming Control Act, see Chapter 60, Article 2E NMSA 1978.

Effective dates. - Laws 1997, ch. 190, § 70 does not contain an effective date provision applicable to the Indian Gaming Compact, but, pursuant to N.M. Const., art. IV, § 23, the compact is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Indian Gaming Compacts approved. - The Secretary of the Interior, through the Assistant Secretary for Indian Affairs, published in the August 29, 1997, Federal Register (62 FR 45867) notice of Indian Gaming Compacts, executed on July 9, 1997, between the State of New Mexico and the following tribes and pueblos: the Mescalero Apache Tribe, Pueblo of San Felipe, Pueblo of Pojoaque, Pueblo of Tesuque, Pueblo of Laguna, Pueblo of Santa Clara, Pueblo of Sandia, Pueblo of Taos, Pueblo of Acoma and Pueblo of Isleta. Pursuant to Section 11 of the Indian Gaming Regulatory Act of

1998 (25 U.S.C. § 2710), these compacts are considered approved, effective August 29, 1997, but only to the extent they are consistent with the provisions of that act.

The Secretary of the Interior, through the Assistant Secretary for Indian Affairs, published in the October 15, 1997, Federal Register (62 FR 53650) notice of an Indian Gaming Compact between the State of New Mexico and the Pueblo of San Juan, executed on July 11, 1997. Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1998 (25 U.S.C. § 2710), these compacts are considered approved, effective October 15, 1997, but only to the extent they are consistent with the provisions of that act.

The Secretary of the Interior, through the Assistant Secretary for Indian Affairs, published in the November 5, 1997, Federal Register (62 FR 53650) notice of Indian Gaming Compacts, executed on August 20, 1997, between the State of New Mexico and the following tribes and pueblos: Pueblo of Picuris, Pueblo of Santa Ana, and the Jicarilla Apache Tribe, and an Indian Gaming Compact between the State of New Mexico and the Pueblo of Nambe, executed on September 5, 1997. Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1998 (25 U.S.C. § 2710), these compacts are considered approved, effective August 29, 1997, but only to the extent they are consistent with the provisions of that act.

Liquor Control Act. - See 60-3A-1 NMSA 1978 and notes thereto.

Fair Labor Standards Act. - The federal Fair Labor Standards Act, referred to in Paragraph B(3) of Section 4, is codified as 29 U.S.C. § 201 et seq.

Occupational Safety and Health Act. - The federal Occupational Safety and Health Act, referred to in Paragraph B(3) of Section 4, is codified as 29 U.S.C. § 651 et seq.

Privacy Act of 1974. - The federal Privacy Act of 1974, referred to in Paragraph B(1) of Section 5, is codified as 5 U.S.C. § 552a.

Internal Revenue Code. - The federal Internal Revenue Code of 1986, referred to in Paragraph F(2) of Section 5, is codified as 26 U.S.C. § 1 et seq.

National Environmental Policy Act. - The federal National Environmental Policy Act, referred to in Paragraph F(2) of Section 5, is codified as 42 U.S.C. §§ 4321, 4331 to 4335, and 4341 to 4347.

Approval of compacts under Indian Gaming Regulatory Act. - In order for class III Indian gaming operations to be valid under The Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.): the state and the tribe must have "entered into" a compact and the compact must be "in effect" pursuant to secretarial approval and notice; state law determines the procedures by which a state may validly enter into a compact; and in determining whether the state and the tribes have entered into valid and binding compacts under New Mexico law the New Mexico Supreme Court decision of *State ex rel. Clark v. Johnson,* 120 N.M. 562, 904 P.2d 11 (1995) controls. Pueblo of Santa Ana

v. Kelly, 104 F.3d 1546 (10th Cir. 1997), cert. denied, 522 U.S. 807, 118 S. Ct. 45, 139 L. Ed. 2d 11 (1997).

Limits on arbitration. - An arbitration panel selected under Section 7 of the Compact could not change or invalidate the regulatory fees specified in Paragraph E(5) of Section 4. 1999 Op. Att'y Gen. No. 99-02.

If the revenue sharing agreement codified at 11-3-2 NMSA 1978, is covered by Section 7 of the Compact, the arbitration panel would not have authority to determine the legal validity of the revenue-sharing amount. 1999 Op. Att'y Gen. No. 99-02.

11-13-2. Revenue sharing of tribal gaming revenue.

The governor is authorized to execute a revenue-sharing agreement in the form substantially set forth in this section with any New Mexico Indian nation, tribe or pueblo that has also entered into an Indian gaming compact as provided by law. Execution of an Indian gaming compact is conditioned upon execution of a revenue-sharing agreement. The consideration for the Indian entity entering into the revenue-sharing agreement is the condition of the agreement providing limited exclusivity of gaming activities to the tribal entity. The revenue-sharing agreement shall be in substantially the following form and is effective when executed by the governor on behalf of the state and the appropriate official of the Indian entity:

"REVENUE-SHARING AGREEMENT

1. Summary and consideration. The Tribe shall agree to contribute a portion of its Class III Gaming revenues identified in and under procedures of this Revenue-Sharing Agreement, in return for which the State agrees that the Tribe:

A. has the exclusive right within the State to provide all types of Class III Gaming described in the Indian Gaming Compact, with the sole exception of the use of Gaming Machines, which the State may permit on a limited basis for racetracks and veterans' and fraternal organizations; and

B. will only share that part of its revenue arising from the use of Gaming Machines and all other gaming revenue is exclusively the Tribe's.

2. Revenue to State. The parties agree that, after the effective date hereof, the Tribe shall make the quarterly payments provided for in Paragraph 3 of the Revenue Sharing Agreement to the state treasurer for deposit into the General Fund of the State ("State General Fund").

3. Calculation of Revenue to State.

A. As used in this Revenue-Sharing Agreement, "net win" means the annual total amount wagered at a Gaming Facility on Gaming Machines less the following amounts:

(1) the annual amount paid out in prizes from gaming on Gaming Machines;

(2) the actual amount of regulatory fees paid to the state; and

(3) the sum of two hundred fifty thousand dollars ($250,000) per year as an amount representing tribal regulatory fees, with these amounts increasing by five percent (5%) each year beginning on the first day of January occurring after the Compact has been in effect for at least twelve months.

B. The Tribe shall pay the state sixteen percent (16%) of the net win.

C. For purposes of these payments, all calculations of amounts due shall be based upon the quarterly activity of the gaming facility. Quarterly payments due to the State pursuant to these terms shall be paid no later than twenty-five (25) days after the last day of each calendar quarter. Any payments due and owing from the Tribe in the quarter the Compact is approved, or the final quarter the Compact is in force, shall reflect the net win, but only for the portion of the quarter the Compact is in effect.

4. Limitations. The Tribe's obligation to make the payments provided for in Paragraphs 2 and 3 of this section shall apply and continue only so long as there is a binding Indian Gaming Compact in effect between the Tribe and the State, which Compact provides for the play of Class III Gaming, but shall terminate in the event of any of the following conditions:

A. If the State passes, amends, or repeals any law, or takes any other action, which would directly or indirectly attempt to restrict, or has the effect of restricting, the scope of Indian gaming.

B. If the State permits any expansion of nontribal Class III Gaming in the State. Notwithstanding this general prohibition against permitted expansion of gaming activities, the State may permit: (1) the enactment of a State lottery, (2) any fraternal, veterans or other nonprofit membership organization to operate such electronic gaming devices lawfully, but only for the benefit of such organization's members, (3) limited fundraising activities conducted by nonprofit tax exempt organizations pursuant to Section 30-19-6 NMSA 1978, and (4) any horse racetracks to operate electronic gaming devices on days on which live or simulcast horse racing occurs.

5. Effect of Variance. In the event the acts or omissions of the State cause the Tribe's obligation to make payments under Paragraph 3 of this section to terminate under the provisions of Paragraph 4 of this section, such cessation of obligation to pay will not adversely affect the validity of the Compact, but the amount that the Tribe agrees to reimburse the State for regulatory fees under the Compact shall automatically increase by twenty percent (20%).

6. Third-Party Beneficiaries. This Agreement is not intended to create any third-party beneficiaries and is entered into solely for the benefit of the Tribe and the State."

History: Laws 1997, ch. 190, § 2.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 190, § 70 does not contain an effective date provision applicable to the Indian Gaming Compact, but, pursuant to N.M. Const., art. IV, § 23, the compact is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ARTICLE 13A
COMPACT NEGOTIATION

11-13A-1. Short title.

This act [11-13A-1 to 11-13A-5 NMSA 1978] may be cited as the "Compact Negotiation Act".

History: Laws 1999, ch. 252, § 1.

ANNOTATIONS

Emergency clauses. - Laws 1999, ch. 252, § 6 makes the Compact Negotiation Act effective immediately. Approved April 7, 1999.

11-13A-2. Definitions.

As used in the Compact Negotiation Act [11-13A-1 to 11-13A-5 NMSA 1978]:

A. "committee" means the joint legislative committee on compacts;

B. "compact" means a tribal-state class III gaming compact entered into between a tribe and the state pursuant to the federal Indian Gaming Regulatory Act and including any separate agreement ancillary to that compact;

C. "governor" means the governor of New Mexico; and

D. "tribe" means an Indian nation, tribe or pueblo located in whole or in part within the state.

History: Laws 1999, ch. 252, § 2.

ANNOTATIONS

Emergency clauses. - Laws 1999, ch. 252, § 6 makes the Compact Negotiation Act effective immediately. Approved April 7, 1999.

Indian Gaming Regulatory Act. - The Federal Indian Gaming Regulatory Act, referred to in Subsection B, appears as 25 U.S.C. § 2701 et seq.

11-13A-3. Compacts; negotiation; submission to committee by governor.

A. A tribe, pursuant to action of its governing authority, may request the state to negotiate a compact or to negotiate an amendment to an approved and existing compact. The request shall be in writing and shall be submitted to the governor.

B. The legislature by joint resolution or the governor may request a tribe to negotiate a compact or to negotiate an amendment to an approved and existing compact by submitting a written request to the chief executive officer of the tribe or a representative authorized by an existing compact to negotiate modifications to that compact.

C. The governor may designate a representative to negotiate the terms of a compact or an amendment, unless a representative has been identified in the wording of the compact to be amended. The designation shall be written, and a copy of the designation shall be delivered or mailed within three days of the designation to the attorney general, the speaker of the house of representatives and the president pro tempore of the senate. The governor or the governor's designated representative is authorized to negotiate the terms of a compact or amendment on behalf of the state, but neither the representative nor the governor is authorized to execute a compact or amendment on behalf of the state without legislative approval granted pursuant to the provisions of Section 4 of the Compact Negotiation Act [11-13A-4 NMSA 1978].

D. If a proposed compact or amendment is agreed upon through negotiations between the tribal representative and the governor's representative, it shall be prepared and submitted by the governor to the committee within five days of the conclusion of negotiations. The governor shall include in his submittal document his recommendation for approval of the proposed compact or amendment and comments about or analysis of its provisions.

History: Laws 1999, ch. 252, § 3.

ANNOTATIONS

Emergency clauses. - Laws 1999, ch. 252, § 6 makes the Compact Negotiation Act effective immediately. Approved April 7, 1999.

11-13A-4. Submittal to committee; committee action; legislative action.

A. Submittal of a proposed compact or amendment occurs when the compact or amendment and the submittal document are received for the committee by the legislative council service.

B. After its receipt, the committee shall review the proposed compact or amendment in a timely manner but no later than forty-five days from receipt and shall:

(1) recommend approval of the proposed compact or amendment by submitting a joint resolution to approve the compact or amendment to the legislature; or

(2) by written transmittal document, propose specific modifications to the proposed compact or amendment and request the governor to resume negotiations with the tribe.

C. If the committee proposes specific modifications to the proposed compact or amendment, the governor or his designated representative shall resume negotiations with the tribe within twenty days of receipt of the transmittal document unless within that time period either the governor or the tribe refuses to negotiate further, in which case the governor shall notify the committee immediately.

D. If negotiations are resumed pursuant to Subsection C of this section and a modified proposed compact or amendment is agreed to, the governor shall submit the modified proposed compact or amendment together with any additional analysis or recommendations to the committee. The approval process described in this section for the originally submitted proposed compact or amendment shall be followed for consideration of a proposed modified compact or a proposed modified amendment, except that the committee shall conduct its review in a timely manner but in not more than thirty days.

E. Within thirty days of being notified that further negotiations are refused, the committee shall meet to reconsider the proposed compact or amendment together with any changes agreed upon by the negotiating parties. The committee shall submit to the legislature the proposed compact or amendment and a joint resolution to approve the proposed compact or amendment with the committee's recommendation to approve it or disapprove it, or expressing no recommendation on the action that should be taken by the legislature.

F. The committee may return a proposed compact or amendment with suggested modifications to the governor and the tribe for renegotiation no more than three times. After the third submittal for renegotiation, the committee shall submit to the legislature the proposed compact or amendment and a joint resolution to approve the proposed compact or amendment with the committee's recommendation to approve it or disapprove it, or expressing no recommendation on the action that should be taken by the legislature.

G. If the legislature is in session when the committee makes its decision on the proposed compact or amendment, the committee shall prepare and introduce a joint

resolution to approve the proposed compact or amendment without delay after reaching its decision. The joint resolution shall be accompanied by the committee's recommendation to approve or to disapprove or expressing no recommendation. A joint resolution may cover more than one compact or amendment if the terms of the compacts or amendments are identical except for the name of the tribe and the name of the person executing the compact on behalf of the tribe. If a majority in each house votes to adopt the joint resolution, the proposed compact or amendment is approved by the legislature, and the governor shall execute it on behalf of the state.

H. If the legislature is not in session when the recommendation of the committee is submitted, the committee shall proceed pursuant to the provisions of Subsection G of this section by no later than the second day of the next regular or special session of the legislature.

I. The legislature may only amend or modify the joint resolution submitted to it pursuant to the provisions of this section so as to correct technical errors in the text or format. Neither house may refer the joint resolution to a committee other than a committee of the whole in each house.

J. If a request for negotiation of a compact or amendment is made and the proposed compact or amendment is identical to a compact or amendment previously approved by the legislature except for the name of the compacting tribe and the names of the persons to execute the compact or amendment on behalf of the tribe and on behalf of the state, the governor shall approve and sign the compact or amendment on behalf of the state without submitting the compact for approval pursuant to the provisions of this section. A compact or amendment signed by the governor pursuant to this subsection is deemed approved by the legislature.

History: Laws 1999, ch. 252, § 4.

ANNOTATIONS

Emergency clauses. - Laws 1999, ch. 252, § 6 makes the Compact Negotiation Act effective immediately. Approved April 7, 1999.

11-13A-5. Joint legislative committee on compacts; creation; membership; authority.

A. The joint legislative "committee on compacts" is created. Once established it shall continue to exist until specific action is taken by the legislature to terminate its existence.

B. The committee shall consider the requirements of the federal Indian Gaming Regulatory Act, provisions of existing state law and the best interests of the tribes and the citizens of the state in considering any compact or amendment submitted to it.

C. The committee shall have sixteen members, eight from the house of representatives and eight from the senate. House members shall be appointed annually by the speaker of the house and senate members shall be appointed annually by the committees' committee or, if the senate appointments are made in the interim, by the president pro tempore after consultation with and agreement of a majority of the members of the committees' committee. Members shall be appointed from each house to give the two major political parties in each house equal representation on the committee. The appointing authorities shall consider appointing to the committee a Native American member or a member who represents a district in which Native Americans constitute a significant percentage of the voting age population.

D. The president pro tempore of the senate shall designate a senate member of the committee to be chairman of the committee in odd-numbered years and the vice chairman in even-numbered years. The speaker of the house of representatives shall designate a house member of the committee to be chairman of the committee in even-numbered years and the vice chairman in odd-numbered years.

E. The committee shall meet at the call of the chairman to consider a compact or amendment submitted to it.

F. The committee may meet during legislative sessions as needed.

G. Staff services for the committee shall be provided by the legislative council service.

History: Laws 1999, ch. 252, § 5.

ANNOTATIONS

Emergency clauses. - Laws 1999, ch. 252, § 6 makes the Compact Negotiation Act effective immediately. Approved April 7, 1999.

Indian Gaming Regulatory Act. - The Federal Indian Gaming Regulatory Act, referred to in Subsection B, appears as 25 U.S.C. § 2701 et seq.

ARTICLE 14
MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

11-14-1. Enactment and joinder with other jurisdictions.

The Multistate Highway Transportation Agreement is adopted and entered into with all other jurisdictions legally joining therein in the form substantially set forth in Section 2 [11-14-2 NMSA 1978].

History: Laws 1997, ch. 191, § 1.

ANNOTATIONS

Emergency clauses. - Laws 1997, ch. 191, § 7 makes the act effective immediately. Approved April 10, 1997.

11-14-2. Provisions of agreement.

The provisions of this multistate agreement are as follows:

"MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

ARTICLE I. FINDINGS AND PURPOSE

(a) The participating jurisdictions find that:

(1) Highway transportation is the major mode for movement of people and goods in the western states.

(2) Uniform application of state vehicle regulations and laws may result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity.

(b) The purposes of this agreement are to:

(1) Adhere to the principle that each participating jurisdiction has the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system.

(2) Establish a system that would promote more efficient operation of vehicles traveling between two or more participating jurisdictions regarding necessary state government vehicle laws and regulations.

(3) Encourage uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement when the objectives are compatible with the safe operation of the vehicles on each member's highway system, and when these size and weight standards do not have an adverse impact on state and local highway, street or road maintenance programs.

(4) Encourage uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(5) Provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in paragraph (a) of this article.

ARTICLE II. DEFINITIONS

(a) As used in this agreement:

(1) "Designated representative" means a legislator or other person authorized to represent the jurisdiction.

(2) "Jurisdiction" means a state of the United States or the District of Columbia.

(3) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards and which operates in two or more participating jurisdictions.

ARTICLE III. GENERAL PROVISIONS

(a) Participation in this agreement is open to jurisdictions which subscribe to the findings, purpose and objectives of this agreement and which seek legislation necessary to accomplish these objectives.

(b) The particular jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

(c) Article headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or paragraph hereof.

(d) This agreement shall not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or rules or regulations thereof.

(e) The final decisions regarding the interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions acting through their designated representatives. Results of all such actions shall be in writing.

(f) This agreement may be amended by unanimous joint action of the participating jurisdictions acting through their designated representatives. Any amendments shall be in writing and shall become a part of the agreement.

(g) Any jurisdiction entering this agreement shall provide each of the other participating jurisdictions with a list of any of its restrictions, conditions, or limitations on the general terms of this agreement.

(h) Any jurisdiction may become a member of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV. COOPERATING COMMITTEE

(a) Pursuant to paragraph (b) of Article III, the designated representatives of the participating jurisdictions shall constitute a committee which shall have the power to:

(1) Collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size, vehicle weight-related matters, highway safety and bridge maintenance problems caused by heavy vehicles.

(2) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(3) Recommend changes in law or policy, including the compatibility of laws and uniformity of rules and regulations which would assist effective governmental action or coordination in the field of vehicle size and weight-related matters.

(b) Each participating jurisdiction shall be entitled to one vote only. No action of the committee shall be binding unless a majority of the participating jurisdictions are in favor thereof.

(c) The committee shall meet at least once annually and shall elect, from among its members, a vice chairman and a secretary.

(d) The committee shall submit annually to the legislature of each participating jurisdiction, not later than November 1, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable. Copies of all such reports shall be made available to the Transportation Committee of the Western Conference, Council of State Governments, and to the Western Association of State Highway and Transportation Officials.

ARTICLE V. OBJECTIVES OF THE PARTICIPATING JURISDICTIONS

(a) The participating jurisdictions hereby declare that:

(1) It is the objective of the participating jurisdictions to obtain safer, more economical transportation by motor vehicles among the participating jurisdictions.

(2) It is the further objective of the participating jurisdictions that in the event the operation of a vehicle, or combination of vehicles pursuant to the objectives stated in paragraph (1) of subdivision (b) would result in withholding or forfeiture of federal-aid funds, the operation of such vehicle, or combination of vehicles shall be authorized under special permit authority by each participating jurisdiction which can legally issue such permits.

(3) The authority of any participating jurisdiction to issue special permits for the movement of any vehicle, or combination of vehicles, having dimensions or weights, or

both, in excess of the maximum statutory limits in each participating jurisdiction shall not be affected.

(4) It is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle, or combination of vehicles, among the participating jurisdictions. To that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size weight-related matters including, but not limited to, the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; traffic safety and highway maintenance; and such other matters as may be pertinent.

(5) In recognition of the desire for a degree of national uniformity of size and weight regulations, it is the further objective of the participating jurisdictions to encourage the development of broad, uniform size and weight standards on a national basis under this agreement that are compatible with national standards.

ARTICLE VI. ENTRY INTO FORCE AND WITHDRAWAL

(a) This agreement shall be in force in the State of New Mexico for a period of three years when enacted into law by two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in paragraph (g) of Article III. Not later than July 1, 2000, the Secretary of Highway and Transportation shall recommend to the Legislature whether or not this agreement should be continued based upon its usefulness to the State of New Mexico.

(b) Any participating jurisdiction may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all the other participating jurisdictions.

ARTICLE VII. CONSTRUCTION AND SEVERABILITY

(a) This agreement shall be liberally construed so as to effectuate the purposes thereof.

(b) The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement

shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the jurisdictions affected as to all severable matters.

ARTICLE VIII. FILING OF DOCUMENTS

(a) A copy of this agreement, its amendments, and rules and regulations promulgated thereunder and interpretations thereof, shall be filed in the highway department of each participating jurisdiction and shall be made available for review by interested parties."

History: Laws 1997, ch. 191, § 2.

ANNOTATIONS

Emergency clauses. - Laws 1997, ch. 191, § 7 makes the act effective immediately. Approved April 10, 1997.

11-14-3. Designated representative to cooperating committee; appointment; term of office.

The designated representative to the cooperating committee established by Article IV of the Multistate Highway Transportation Agreement shall be jointly appointed by the speaker of the house of representatives and the president pro tempore of the senate. The designated representative may be represented by an alternate jointly appointed by the speaker and the president pro tempore.

History: Laws 1997, ch. 191, § 3.

ANNOTATIONS

Emergency clauses. - Laws 1997, ch. 191, § 7 makes the act effective immediately. Approved April 10, 1997.

11-14-4. Statutes prescribing weight and size standards and relating to special permits; continuation.

All statutes prescribing weight and size standards and all statutes relating to special permits shall continue in effect until amended or repealed.

History: Laws 1997, ch. 191, § 4.

ANNOTATIONS

Emergency clauses. - Laws 1997, ch. 191, § 7 makes the act effective immediately. Approved April 10, 1997.

11-14-5. Cooperation by state agency with cooperating committee.

Any state agency may cooperate with and assist the cooperating committee within the scope of its authority.

History: Laws 1997, ch. 191, § 5.

ANNOTATIONS

Emergency clauses. - Laws 1997, ch. 191, § 7 makes the act effective immediately. Approved April 10, 1997.

11-14-6. Cooperating committee report.

A copy of the report submitted to the legislature pursuant to paragraph (d) of Article IV of the Multistate Highway Transportation Agreement shall also be submitted to the state highway and transportation department. All notices required by the cooperating committee bylaws shall be given to the designated representative or his alternate.

History: Laws 1997, ch. 191, § 6.

ANNOTATIONS

Emergency clauses. - Laws 1997, ch. 191, § 7 makes the act effective immediately. Approved April 10, 1997.

ARTICLE 15
EMERGENCY MANAGEMENT ASSISTANCE COMPACT

11-15-1. Short title.

This act [11-15-1 and 11-15-2 NMSA 1978] may be cited as the "Emergency Management Assistance Compact".

History: Laws 1999, ch. 87, § 1.

ANNOTATIONS

Effective dates. - Laws 1999, ch. 87, § 3, makes the Emergency Management Assistance Compact effective on July 1, 1999.

11-15-2. Compact entered into.

The Emergency Management Assistance Compact [11-15-1 and 11-15-2 NMSA 1978] is enacted into law and entered into with all other jurisdictions legally joining therein in accordance with its terms, in a form substantially as follows:

"EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE 1 - PURPOSE AND AUTHORITIES

A. The Emergency Management Assistance Compact is made and entered into by and between the participating member states that enact that compact.

B. As used in the Emergency Management Assistance Compact:

(1) "party states" means the participating member states to the compact; and

(2) "state" means the several states, the Commonwealth of Puerto Rico, the District of Columbia and all United States territorial possessions.

C. The purpose of the Emergency Management Assistance Compact is to provide for mutual assistance between the party states in managing any emergency or disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency or enemy attack.

D. The Emergency Management Assistance Compact shall also provide for mutual cooperation in emergency-related exercises, testing or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance pursuant to that compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE 2 - GENERAL IMPLEMENTATION

A. Each party state entering into the Emergency Management Assistance Compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under that compact. Each state further recognizes that there will be emergencies that require immediate access and will present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

B. The prompt, full and effective use of resources of the participating states, including any resources on hand or available from the federal government or any other source,

that are essential to the safety, care and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of the Emergency Management Assistance Compact shall be understood.

C. On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement the Emergency Management Assistance Compact.

ARTICLE 3 - PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency or enemy attack;

(2) review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(3) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(4) assist in warning communities adjacent to or crossing the state boundaries;

(5) protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue and critical life-line equipment, services and resources, both human and material;

(6) inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

(7) provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the responsibilities delineated in this subsection.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be

confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

(1) a description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services and search and rescue;

(2) the amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and

(3) the specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans and resource records relating to emergency capabilities.

ARTICLE 4 - LIMITATIONS

A. Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by the Emergency Management Assistance Compact in accordance with the terms of the compact; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

B. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of the Emergency Management Assistance Compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving states, whichever is longer.

ARTICLE 5 - LICENSES AND PERMITS

Whenever any person holds a license, certificate or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE 6 - LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to the Emergency Management Assistance Compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to that compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE 7 - SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the party states, the Emergency Management Assistance Compact contains elements of a broad base common to all states, and nothing in that compact shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

ARTICLE 8 - COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to the Emergency Management Assistance Compact in the same manner and on the same terms as if the injury or death were sustained within its own state.

ARTICLE 9 - REIMBURSEMENT

Any party state rendering aid in another party state pursuant to the Emergency Management Assistance Compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs

incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article 8 of that compact shall not be reimbursable under this provision.

ARTICLE 10 - EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant shall be worked out and maintained between the party states and the emergency management directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees; the number of evacuees to be received in different areas; the manner in which food, clothing, housing, and medical care will be provided; the registration of the evacuees; the providing of facilities for the notification of relatives or friends; and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE 11 - IMPLEMENTATION

A. The Emergency Management Assistance Compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, the Emergency Management Assistance Compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from the Emergency Management Assistance Compact by enacting a statute repealing that compact, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of the Emergency Management Assistance Compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE 12 - VALIDITY

This section shall be construed to effectuate the purposes stated in Article 1 of the Emergency Management Assistance Compact. If any provision of that compact is declared unconstitutional, or its applicability to any person or circumstances is held invalid, the constitutionality of the remainder of the compact and its applicability to other persons and circumstances shall not be affected.

ARTICLE 13 - ADDITIONAL PROVISIONS

Nothing in the Emergency Management Assistance Compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

ARTICLE 14 - REPORTING TO THE LEGISLATURE

The secretary of public safety shall, by January, 2000, provide to the legislative finance committee copies of all mutual aid plans and procedures promulgated, developed or entered into after the effective date of this section. The secretary shall annually thereafter provide the legislative finance committee with copies of all new or amended mutual aid plans and procedures by January of each calendar year."

History: Laws 1999, ch. 87, § 2.

ANNOTATIONS

Effective dates. - Laws 1999, ch. 87, § 3, makes the Emergency Management Assistance Compact effective on July 1, 1999.