

# CHAPTER 15

## ADMINISTRATION OF GOVERNMENT

### ARTICLE 1

### INFORMATION AND COMMUNICATIONS

### MANAGEMENT

**15-1-1 to 15-1-7.1. Repealed.**

#### ANNOTATIONS

**Repeals.** - Pursuant to former 15-1-13 NMSA 1978, the Information and Communication Management Act, consisting of 15-1-1 to 15-1-13 NMSA 1978, as enacted by Laws 1986, ch. 81, § 2, and Laws 1993, ch. 197, §§ 3 to 9, and as amended by Laws 1989, ch. 191, § 1 and Laws 1993, ch. 197, §§ 1, 2, 12, 13, is repealed effective July 1, 1996. For provisions of the former sections, see 1994 Replacement Pamphlet. For present comparable provisions, see Chapter 15, Article 1B NMSA 1978.

Laws 1986, ch. 81, § 15 repeals former 15-1-1 to 15-1-10 NMSA 1978, as enacted by Laws 1984, ch. 64, §§ 4 to 13, the Information Systems Act, effective May 21, 1986. For provisions of former section, see 1985 Supplement.

Laws 1986, ch. 81, § 15 repeals former 15-1-9 NMSA 1978, as enacted by Laws 1984, ch. 64, § 12, relating to records contained in information systems databases, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

**Recompilations.** - Laws 1995, ch. 110, § 8 recompiled former 15-1-9 NMSA 1978, relating to public records, as 14-3-17.1 NMSA 1978, effective July 1, 1995.

**15-1-7.2. Temporary provision; DWI process and data standards research and planning.**

The commission on information and communication management shall hire staff necessary to define a more efficient DWI process, set standards for data collection and exchange, prepare a management plan and report and make recommendations to the DWI oversight task force, the legislative finance committee and the governor. The staff shall be term employees of the commission on information and communication management but shall be under the direction and supervision of the chairman of the DWI process and data standards committee. In defining and working to implement a more efficient DWI process, preparing a comprehensive management plan and report and in setting standards for data collection and exchange, the staff of the commission on information and communication management shall work in cooperation with the DWI process and data standards committee, appointed by the governor, for the purpose of

coordinating a statewide DWI information system. The committee shall be composed of representatives from the national laboratories and state, local and tribal governments and shall have co-chairmen that are two state government representatives, one from the executive branch and one from the judicial branch, both appointed by the governor.

**History:** Laws 1994, ch. 66, § 1.

## ANNOTATIONS

**Cross-references.** - For court automation fund, see 34-9-10 NMSA 1978.

**Appropriations.** - Laws 1994, ch. 147, § 2K, effective March 9, 1994, appropriates \$350,000 from the computer systems enhancement fund to the commission on information and communication management for expenditure in the eighty-second and eighty-third fiscal years to define a more efficient DWI process, set standards for data collection and exchange, prepare a management plan and make recommendations to the DWI oversight task force, the legislative finance committee, and the governor. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

**15-1-8 to 15-1-13. Repealed.**

## ANNOTATIONS

**Repeals.** - Pursuant to former 15-1-13 NMSA 1978, the Information and Communication Management Act, consisting of 15-1-1 to 15-1-13 NMSA 1978, as enacted by Laws 1986, ch. 81, § 2, and Laws 1993, ch. 197, §§ 3 to 9, and as amended by Laws 1989, ch. 191, § 1 and Laws 1993, ch. 197, §§ 1, 2, 12, 13, is repealed effective July 1, 1996. For provisions of the former sections, see 1994 Replacement Pamphlet. For present comparable provisions, see Chapter 15, Article 1B NMSA 1978.

Laws 1986, ch. 81, § 15 repeals former 15-1-1 to 15-1-10 NMSA 1978, as enacted by Laws 1984, ch. 64, §§ 4 to 13, the Information Systems Act, effective May 21, 1986. For provisions of former section, see 1985 Supplement.

Laws 1986, ch. 81, § 15 repeals former 15-1-9 NMSA 1978, as enacted by Laws 1984, ch. 64, § 12, relating to records contained in information systems databases, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

**Recompilations.** - Laws 1995, ch. 110, § 8 recompiled former 15-1-9 NMSA 1978, relating to public records, as 14-3-17.1 NMSA 1978, effective July 1, 1995.

# ARTICLE 1A

## AUTOMATED DATA PROCESSING

(Repealed by Laws 1984, ch. 64, § 26A.)

## **15-1A-1 to 15-1A-17. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1984, ch. 64, § 26A, amends Laws 1981, ch. 241, § 12, to repeal 15-1A-1 through 15-1A-17 NMSA 1978.

## **ARTICLE 1B INFORMATION AND COMMUNICATION MANAGEMENT**

### **15-1B-1. Short title. (Effective until July 1, 1998.)**

This act [15-1B-1 to 15-1B-9 NMSA 1978] may be cited as the "Information and Communication Management Act".

**History:** Laws 1996, ch. 44, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - For the repeal of this section, see 15-1B-9 NMSA 1978.

**Effective dates.** - Laws 1996, ch. 44, § 12 makes the Information and Communication Management Act effective on July 1, 1996.

### **15-1B-2. Purpose of act. (Effective until July 1, 1998.)**

The purpose of the Information and Communication Management Act [15-1B-1 to 15-1B-9 NMSA 1978] is to create a central resource for strategic information and communications systems planning for state government to:

A. assist executive agencies in establishing and maintaining efficient and cost-effective information management and communications systems, appropriate to the missions of the agencies that will enable the agencies to more effectively carry out their responsibilities to the public;

B. provide leadership in developing and revising the statewide information architecture through collaboration with state executive agencies; and

C. provide a centralized source for the administration of the information architecture and other statewide policies on information technology.

**History:** Laws 1996, ch. 44, § 2.

## ANNOTATIONS

**Delayed repeals.** - For the repeal of this section, see 15-1B-9 NMSA 1978.

**Effective dates.** - Laws 1996, ch. 44, § 12 makes the Information and Communication Management Act effective on July 1, 1996.

### **15-1B-3. Definitions. (Effective until July 1, 1998.)**

As used in the Information and Communication Management Act [15-1B-1 to 15-1B-9 NMSA 1978]:

A. "executive agency" means a state agency, instrumentality, board or commission in the executive branch of state government, state educational institutions and local political subdivisions;

B. "information and communications systems" means computer, voice and data communications software and hardware, including imaging systems, terminals, radio and communications networks and facilities; and

C. "information architecture" means documents of statewide application that contain principles, policies, standards and guidelines for development of information and communications systems for state agencies.

**History:** Laws 1996, ch. 44, § 3.

## ANNOTATIONS

**Delayed repeals.** - For the repeal of this section, see 15-1B-9 NMSA 1978.

**Effective dates.** - Laws 1996, ch. 44, § 12 makes the Information and Communication Management Act effective on July 1, 1996.

### **15-1B-4. Office on information and communication management created; administrative attachment; chief information officer; qualifications; staff. (Effective until July 1, 1998.)**

A. The "office on information and communication management" is created. The office is administratively attached to the office of the governor.

B. The administrative head of the office on information and communication management is the "chief information officer", who shall have a minimum of five years' experience in management of a large information technology system and shall be appointed by the governor with the consent of the senate. The chief information officer shall serve at the pleasure of the governor.

C. The chief information officer shall have all the powers and duties of the office in the interim period between the time he is appointed by the governor and confirmation [confirmed] by the senate.

D. The chief information officer is authorized to hire information and communications management analysts and other staff as necessary pursuant to the Personnel Act.

**History:** Laws 1996, ch. 44, § 4.

## ANNOTATIONS

**Delayed repeals.** - For the repeal of this section, see 15-1B-9 NMSA 1978.

**Bracketed material.** - The bracketed word "confirmed" in Subsection C was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Effective dates.** - Laws 1996, ch. 44, § 12 makes the Information and Communication Management Act effective on July 1, 1996.

**Temporary provisions.** - Laws 1996, ch. 44, § 9 provides that on the effective date of that act the office of communication and information management shall succeed to all rights and responsibilities of the commission on information and communication management, including all contractual and property rights and obligations. All references in the law to the commission on information and communication management shall be deemed to be references to the office of communication and information management.

Laws 1996, ch. 44, § 10 provides that on the effective date of that act all employees, budgets, appropriations, property, facilities, equipment, supplies and records of the commission on information and communication management are transferred to the office of information and communication management.

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

### **15-1B-5. Chief information officer; duties. (Effective until July 1, 1998.)**

The chief information officer shall:

A. provide leadership in and coordination of the continued development of the existing information architecture with the technical advisory committee, executive agencies and other public entities as necessary;

B. monitor national and international standards relating to information resources technologies, develop and publish policies, procedures and standards relating to

information resources management by state executive agencies and ensure compliance with those policies, procedures and standards;

C. ensure that prudent risk management practices preserve the integrity and security of information and communications systems and ensure timely resumption of operations following a disaster;

D. facilitate, cooperate with and provide guidance to executive agencies in the preparation of annual information and communications systems management plans, which shall include information about planned information technology objectives and expenditures for the next fiscal year in the level of detail and format specified by the chief information officer;

E. work with the technical advisory committee and executive agencies to develop agency plans that:

(1) demonstrate that the agency has developed relevant, achievable measurable objectives consistent with the agency's mission and existing statewide information and communications policies and goals, including the information architecture, or that departures from such policies and goals are justified;

(2) show effective and efficient use of available resources, including staff, funds and existing capital and time;

(3) specifically identify communities of interest, within and outside the agency, with whom information and data should be shared to prevent duplication of effort; and

(4) provide for security of data and disaster recovery in a manner consistent with the agency's needs and statewide policies;

F. make recommendations to the department of finance and administration and the legislative finance committee for approval or disapproval of the collective executive agency recommendations and requests for expenditures for information or communications management systems if requested information appropriations in any fiscal year exceed five hundred thousand dollars (\$500,000). The amount requested is to be determined by calculation of amounts to be expended for equipment, software, maintenance costs, agreements for services and other related costs of such systems;

G. monitor periodically the performance of executive agencies in achieving the goals of their individual plans and in achieving compliance with the information architecture. A written report shall be sent to the head of the agency. The report shall:

(1) specify compliance with information architecture;

(2) specify compliance with approved plans;

(3) specify solutions for improved compliance; and

(4) be provided, along with agency recommendations, to the legislative finance committee;

H. develop a schedule for ongoing monitoring of major system development projects. A written report shall be sent to the head of the agency as specified in the schedule. The report shall:

(1) specify compliance with information architecture;

(2) specify compliance with audit guidelines;

(3) provide recommendations for improved compliance; and

(4) be provided, along with agency recommendations, to the legislative finance committee;

I. review all budget requests for appropriations for information and communications systems for all executive agencies for each fiscal year. The chief information officer shall designate the priority of each requested expenditure by assigning priorities based on the state strategic plan for information and communications systems management. The priority listing shall be provided to the department of finance and administration and the legislative finance committee. Each agency shall also receive a copy of the priority listing. The budget request for appropriations shall be prepared in cooperation with each executive agency;

J. appoint members of the technical advisory committee, call meetings of the committee and preside over the meetings, as provided in Section 7 [15-1B-7 NMSA 1978] of the Information and Communication Management Act; and

K. develop the state strategic plan for information and communications systems management on a continual basis. The plan shall be submitted annually to the department of finance and administration. Amendments to the plan shall be made in cooperation with executive agencies and the technical advisory committee. The plan shall take into account the existing agency plans and the information architecture and assess the resources available, costs and benefits of provisions in the plan, including assessment of alternative courses of action, the risks involved, a summary of the state's current and projected use of information technology, a description of major changes in state policy and a brief description of each executive agency plan.

**History:** Laws 1996, ch. 44, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - For the repeal of this section, see 15-1B-9 NMSA 1978.

**Effective dates.** - Laws 1996, ch. 44, § 12 makes the Information and Communication Management Act effective on July 1, 1996.

**15-1B-6. Chief information officer; powers. (Effective until July 1, 1998.)**

The chief information officer shall have the power to:

- A. employ staff pursuant to the Personnel Act;
- B. obtain information, documents and records from each of the executive agencies as needed to carry out his duties;
- C. develop with state agencies annual information and communications systems management plans;
- D. notify each executive agency, where necessary, of any noncompliance with statewide policies, including the information architecture or the agency's plan;
- E. enter into contracts and agreements relating to any powers or duties given the chief information officer under the Information and Communication Management Act [15-1B-1 to 15-1B-9 NMSA 1978];
- F. approve as a signatory professional service contracts for information and communication systems; and
- G. approve rate structures for the information systems division of the general services department.

**History:** Laws 1996, ch. 44, § 6.

**ANNOTATIONS**

**Delayed repeals.** - For the repeal of this section, see 15-1B-9 NMSA 1978.

**Effective dates.** - Laws 1996, ch. 44, § 12 makes the Information and Communication Management Act effective on July 1, 1996.

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

**15-1B-7. Technical advisory committee; creation; purpose. (Effective until July 1, 1998.)**

A. The "technical advisory committee" is created. The committee shall consist of senior technical representatives from the judiciary, the legislature, executive agencies, local



political subdivisions, public school systems, higher education, the business community, the national laboratories and the general public and shall be appointed by the chief information officer. Meetings shall be held on the call of the chief information officer.

B. The technical advisory committee shall represent users of the information and communications systems affected by the information architecture and shall provide advice to the chief information officer as to their needs.

**History:** Laws 1996, ch. 44, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - For the repeal of this section, see 15-1B-9 NMSA 1978.

**Effective dates.** - Laws 1996, ch. 44, § 12 makes the Information and Communication Management Act effective on July 1, 1996.

### **15-1B-8. Executive agency cooperation with chief information officer. (Effective until July 1, 1998.)**

A. Each executive agency of the state shall furnish and make available, upon request by the chief information officer or the technical advisory committee, documents, materials or information, not made confidential by law, related to its information or communications systems.

B. Each executive agency shall present all requests for expenditures for information and communications systems for the subsequent fiscal year to the chief information officer by September 1 of the previous fiscal year. The executive agency shall assign a priority to each proposed expenditure.

C. Each executive agency shall maintain and update continually an information and communication systems management plan pursuant to Sections 5 and 6 [15-1B-5 and 15-1B-6 NMSA 1978] of the Information and Communication Management Act. The plan shall be developed annually in cooperation with the chief information officer by May 1 of each year for the fiscal [year] beginning July 1 to reflect amounts budgeted. All departures from the information architecture or other statewide policies shall be justified by the agency submitting the plan. A copy of the final plan for the agency shall be given by the chief information officer to the head of the agency, the department of finance and administration and the legislative finance committee. All expenditures for any information or communications management systems that exceed five hundred thousand dollars (\$500,000) in any fiscal year shall be specifically identified. No expenditure may be made until the plan is approved by the chief information officer.

D. Each executive agency shall appoint a person or group of persons with the necessary technical expertise for the purpose of providing a continuing liaison with the office on information and communication management.

**History:** Laws 1996, ch. 44, § 8.

## ANNOTATIONS

**Delayed repeals.** - For the repeal of this section, see 15-1B-9 NMSA 1978.

**Effective dates.** - Laws 1996, ch. 44, § 12 makes the Information and Communication Management Act effective on July 1, 1996.

**Bracketed material.** - The bracketed word "year" in Subsection C was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

### **15-1B-9. Sunset; termination of office on technology and communication management. (Effective until July 1, 1998.)**

The office on information and communication management is terminated on July 1, 1998 pursuant to the Sunset Act [12-9-11 and 12-9-12 NMSA 1978]. Effective July 1, 1998, the Information and Communication Management Act [15-1B-1 to 15-1B-9 NMSA 1978] is repealed.

**History:** Laws 1996, ch. 44, § 11.

## ANNOTATIONS

**Effective dates.** - Laws 1996, ch. 44, § 12 makes the Information and Communication Management Act effective on July 1, 1996.

## ARTICLE 2 COMMUNICATIONS DIVISION

### **15-2-1. Communications division; creation; communications engineer; qualifications.**

A. The "communications division" is created within the general services department.

B. The director of the communications division [division], with the approval of the secretary of general services, may hire a communications engineer to oversee the engineering responsibilities of the division.

C. The communications engineer shall have a degree in either electrical engineering with an electrical communications specialty or in electronics engineering.

**History:** 1953 Comp., § 4-26-1, enacted by Laws 1977, ch. 247, § 23; Laws 1978, ch. 124, § 3; 1980, ch. 151, § 9; 1983, ch. 301, § 39.

## ANNOTATIONS

**Bracketed material.** - The bracketed word in Subsection B was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States §§ 141, 142.

### **15-2-2. Radio communications bureau; duties.**

The "radio communications bureau," hereby created, of the communications division of the general services department shall have supervisory control over all mobile or fixed radio equipment now owned or subsequently acquired by the state or any state officer, department, other agency, board or commission or division or bureau of any state department or other agency. This supervisory control shall include but not be limited to the determination of the need for, purchase, repair, maintenance, combination or disposition of radio equipment.

**History:** 1953 Comp., § 4-26-2, enacted by Laws 1977, ch. 247, § 24; 1978, ch. 124, § 4; 1980, ch. 151, § 10; 1983, ch. 301, § 40.

#### **15-2-2.1. Lease of radio communications network; conditions and requirements.**

In exercising supervisory control pursuant to Section 15-2-2 NMSA 1978, the radio communications bureau of the communications division of the general services department may lease to a private entity excess capacity on its radio communications property, including buildings, towers or antennas, provided that:

- A. the lease conforms with competitive procurement requirements of the Procurement Code;
- B. the lease is for an equal value exchange of money or property;
- C. the secretary of general services certifies that the excess capacity will be available for at least the duration of the lease;
- D. if the lease exceeds ten years, the lease is first approved by the state board of finance;
- E. the radio communications bureau has submitted to the legislative finance committee a detailed plan for the use of excess capacity being leased and an assessment of how the lease will affect public sector uses; and
- F. income from the leases shall be deposited to the credit of the radio communications bureau and used to carry out the duties of the bureau.

**History:** 1978 Comp., § 15-2-2.1, enacted by Laws 1997, ch. 263, § 1.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1997, ch. 263 § 2 makes the act effective immediately. Approved April 11, 1997.

**Procurement Code.** - See 13-1-28 NMSA 1978 and notes thereto.

#### **15-2-3. Service charge.**

A. The radio communications bureau of the communications division of the general services department shall charge a fee to the state or any officer, agency, department, division, board or commission of the state for any services rendered in the exercise of the radio communications bureau's supervisory control.

B. Fees shall be fixed by the secretary of general services.

C. Income from fees collected shall be deposited to the credit of the radio communications bureau and used to carry out the duties of the bureau.

D. The radio communications bureau may provide service to counties and municipalities at the same rates charged state agencies.

**History:** 1953 Comp., § 4-26-2.1, enacted by Laws 1970, ch. 71, § 1; 1975, ch. 214, § 1; 1977, ch. 247, § 25; 1978, ch. 124, § 5; 1980, ch. 151, § 11; 1983, ch. 301, § 41.

#### **15-2-4. Exclusion from jurisdiction.**

The radio communications bureau of the communications division of the general services department shall not have supervisory control over:

A. the use of such equipment, except as to the technical requirements of the equipment or unless the equipment is used by one or more agencies, and the radio communications bureau must determine priority of use;

B. the radio equipment of the office of military affairs, except the radio communications bureau may maintain all radio equipment owned by the office of military affairs which interfaces with state-owned radio equipment; or

C. unless otherwise directed by the secretary of general services, radio equipment that is incidental to a system which is primarily a telephone system.

**History:** 1953 Comp., § 4-26-3, enacted by Laws 1966, ch. 32, § 3; 1971, ch. 115, § 1; 1977, ch. 247, § 26; 1978, ch. 124, § 6; 1980, ch. 151, § 12; 1983, ch. 301, § 42.

### **15-2-5. Property transfer.**

Ownership of all radio communication property at mountaintop or remote sites, including buildings, towers, antennas, emergency power plants and radio equipment owned by the New Mexico state police, state highway department, department of game and fish and the state forestry division, is transferred to the communications division of the general services department.

**History:** 1953 Comp., § 4-26-4, enacted by Laws 1971, ch. 115, § 2; 1977, ch. 247, § 27; 1978, ch. 124, § 7; 1980, ch. 151, § 13; 1983, ch. 301, § 43.

### **15-2-6, 15-2-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 81, § 15 repealed former 15-2-6 and 15-2-7 NMSA 1978 as amended by Laws 1978, ch. 124, § 8 and Laws 1980, ch. 151, § 14 relating to radio equipment amortization, effective May 21, 1986. For provisions of former sections see 1983 Replacement Pamphlet. For present provision see 15-1-11 NMSA 1978.

### **15-2-8. Transfer of property; custody and control.**

The radio equipment purchased in accordance with Laws 1972, Chapter 74 [15-3-21 to 15-3-24 NMSA 1978] by the property control division of the department of finance and administration is transferred to the radio communications bureau of the general services department. The radio communications bureau has the custody and control of the transferred radio equipment.

**History:** 1953 Comp., § 4-26-7, enacted by Laws 1975, ch. 214, § 4; 1977, ch. 247, § 29; 1978, ch. 124, § 10; 1980, ch. 151, § 15; 1983, ch. 301, § 44.

## **ARTICLE 3**

### **PROPERTY CONTROL DIVISION**

#### **15-3-1. Property control division; creation; director.**

The "property control division" is created within the general services department. The director of the division shall be appointed by the secretary of general services with the governor's consent.

**History:** 1953 Comp., § 6-2-25, enacted by Laws 1968, ch. 43, § 1; 1977, ch. 247, § 68; 1983, ch. 301, § 45.

#### **ANNOTATIONS**

**Cross-references.** - For appointment of director, see 9-17-5 NMSA 1978.

**Appropriations.** - Laws 1994, ch. 147, § 6RRR, effective March 9, 1994, appropriates \$200,000 from the general fund to the property control division of the general services department for expenditure in the eighty-second through eighty-fifth fiscal years for construction of a new facility for La Familia medical center located in Santa Fe county. Any unexpended or unencumbered balance remaining at the end of the eighty-fifth fiscal year shall revert to the general fund.

Laws 1994, ch. 148, § 41, effective March 9, 1994, appropriates the proceeds from the sale by the property control division of the general services department of property located at the southeast corner of St. Michael's drive and St. Francis drive in the city of Santa Fe that was purchased with money appropriated from the capital projects fund to the capital program fund pursuant to Laws 1989, ch. 315, § 2B(12), in an amount not to exceed \$2,250,000, to the property control division of the general services department for expenditure in the eighty-second through eighty-fourth fiscal years for constructing and equipping the state library, archives and records center in Santa Fe county. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the capital projects fund fund.

Laws 1994, ch. 148, § 52B, effective March 9, 1994, appropriates \$400,000 from the general fund to the property control division of the general services department for expenditure in the eighty-second through eighty-fourth fiscal years for constructing and equipping a secure forensic treatment facility at the Las Vegas medical center in San Miguel county. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the general fund.

Laws 1996 (1st S.S.), ch. 4, § 36, effective April 1, 1997, appropriates \$100,000 from the general fund to the property control division of the general services department for expenditure in fiscal years 1997 and 1998 for the purpose of renovating a working ranch or farm to be used as an environmental work camp at camp Sierra Blanca in Lincoln county.

Laws 1996 (1st S.S.), ch. 4, § 38, effective March 21, 1996, appropriates \$156,600 from the employment security department fund to the capital program fund for expenditure by the property control division of the general services department in fiscal years 1996 through 2000 for the purpose of completing renovations or repairs of the Alamogordo and Farmington labor department offices.

**Extension of expenditure period and purpose.** - Laws 1994, ch. 148, § 71A, effective March 9, 1994, provides that certain appropriations made by Chapter 366 of Laws 1993 are extended so that they may be expended through the eighty-fourth fiscal year.

Laws 1996, ch. 14, § 10, effective March 4, 1996, provides that notwithstanding the provisions of Laws 1994, ch. 148, § 71A, the period of time in which the appropriations

to the property control division of the general services department made in Laws 1993, ch. 366, § 3M and 4O may be expended shall be extended through fiscal year 1998.

Laws 1996, ch. 14, § 11, effective March 4, 1996, provides that notwithstanding the provisions of Laws 1994, ch. 148, § 71A(3)(a), the balance of the appropriation from the general fund to the property control division of the general services department made in Laws 1993, ch. 366, § 3N for a study committee and to plan for a comprehensive state library, records and archives building may also be expended for construction of the state library, records and archives building.

Laws 1996, ch. 14, § 16, effective March 4, 1996, provides that notwithstanding the provisions of Laws 1994, ch. 148, § 41, certain appropriations made by Laws 1989, ch. 315, § 2B(12) from the capital projects fund to the capital program fund shall be extended through fiscal year 1998.

Laws 1996, ch. 14, § 18, effective March 4, 1996, provides that notwithstanding the provisions of Laws 1994, ch. 148, § 52B, appropriations from the general fund to the general services department for a secure forensic treatment facility at the Las Vegas medical center shall be extended through fiscal year 1997.

**Title of act.** - The title of Laws 1968, ch. 43, did not violate N.M. Const., art. IV, § 16. 1967-68 Op. Att'y Gen. No. 68-64.

**Binding on judiciary.** - The provisions of Laws 1968, ch. 43 (compiled as 15-3-1, 15-3-9 to 15-3-11, 15-3-14 to 15-3-16, 15-3-25 and 15-3-31 NMSA 1978) and the rules promulgated thereunder, are binding on the judicial branch unless the supreme court determines that such compliance would unreasonably impede or impair the functions of the judiciary. 1967-68 Op. Att'y Gen. No. 68-64.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 141.

## **15-3-2. Director of division; duties; federal funds.**

A. The director of the property control division shall:

(1) have control over all state buildings and lands except those under the control and management of the state highway department; the state fair commission; state institutions of higher learning; the New Mexico school for the deaf; the New Mexico school for the visually handicapped; the supreme court; the commissioner of public lands; the state armory board, in accordance with Section 20-7-2 NMSA 1978; the building in which the legislature is housed, the adjacent utilities plant and the surrounding grounds; the museum of New Mexico; and the state library building and adjacent grounds. The director shall assign the use or occupancy of state buildings and lands under his control to the state agency or political subdivision which may make the best and highest beneficial use of the property;

(2) regulate the use or occupancy of buildings and real property under his control and make reasonable requirements for the continuation of that use or occupancy;

(3) have custody of all maps, deeds, plats, plans, specifications, contracts, books and other papers connected with state buildings over which he exercises control;

(4) secure copies of all documents of title to all real property under his control held in the name of the state or for the use of the state, and index such documents so that the status of real property held by the state under his control can be readily ascertained;

(5) control the lease or rental of space in private buildings by state executive agencies other than the state land office;

(6) preserve, repair, clean, heat and light the buildings and improvements under his control which are located within the exterior boundaries of the city of Santa Fe, either with his own staff or by contract with private firms;

(7) care for and beautify the grounds and premises under his control which are located within the exterior boundaries of the city of Santa Fe, either with his own staff or by contract with private firms;

(8) make rules and regulations for the conduct of all persons in and about such buildings and grounds, necessary and proper for the safety, care and preservation of the buildings and grounds and for the safety and convenience of the persons while they are in and about the buildings and grounds;

(9) have the power to sell state buildings and real property under his control in accordance with Sections 13-6-2 and 13-6-3 NMSA 1978. Any such sale shall be by quitclaim deed;

(10) have the power to purchase title insurance or a title opinion in conjunction with the sale of state buildings or land; and

(11) have the power to enter into contracts for the improvement, alteration and reconstruction of the state buildings under his control, including the executive mansion, and for the design and construction of additional buildings, to the extent funds are available.

B. The provisions of this section shall be subject to federal law or regulation if the buildings or property were purchased with federal funds.

**History:** Laws 1968, ch. 43, § 2; 1953 Comp., § 6-2-26; Laws 1971, ch. 285, § 2; 1973, ch. 209, § 1; 1977, ch. 247, § 69; 1977, ch. 385, § 14; 1978, ch. 166, § 14; 1980, ch. 151, § 16.

## ANNOTATIONS



**Cross-references.** - For maintenance charges for the use of New Mexico state police facilities, see 15-3-33 NMSA 1978.

For transfer of control of state library building to legislative council, see 2-3-6 NMSA 1978.

For service of director on architect, engineering, and land surveyor selection committee, see 13-1-121 NMSA 1978.

### **15-3-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 301, § 84, repeals 15-3-3 NMSA 1978, relating to construction of references to the capitol custodian, effective July 1, 1983.

### **15-3-4. Purpose of act.**

It is the purpose of this act [15-3-4, 15-3-5 NMSA 1978] to set aside a permanent area and integrated site for future use.

**History:** 1953 Comp., § 6-1-19, enacted by Laws 1957, ch. 92, § 1.

### **15-3-5. Penitentiary property transferred.**

The remaining property on Cordova road held in the name of the New Mexico state penitentiary including the former site of the New Mexico state penitentiary is hereby transferred to the property control division of the general services department. The land will be held in the name of the state of New Mexico.

**History:** 1953 Comp., § 6-1-20, enacted by Laws 1957, ch. 92, § 2; 1977, ch. 247, § 59; 1983, ch. 301, § 46.

### **15-3-6. Lease of former penitentiary land.**

The property control division of the general services department may execute, on behalf of the state of New Mexico, as lessor, from time to time, agreements of lease of all or any part of the real property on Cordova road, in Santa Fe, New Mexico, formerly held in the name of the penitentiary of New Mexico, and now administered by the division to such persons, on such terms and conditions, and for such consideration, as the division determines, in the exercise of its discretion, to be advantageous to the state of New Mexico; but no such agreement of lease shall provide for a term of more than five years from the date thereof, unless first approved by the state board of finance.

**History:** 1953 Comp., § 6-1-22, enacted by Laws 1959, ch. 174, § 2; 1977, ch. 247, § 60; 1983, ch. 301, § 47.

### **15-3-7. Prohibition.**

No state agency subject to the provisions of Subsection E [Subsection A(5)] of Section 15-3-2 NMSA 1978 may enter into a lease or rental agreement unless the building in which the space is leased or rented meets the standards relating to the physically handicapped set by the general construction board or any trade board [bureau] pursuant to Section 60-13-44 NMSA 1978.

**History:** 1953 Comp., § 6-2-26.1, enacted by Laws 1975, ch. 10, § 1.

#### **ANNOTATIONS**

**Bracketed material.** - The reference to Subsection E of 15-3-2 NMSA 1978 in this section seems incorrect, as that section contains no such subsection. Subsection A of 15-3-2 NMSA 1978 relates to the controlling of leasing and rental of space in private buildings. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

The 1977 amendment of 60-13-44 NMSA 1978, referred to in this section, substituted "trade bureau" for "trade board" throughout that section. The bracketed material was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

### **15-3-8. Regulations; waiver.**

A. The director of the property control division of the general services department may adopt regulations allowing the requirements of Section 15-3-7 NMSA 1978 to be waived in cases where extreme hardship would be caused, except that reasonable diligence must be made to bring a substandard building up to the standards specified in all cases.

B. The director of the property control division of the general services department may allow waivers for and exercise the regulatory powers granted by Subsection A of this section over all leases and rental agreements entered into by any state agency, which are subject to his control by virtue of Subsection E [Subsection A(5)] of Section 15-3-2 NMSA 1978.

**History:** 1953 Comp., § 6-2-26.2, enacted by Laws 1975, ch. 10, § 2; 1977, ch. 247, § 70; 1983, ch. 301, § 48.

#### **ANNOTATIONS**

**Compiler's note.** - The compiler inserted the bracketed language in Subsection B in the 1980 replacement pamphlet and the bracketed language was subsequently enacted in the 1983 session law.

### **15-3-9. Power of the property control division to purchase land.**

The property control division may do any and all acts necessary and proper in the acquisition of lands. All such acquisitions of land shall first be approved by the state board of finance.

**History:** 1953 Comp., § 6-2-27, enacted by Laws 1968, ch. 43, § 3; 1971, ch. 285, § 5.

#### **ANNOTATIONS**

**Cross-references.** - For powers and duties of board of finance, see 6-1-1 NMSA 1978.

### **15-3-10. Acquisition of land by gift or donation.**

The property control division is authorized to acquire land by gift or donation, the title to which shall vest in the state of New Mexico. However, all such gifts or donations of lands must first be approved by the board of finance.

**History:** 1953 Comp., § 6-2-28, enacted by Laws 1968, ch. 43, § 4.

#### **ANNOTATIONS**

**Cross-references.** - For powers and duties of board of finance, see 6-1-1 NMSA 1978.

### **15-3-11. Building and remodeling; leasing.**

A. The director of the property control division of the general services department has the authority to do all acts necessary and proper for the redesigning, major renovation and remodeling of present state buildings and the erection of additional state buildings when needed. The director of the property control division may let contracts for these purposes made according to the established state purchasing procedures for contracts of the type and amount let. However, all such remodeling, major renovation and construction must first be approved by the state board of finance. This subsection shall not apply to any redesigning, major renovation or remodeling or the erection of additional state buildings exempt from the control of the property control division pursuant to Section 15-3-2 NMSA 1978.

B. The director of the property control division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code for the purchase of tangible personal property, has the authority to enter into long-term leases, for periods not to exceed ten years, of vacant lands where the lessor contracts with the state to construct and complete buildings, subject to the approval of the staff

architect, as a condition precedent to the start of the rental term. Such buildings shall comply with applicable standards for the physically handicapped and applicable codes. No lease shall be executed under this subsection until the staff architect created under the provisions of Section 15-3-13 NMSA 1978 has filed with the legislative finance committee a detailed statement of his evaluation and approval of the proposed building.

**History:** 1953 Comp., § 6-2-29, enacted by Laws 1968, ch. 43, § 5; 1971, ch. 285, § 6; 1977, ch. 247, § 71; 1978, ch. 209, § 1; 1983, ch. 301, § 49; 1989, ch. 324, § 9; 1996, ch. 46, § 3.

## ANNOTATIONS

**Cross-references.** - For powers and duties of state board of finance, see 6-1-1 NMSA 1978.

**The 1996 amendment,** effective July 1, 1996, substituted "state buildings exempt from the control of the property control division pursuant to Section 15-3-2 NMSA 1978" for "building of the state highway department" at the end of Subsection A, substituted "has filed" for "shall have filed" in the last sentence of Subsection B, and deleted former Subsection C, which provided that the secretary of general services shall establish a schedule of rental fees and the subsequent utilization of those fees.

**Temporary provisions.** - Laws 1996, ch. 46, § 5, effective July 1, 1996, provides that all fund balances in the long-term lease guarantee fund are transferred to the public building repair fund and that the state treasurer shall take the necessary actions to accomplish the transfer of those funds.

**Procurement Code.** - See 13-1-28 NMSA 1978 and notes thereto.

**Prior approval of board of finance mandatory.** - The chief (now director) of the property control division may not award any contract that has not been approved by the board of finance. 1969 Op. Att'y Gen. No. 69-56.

No act or acts of the chief (now director) of the division of property control have any validity so far as creating contractual obligation of the state of New Mexico until approval is given by the board of finance. 1969 Op. Att'y Gen. No. 69-56.

**Contractual provisions authorized.** - Inherent in the authority to do all acts necessary and proper in the remodeling or erection of state buildings, including the authority to let the contract, is the power to include therein a provision that the contractor must obtain a permit from the proper trade board (now bureau), pay the permit fee and submit to inspection to insure compliance with the codes. 1969-70 Op. Att'y Gen. No. 70-38.

**15-3-11.1. Public buildings repair fund; created; expenditures.**

A. The "public buildings repair fund" is created in the state treasury. The fund shall consist of appropriations, building use fees, gifts, grants, donations and bequests. Money in the fund shall not revert at the end of any fiscal year. The fund shall be administered by the property control division of the general services department.

B. Expenditures may be made from the public buildings repair fund only for necessary repair, renovation and purchase of physical plant equipment for public buildings owned by the state and under the control of the property control division.

C. The property control division shall establish priorities for the use of the public buildings repair fund and shall submit to the legislature in each regular session a list of recommended expenditures to be made from the fund in the following fiscal year. Except as provided in Subsection D of this section, the public buildings repair fund shall be expended pursuant to appropriations by the legislature.

D. Upon certification from the secretary of general services to the state board of finance that an emergency need for repairs or purchase of equipment exists in a public building to which the provisions of this section apply, the state board of finance may approve such emergency expenditures from the public buildings repair fund. Total expenditures pursuant to this subsection shall not exceed two hundred thousand dollars (\$200,000) a year. The state board of finance shall report emergency expenditures to the legislative finance committee.

**History:** Laws 1996, ch. 46, § 1.

## **ANNOTATIONS**

**Effective dates.** - Laws 1996, ch. 46, § 6 makes this act effective on July 1, 1996.

**Temporary provisions.** - Laws 1996, ch. 46, § 5, effective July 1, 1996, provides that all fund balances in the long-term lease guarantee fund are transferred to the public building repair fund and that the state treasurer shall take the necessary actions to accomplish the transfer of funds.

### **15-3-11.2. Building use fees; transfers to fund.**

The secretary of general services shall establish a schedule of building use fees for state agencies occupying space in state-owned buildings under the control of the property control division of the general services department. The building use fees shall equal the estimated cost for the next fiscal year of planned and emergency repairs, renovations and purchase of physical plant equipment; provided that total fees shall not exceed ten million dollars (\$10,000,000) in any fiscal year. The building use fees shall be included in the budget requests of pertinent state agencies beginning with fiscal year 1998. At the beginning of each fiscal year, the department of finance and administration shall transfer to the public buildings repair fund the amounts appropriated for building use fees.

**History:** Laws 1996, ch. 46, § 2.

### **ANNOTATIONS**

**Effective dates.** - Laws 1996, ch. 46, § 6 makes the act effective on July 1, 1996.

**General rule is that interest is accretion or increment to principal fund** earning it, and becomes a part of that fund. 1980 Op. Att'y Gen. No. 80-17.

### **15-3-12. State building contract; feasibility study of energy sources.**

Before any contract is executed for the construction, major alteration or renovation of any state-owned building, the property control division of the general services department shall have a feasibility study made on the use of energy sources other than fossil fuels for the heating and air conditioning of the proposed building. A copy of the feasibility study shall remain on file with the property control division and shall be open to public inspection.

**History:** 1953 Comp., § 6-2-29.1, enacted by Laws 1975, ch. 200, § 1; 1983, ch. 301, § 50.

### **15-3-12.1. Water conservation devices; state government building.**

The construction of new state government buildings shall provide for water conservation devices, including flow-limiting faucets in lavatories and other water dispensing facilities.

**History:** Laws 1995, ch. 73, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1995, ch. 73, § 2 makes the act effective on July 1, 1995.

### **15-3-13. Position of staff architect created; duties and responsibilities.**

A. The position of "staff architect" is created within the property control division of the general services department. The staff architect shall be a legal resident of and an architect registered in the state for at least two years. The staff architect shall assist the director of the property control division in carrying out the provisions and requirements of the Property Control Act. It shall also be his duty and responsibility to:

(1) develop long-range programs for the continuing preservation and repair of buildings and improvements and for the beautification of grounds and premises under the control of the director of the property control division;

(2) conduct continuing review and analysis of requirements for additional structures and facilities to house state agencies;

(3) review plans and specifications developed by architects or engineers contracted for the construction of new buildings or for the remodeling or renovation of existing state buildings under control of the director of the property control division, insuring that all local, state and federal laws and building codes are complied with, that adequate parking is provided according to law and that adequate safety is provided for such buildings and for all persons while they are in or about the building;

(4) develop or contract for the development of plans and specifications for state projects whose expenditures do not exceed five hundred thousand dollars (\$500,000) and for state projects which consist of repair, replacement or remodeling of nonstructural elements of an existing structure or project;

(5) conduct on-site inspections of state buildings while under construction or while being remodeled or repaired to assure that construction specifications are being met. If the state project does not involve expenditures in excess of five hundred thousand dollars (\$500,000), this responsibility may be delegated to the user agency. The division shall develop a standard form which shall be completed by the user agency in the exercise of this responsibility; and

(6) supervise the inspection of all facilities leased or rented by state agencies and recommend structural and facility changes necessary to bring leased or rented facilities up to standard pursuant to Section 60-13-44 NMSA 1978.

B. Any person who was employed as the staff architect who subsequently leaves the position, or any firm he may subsequently be employed by, is prohibited for a period of two years from providing architectural services or bidding on the construction, remodeling or renovation of any state building, if he developed or worked on the plans or specifications for such construction, remodeling or renovation while employed as staff architect.

**History:** Laws 1968, ch. 43, § 6; 1953 Comp., § 6-2-30; Laws 1975, ch. 177, § 1; 1977, ch. 247, § 72; 1977, ch. 360, § 3; 1978, ch. 69, § 1; 1981, ch. 277, § 1; 1983, ch. 301, § 51.

## **ANNOTATIONS**

**Cross-references.** - For staffing of architect, engineering and land surveyor selection committee by staff architect, see 13-1-121 NMSA 1978.

**Property Control Act.** - See 15-3-32 NMSA 1978.

**15-3-13.1 to 15-3-13.7. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1984, ch. 65, § 175, repeals 15-3-13.1 through 15-3-13.7 NMSA 1978, as enacted by Laws 1983, ch. 12, §§ 1 through 7, relating to architect and engineering selection on state capital projects. For provisions of former sections, see 1983 Replacement Pamphlet. For present comparable provisions, see 13-1-119 through 13-1-124 NMSA 1978.

Laws 1984, ch. 65, as amended by Laws 1984 (1st S.S.), ch. 2, § 1, makes the act effective on November 1, 1984.

Laws 1984 (1st S.S.), ch. 2, § 2, makes the act effective immediately. Approved March 28, 1984.

### **15-3-13.8. Architect rate schedule.**

The secretary shall adopt by regulation an "architect rate schedule" which shall set the highest permissible rates for each building type group, which shall be defined in the regulations. The rate schedule shall be in effect upon the approval of the state board of finance and shall apply to all contracts between the secretary or a designee and an architect which are executed after the effective date of the architect rate schedule.

**History:** 1978 Comp., § 15-3-13.8, enacted by Laws 1984, ch. 64, § 19.

### **15-3-14. Lease of land or buildings for private use.**

The director of the property control division of the general services department may lease any land or building under his control to private use until the land or building is needed for public use. All income from the leases shall be deposited in the public buildings repair fund. All leases shall be made in accordance with Sections 13-6-2.1 and 13-6-3 NMSA 1978. The property control division shall establish building use fees at the current fair-market value for property under its control; provided that this provision does not apply to residences furnished to state officials or employees for the legitimate convenience of the employer and that are not taxable benefits for general income tax purposes. Beginning with fiscal year 1997, all state departments and institutions whose property is under the control of the property control division shall remit building use fees collected from lessees to the property control division for deposit into the public buildings repair fund. Departments and institutions may charge separate utility costs for property where the property is not separately metered, and those costs may be deposited to the credit of the department's or institution's operating budget.

**History:** 1953 Comp., § 6-2-32, enacted by Laws 1968, ch. 43, § 8; 1971, ch. 285, § 7; 1977, ch. 247, § 73; 1978, ch. 209, § 2; 1996, ch. 46, § 4.

## ANNOTATIONS



**Cross-references.** - For the public buildings repair fund, see 15-3-11.1 NMSA 1978.

**The 1996 amendment**, effective July 1, 1996, inserted "of the general services department" in the first sentence, substituted "public buildings repair fund" for "long term lease guarantee fund" in the second sentence, substituted "13-6-2.1 and 13-6-3 NMSA 1978" for "6-1-8 and 6-1-8.1 NMSA 1953" in the third sentence, and added the last three sentences.

### **15-3-15. Concessions.**

A. The director of the property control division may grant concession contracts in state buildings under his control, except concession contracts authorized to be entered into by the state park and recreation commission [state parks division] pursuant to Section 16-2-9 NMSA 1978, at such fees as he may prescribe.

B. Concessions shall be granted only under written contract, the faithful performance of which shall be secured by a bond prescribed by the director of the property control division. All income from such concessions shall be deposited in the state capitol improvement fund.

**History:** 1953 Comp., § 6-2-33, enacted by Laws 1968, ch. 43, § 9; 1971, ch. 285, § 8; 1977, ch. 247, § 74.

### **ANNOTATIONS**

**Bracketed material.** - The state park and recreation commission was abolished by Laws 1977, ch. 254, § 4. Section 3 of that act establishes the natural resources department, consisting of several divisions, including the state park and recreation division, and § 11 sets out the duties of that division. The natural resources department was abolished by Laws 1987, ch. 234, § 84. Section 3 of that act establishes the energy, minerals and natural resources department, consisting of several divisions, including the state parks division. See 9-5A-3 and 9-5A-6.1 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**State capitol improvement fund.** - The reference to the state capitol improvement fund in Subsection B apparently means that fund created by 15-3-18 NMSA 1978, repealed by Laws 1978, ch. 209, § 3. See repeal note to 15-3-18 NMSA 1978.

### **15-3-16. Negotiating federal grants and loans.**

The director of the property control division shall have the power to negotiate and receive loans and grants from the United States government and to transfer such amounts to the state capitol improvement fund.

**History:** 1953 Comp., § 6-2-34, enacted by Laws 1968, ch. 43, § 10; 1977, ch. 247, § 75.

## ANNOTATIONS

**State capitol improvement fund.** - The reference to the state capitol improvement fund at the end of this section apparently means that fund created by 15-3-18 NMSA 1978, repealed by Laws 1978, ch. 209, § 3. See repeal note to 15-3-18 NMSA 1978.

### **15-3-17. [Park system near capitol grounds.]**

The regulation and control of the flow of water in the Santa Fe river, the prevention of pollution thereof, the preservation of the trees and other growth along the shores of said stream, from the Denver & Rio Grande railroad bridge to the Canon Road bridge on Palace avenue, within the city of Santa Fe, and a comprehensive and systematic development of such portion of said river and its banks as a park system, are hereby declared to be proper objects of state encouragement and support, as tending to improve the capital city of the state and the capitol buildings and grounds.

**History:** Laws 1929, ch. 15, § 1; C.S. 1929, § 134-1206; 1941 Comp., § 6-213; 1953 Comp., § 6-1-18.

### **15-3-18. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1978, ch. 209, § 3, repeals 6-2-24.1, 1953 Comp. (15-3-18 NMSA 1978), relating to the creation of the state capitol improvement fund, and provides that any balances remaining in the state capitol improvement fund are to be transferred to the long-term lease guarantee fund. For provisions relating to the long-term lease guarantee fund, see 15-3-11 and 15-3-14 NMSA 1978.

### **15-3-19. Parking facilities required for state buildings; standards.**

A. No state building shall be constructed or enlarged to a major degree without providing adequate parking facilities for the use of the public officers and employees employed in such building and for the use of those members of the public reasonably expected to enter such building on public business.

B. Whenever any state building is constructed or enlarged to a major degree, adequate parking facilities must be provided which are sufficient to service the state personnel employed in such building and any members of the public reasonably expected to use such building on public business.

C. The furnishing of at least one parking space for each three hundred square feet of usable floor space, exclusive of hallways, stairways, toilet facilities, utility rooms and similar common areas, shall be deemed to be adequate parking for the use of such state building.

D. The provisions of this section shall not apply to historic sites or state buildings in historical zones as designated by local government ordinance.

**History:** 1953 Comp., § 6-6-18, enacted by Laws 1977, ch. 360, § 1.

### **15-3-20. Staff architect approval.**

The staff architect of the property control division of the general services department in the case of state buildings, or the university staff architect or the board of educational finance in the case of state educational facilities, shall review all plans for the construction or major enlargement of any state building or state educational facility [facility], prior to the execution of any contract for such work, and shall certify to the state board of finance that adequate parking is provided for in compliance with the provisions of this act. If adequate parking is not provided for pursuant to the provisions of this act, no contract may be entered into on behalf of the state.

**History:** 1953 Comp., § 6-6-19, enacted by Laws 1977, ch. 360, § 2; 1983, ch. 301, § 52.

## **ANNOTATIONS**

**Bracketed material.** - The bracketed word in the first sentence was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

**Architectural barrier removal.** - Laws 1994, ch. 148, § 3A, effective March 9, 1994, provides that money appropriated for any state capital improvements project that relates to architectural barrier removal pursuant the federal American with Disabilities Act of 1990 shall not be expended until the state architect has formally approved the architectural barrier removal project.

### **15-3-21. Short title.**

This act [15-3-21 to 15-3-23, 15-3-24 NMSA 1978] may be cited as the "Capital Program Act".

**History:** 1953 Comp., § 6-2-42, enacted by Laws 1972, ch. 74, § 1.

### **15-3-22. Definition.**

As used in the Capital Program Act [15-3-21 to 15-3-23, 15-3-24 NMSA 1978] "capital outlay project" means the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including, but not limited to land, buildings, machinery, furniture and equipment, but excluding projects or programs for the construction, improvement or maintenance of highways and bridges under the supervision of the state highway commission. A capital outlay project includes all proposed expenditures related to the entire undertaking.

**History:** 1953 Comp., § 6-2-43, enacted by Laws 1972, ch. 74, § 2.

**15-3-23. Capital program; fund created; allocation and expenditure for capital outlay.**

A. The "capital program fund" is created. To this fund shall be credited all appropriations for capital outlay projects under the control of the property control division of the general services department.

B. The capital program fund shall be allocated by the property control division for capital outlay projects specified by the legislature in accordance with the provisions of Sections 15-3-1, 15-3-2, 15-3-7 to 15-3-16, 15-3-25 and 15-3-31 NMSA 1978.

**History:** 1953 Comp., § 6-2-44, enacted by Laws 1972, ch. 74, § 3; 1983, ch. 301, § 53.

**ANNOTATIONS**

**Appropriations.** - Laws 1994, ch. 147, § 6R, effective March 9, 1994, appropriates \$240,000 from the general fund to the capital program fund for expenditure in the eighty-second through eighty-fifth fiscal years to provide a new motor vehicle field office for the taxation and revenue department facility in Rio Rancho located in Sandoval county. Any unexpended or unencumbered balance remaining at the end of the eighty-fifth fiscal year shall revert to the general fund.

Laws 1994, ch. 148, § 43, effective March 9, 1994, appropriates various amounts from the general fund to the capital program fund for expenditure in the eighty-second through eighty-fourth fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the general fund.

Laws 1994, ch. 148, § 54, effective March 9, 1994, appropriates \$1,563,000 from the employment security department fund to the capital program fund for expenditure by the property control division of the general services department in the eighty-second through eighty-fourth fiscal years for improvements to offices of the labor department throughout the state in order to comply with the federal Americans with Disabilities Act of 1990. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the employment security department fund.

Laws 1995, ch. 41, § 2, effective April 5, 1995, appropriates \$73,000 from the employment security department fund to the property control division of the general services department for expenditure in fiscal years 1995 and 1996 for the purpose of acquiring, remodeling and renovating an existing building for an office for the labor department in the Deming area in Luna county.

Laws 1996 (1st S.S.), ch. 4, § 38, effective March 21, 1996, appropriates \$156,600 from the employment security department fund to the capital program fund for expenditure by

the property control division of the general services department in fiscal years 1996 through 2000 for the purpose of completing renovations or repairs of the Alamogordo and Farmington labor department offices.

**Extension of expenditure period and purpose.** - Laws 1994, ch. 148, § 71C, effective March 9, 1994, provides that certain appropriations from the employment security department fund made by Chapter 85 of Laws 1992 are extended so that they may be expended through the eighty-third fiscal year.

Laws 1994, ch. 148, § 72, as amended by Laws 1995, ch. 41, § 1, effective April 5, 1995, provides that \$97,000 from the appropriation from the employment security department fund to the property control division of the general services department made by Laws 1992, ch. 85, § 1A(3), shall not be used for its original purpose but is appropriated to the property control division of the general services department for acquisition of, remodeling or renovating an existing building for an office for the labor department in the Deming area in Luna county. Additionally, the period of time for expenditure is extended through fiscal year 1996.

Laws 1996, ch. 14, § 17, effective March 4, 1996, provides that notwithstanding the provisions of Laws 1994, ch. 148, § 43A, the period of time in which the appropriations made by 1994, ch. 148, § 43 from the general fund to the capital program fund shall be extended through fiscal year 1997.

Laws 1996, ch. 14, § 19, effective March 4, 1996, provides that notwithstanding the provisions of Laws 1994, ch. 148, § 54A, the period of time in which the appropriations made by Laws 1994, ch. 148, § 54A from the employment security department fund to the capital program fund shall be extended through fiscal year 1997.

Laws 1996, ch. 14, § 20, effective March 4, 1996, provides that notwithstanding the provisions of Laws 1995, ch. 41, §§ 1 and 2, the period of time in which the appropriations from the employment security department fund to the property control division of the general services department shall be extended through fiscal year 1997.

**Compiler's note.** - Section 15-3-25 NMSA 1978, referred to in Subsection B, was repealed in 1994.

### **15-3-23.1. Capital outlay project reserve fund continued; expenditure.**

The capital outlay project reserve fund, created by Laws 1979, Chapter 404, Section 7, is continued. The fund shall be used to meet capital project funding requirements for projects the planning of which has been authorized by the legislature. Expenditures from the fund shall be made only upon specific appropriation by the legislature.

**History:** Laws 1980, ch. 11, § 1.

## ANNOTATIONS

**Cross-references.** - For capital program fund, see 15-3-23 NMSA 1978.

For capitol buildings repair fund, see 15-3-24 NMSA 1978.

**Compiler's note.** - The reference to Laws 1979, ch. 404, § 7, in the first sentence means that uncompiled appropriation section of the act.

### **15-3-23.2. Capital project; contingency limitation.**

No more than six and one-half percent of the cost of a capital project shall be used for contingencies. For the purposes of this section, "contingencies" means unforeseeable elements of cost within the defined scope of the capital project and cost engineering fees.

**History:** 1978 Comp., § 15-3-23.2, enacted by Laws 1984 (1st S.S.), ch. 10, § 10.

### **15-3-23.3. Capital projects; cost engineer required.**

A. For the purposes of this section:

(1) "cost engineer" means a cost engineer or cost consultant certified by the American association of cost engineers or having equivalent experience, certification or registration; and

(2) "capital project" means construction or renovation for those projects appropriated to the capital program fund as defined in Section 15-3-23 NMSA 1978.

B. The general services department may contract with a cost engineer to provide cost engineering services for capital projects under four hundred thousand dollars (\$400,000), and shall contract for such services on any projects over four hundred thousand dollars (\$400,000) unless the department determines that cost engineering services are not necessary. The cost engineer shall provide cost engineering services for the capital project from the planning stage through the end of construction, and the department may contract with the same cost engineer for all capital projects approved by the legislature during any one year.

C. Within twenty days after the end of a legislative session in which capital projects have been authorized by the legislature, the department shall advertise for requests for proposals from qualified persons for cost engineering services for capital projects approved by the legislature during that session. The department shall review the proposals and submit three proposals to the state board of finance for the board's selection. The state board of finance, after consultation with the legislative finance committee, shall select the cost engineer.

D. No capital project shall proceed, and no money transferred, until the department has contracted with a cost engineer to provide cost engineering services for the approved capital projects.

E. The cost engineer shall keep the secretary of general services and the property control division informed of the progress of the capital projects under the cost engineer's control. The secretary and the cost engineer shall make periodic reports to the legislative finance committee.

F. For capital projects not under the control of the general services department, the legislature may require, or the controlling agency may request, the assistance of the cost engineer on those projects.

**History:** 1978 Comp., § 15-3-23.3, enacted by Laws 1984 (1st S.S.), ch. 10, § 11.

### **15-3-24. Capitol buildings repair fund; creation; expenditures.**

A. The "capitol buildings repair fund" is created. To this fund shall be transferred, after payments required by Section 1 of this 1997 act to the New Mexico finance authority, all income, including distributions from the land grant permanent fund, derived from lands granted to the state by the United States congress for legislative, executive and judicial public buildings. Two percent of this fund shall be transferred annually to a "state capitol maintenance fund", hereby created, as a special perpetual fund for the upkeep and maintenance of the capitol renovation and capitol grounds.

B. The capitol buildings repair fund may be used to repair, remodel and equip capitol buildings and adjacent lands, to repair or replace building machinery and building equipment located in capitol buildings and to contract for options to purchase real estate, such real estate, if purchased, to be put to state use; provided that no more than ten thousand dollars (\$10,000) shall be expended for any single option. Any money used for consideration in acquiring an option to purchase real estate shall be applied against the purchase price of the real estate if the option is exercised. No money shall be expended from the capitol buildings repair fund without authorization of the state board of finance.

C. In the event any capital outlay project exceeds authorized project cost by no more than five percent, the state board of finance may authorize the property control division of the general services department to supplement the authorized cost by an allocation not to exceed five percent of the authorized cost from the capitol buildings repair fund to the extent of the unencumbered and unexpended balance of the fund.

**History:** 1953 Comp., § 6-2-45, enacted by Laws 1972, ch. 74, § 4; 1979, ch. 177, § 1; 1992, ch. 92, § 1; 1997, ch. 178, § 4.

### **ANNOTATIONS**

**The 1992 amendment**, effective July 1, 1994, added the third sentence of Subsection A and inserted "of the general services department" in Subsection C.

**The 1997 amendment**, in the second sentence of Subsection A, inserted ", after payments required by Section 1 of this 1997 act to the New Mexico finance authority" and substituted "distributions from the land grant permanent fund" for "earnings on investments". Laws 1997, ch. 178 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Compiler's note.** - The phrase "Section 1 of this 1997 act" in Subsection A refers to Laws 1997, ch. 178, § 1, which is an uncompiled provision authorizing the issuance of revenue bonds. Details of Section 1 of Laws 1997, ch. 178 may be found in the Revenue Bonds table following Chapter 6, Article 12 NMSA 1978.

**The primary beneficiaries of the capitol buildings repair fund** are executive, legislative and judicial buildings located within Santa Fe, New Mexico, the state capital. 1987 Op. Att'y Gen. No. 87-27.

### **15-3-24.1. Capital projects fund; created.**

A. There is created in the state treasury the "capital projects fund" from which appropriations for specific projects and programs shall be made. The state treasurer shall deposit in this fund all amounts specifically appropriated to this fund and all governmental grants designated to or authorized for deposit in this fund.

B. Fifty-six million nine hundred forty-two thousand three hundred seventy-one dollars (\$56,942,371) is appropriated from the general fund to the capital projects fund created in Subsection A of this section for expenditure in the seventy-seventh through eightieth fiscal years. In the event that general fund revenues and balances, including all other transfers to the general fund authorized by law, are insufficient to meet the level of this appropriation, an amount not to exceed this amount is authorized by the legislature to be expended from the general fund operating reserve pursuant to Section 6-4-2.1 NMSA 1978.

**History:** Laws 1989, ch. 315, § 1.

### **ANNOTATIONS**

**Appropriations.** - Laws 1990 (1st S.S.), ch. 6, §§ 2 and 3, effective April 5, 1990, appropriates specified amounts for specified purposes from the capital projects fund to specified agencies or funds for expenditure in the seventy-eighth through eighty-first fiscal years for the specified purposes, and further provide that unless otherwise specified, any unexpended or unencumbered balances remaining at the end of the eighty-first fiscal year shall revert to the capital projects fund.



**Change of purpose.** - Laws 1996, ch. 14, § 34, effective March 4, 1996, provides that notwithstanding the provisions of Laws 1993, ch. 367, § 50, \$225,000 of the balance from the capital projects fund appropriation to the local government division of the department of finance and administration pursuant to Laws 1990 (1st S.S.), ch. 6, § 2C(6), to acquire land and buildings on the ground of the old Albuquerque high school in Bernalillo county shall not be expended for its original purpose but is reappropriated through fiscal year 2000 to provide \$50,000 for renovation in the Martineztown area of Albuquerque, \$135,000 for renovation of Wells Park community center in Albuquerque and \$40,000 to purchase vans for the Wells Park and Duranes community centers in Albuquerque.

Laws 1996, ch. 26, § 1, effective March 4, 1996, provides that the capital program fund appropriated by Laws 1990 (1st S.S.), ch. 6, § 2U for the construction of a home for homeless children is reappropriated to the local government division of the department of finance and administration to plan, design, construct and furnish a home for homeless children in Albuquerque located in Bernalillo county. Notwithstanding the provisions of Laws 1995, ch. 218, § 27, any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the capital program fund.

### **15-3-25 to 15-3-30. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1994, ch. 119, § 15 repeals 15-3-25 to 15-3-30 NMSA 1978, as enacted by Laws 1925, ch. 98, §§ 1-3, Laws 1933, ch. 100, § 3 and Laws 1968, ch. 43, § 11, and amended by Laws 1977, ch. 247, § 76 and Laws 1983, ch. 301, § 54, concerning the state motor pool, purchase or lease of motor vehicles with state funds, excepted vehicles, identification marks on state-owned vehicles, the governor's contingent fund and penalties for use of state vehicles for pleasure, effective May 18, 1994. For former sections, see 1991 Replacement Pamphlet. For present comparable provisions, see 15-8-1 to 15-8-11 and 66-3-28 NMSA 1978.

### **15-3-31. Aircraft control center.**

The director of the property control division shall create and maintain an aircraft control center. In connection with the center, the director shall:

- (1) maintain records of all flights made by state-owned aircraft;
- (2) require the head of each state agency owning an airplane to provide daily reports on all flight schedules including a preflight report of anticipated time of departure and arrival for each flight, name of the pilot and each passenger, the destination and intermediate stops and a post-flight report of actual departure and arrival times; and
- (3) make available, when not in use by the owning agency, state aircraft for the use of other agencies at a reasonable rental rate which he shall determine. However, first

priority of assignment shall be given for use by the owning agency. If the director of the property control division determines that it is impractical for aircraft to be made available for use by other agencies as a result of required emergency use or other special considerations, the aircraft may be exempted from this provision. However, the use of the aircraft must still be reported as required above.

**History:** 1953 Comp., § 6-2-36, enacted by Laws 1968, ch. 43, § 12; 1977, ch. 247, § 77.

### **15-3-32. Short title.**

Sections 15-3-1, 15-3-2, 15-3-7 to 15-3-16, 15-3-25 and 15-3-31 NMSA 1978 may be cited as the "Property Control Act".

**History:** 1953 Comp., § 6-2-38, enacted by Laws 1971, ch. 285, § 1.

## **ANNOTATIONS**

**Compiler's note.** - Section 15-3-25 NMSA 1978 was repealed in 1994.

### **15-3-33. State police facilities; maintenance charges.**

The state police may assess maintenance charges to those agencies which occupy New Mexico state police facilities according to a fee schedule approved by the general services department.

**History:** Laws 1980, ch. 10, § 1; 1983, ch. 301, § 55.

### **15-3-34. Public buildings; flag display.**

The prisoner of war and missing in action flag shall be displayed on legal public holidays in New Mexico at all public buildings with flag poles owned by the state in accordance with regulations adopted by the general services department.

**History:** Laws 1991, ch. 39, § 1.

## **ARTICLE 3A**

# **GOVERNOR'S RESIDENCE ADVISORY COMMISSION**

### **15-3A-1. Governor's residence advisory commission; created.**

A. There is created the "governor's residence advisory commission" which shall be administratively attached to the general services department.

B. The commission shall consist of five members selected as follows:

- (1) the governor or his designee;
- (2) the secretary of general services or his designee; and
- (3) three members appointed by the governor from a list of names submitted by the governor's mansion foundation, a nonprofit, charitable corporation of this state. The chairman of the commission shall be elected annually from among the commission membership.

C. Appointed members shall serve for terms of four years each and vacancies in any appointed member's seat shall be filled for the remainder of the unexpired term in the same manner as the original appointment was made.

D. Appointed members shall receive no compensation but shall be paid per diem and mileage as provided for nonsalaried officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 1989, ch. 363, § 1.

### **15-3A-2. Duties and powers.**

A. The governor's residence advisory commission shall:

- (1) plan, assemble, dispose and acquire furnishings, art, landscaping materials and plants and other decorations for the public areas of the official residence of the governor;
- (2) monitor and report on the status of maintenance of the governor's residence and recommend to the general services department and to the legislature actions necessary to repair, maintain and renovate the residence;
- (3) conduct a detailed inventory at the beginning of each governor's term and annually prepare and submit to the legislature, the governor and the general services department a written inventory of and a statement on the condition of these public furnishings, art decorations and other items of the residence, as well as a written statement on the condition of the residence as a whole; and
- (4) develop statewide interest in the residence and effect such measures as will enhance the governor's ability to provide appropriate hospitality to the visitors of the residence.

B. The commission may:

- (1) utilize the assistance of individuals, the general services department, other state agencies and nonprofit charitable corporations in carrying out its duties;
- (2) accept on behalf of the state from any private or other public sources, money, gifts, donations and bequests for use by the commission in carrying out its duties; and
- (3) enter into public promotions of its endeavors and publish such materials as it deems appropriate to promote the purposes of the commission.

**History:** Laws 1989, ch. 363, § 2.

### **15-3A-3. Trust fund created.**

There is created in the state treasury a permanent trust fund which shall be known as the "governor's residence preservation fund". The fund shall consist of all gifts, donations and bequests of money to the governor's residence advisory commission as well as any appropriations made to the commission. Earnings from the investment of the fund shall be credited to the fund. Expenditure of the fund shall be only for the purposes for which the commission was created and shall be paid to the commission upon vouchers signed by the chairman of the commission and warrants issued by the secretary of finance and administration.

**History:** Laws 1989, ch. 363, § 3.

## **ARTICLE 4 FEDERAL PROPERTY AND COMMODITIES DIVISION**

### **15-4-1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1984, ch. 64, § 26B, repeals 15-4-1 NMSA 1978, as amended through Laws 1983, ch. 301, § 26, relating to the creation of the surplus property control division. For present provisions relating to surplus property, see 15-4-2 and 15-4-3 NMSA 1978.

Laws 1984, ch. 64, contains no effective date provision but was enacted at a session which adjourned on February 16, 1984. See N.M. Const., art. IV, § 23.

### **15-4-2. Surplus property; authority.**

A. For the purpose of managing a surplus property program, the general services department may enter into any contract with the United States government or with any agency or department thereof for the purchase, lease, receipt as a loan or gift or any

other means of acquisition of any real or personal property without regard to provisions of state law that require:

- (1) the posting of notices or public advertising for bids;
- (2) the inviting or receiving of competitive bids; and
- (3) the delivery of purchases before payment.

B. The general services department may designate a representative of a user to enter a bid at any sale of any real or personal property owned by the United States government or any agency or department thereof and may authorize that person to make payment required in connection with the bidding.

**History:** 1953 Comp., § 6-2-40, enacted by Laws 1971, ch. 189, § 2; 1984, ch. 64, § 21.

### **15-4-3. Surplus property; revenues.**

All revenues received from the sale of surplus property by the general services department shall be remitted to the state treasurer for deposit in a revolving fund which is created by this section and is to be known as the "surplus property revolving fund." Deposits to this fund and money remaining in the fund at the end of any fiscal year shall not be transferred or revert to the general fund. Expenditures may be made from the surplus property revolving fund for the purposes of carrying out activities relating to the sale of surplus property but such expenditures shall be made by the state treasurer only upon vouchers approved and warrants drawn by the secretary of general services.

**History:** 1953 Comp., § 6-2-41, enacted by Laws 1971, ch. 189, § 3; 1977, ch. 247, § 80; 1984, ch. 64, § 22.

## **ARTICLE 5 TELECOMMUNICATIONS BUREAU**

### **15-5-1. Telecommunications bureau created; duties.**

A. The "telecommunications bureau" is created within the communications division of the general services department.

B. The telecommunications bureau shall enter into necessary agreements to provide, where feasible, a central telephone system, including wide-area telephone service, and related facilities to all executive, legislative, judicial, institutional and other state governmental offices located in the state of New Mexico.

**History:** Laws 1963, ch. 181, § 1; 1953 Comp., § 6-1-24; Laws 1965, ch. 225, § 1; 1977, ch. 247, § 61; 1978, ch. 124, § 11; 1980, ch. 151, § 17; 1983, ch. 301, § 57.

### **15-5-2. Central telephone services; staff; budget.**

The telecommunications bureau shall provide the staff and material necessary to properly and adequately operate the central telephone system. The budget for the central telephone system shall be approved as part of the total operating budget of the general services department.

**History:** Laws 1963, ch. 181, § 2; 1953 Comp., § 6-1-25; Laws 1965, ch. 225, § 2; 1977, ch. 247, § 62; 1978, ch. 124, § 12; 1980, ch. 151, § 18; 1983, ch. 301, § 58.

### **15-5-3. Charges for central telephone services.**

Departments, institutions and agencies participating in the central telephone system shall be charged a pro rata and equitable share of the total monthly costs of the service. This determination is to be made by the telecommunications bureau of the communications division of the general services department. Toll calls not covered by the wide-area telephone service and supplemental equipment shall be segregated and paid for by agencies, institutions and departments making the calls or using the supplemental equipment.

**History:** 1953 Comp., § 6-1-26, enacted by Laws 1963, ch. 181, § 3; 1965, ch. 225, § 3; 1977, ch. 247, § 63; 1978, ch. 124, § 13; 1980, ch. 151, § 19; 1983, ch. 301, § 59.

## **ANNOTATIONS**

**Billing procedure.** - Normally payment procedures for agencies making toll calls not covered by the wide-area telephone service and supplemental equipment would be established by agreement between the department of finance and administration (now general services department) and the telephone company, but absent such agreement toll calls should be billed directly to the agencies making them. 1967-68 Op. Att'y Gen. No. 67-93.

### **15-5-4. Deposit of money.**

The telecommunications bureau of the communications division of the general services department shall order the deposit or transfer monthly to a fund known as the "central telephone services fund" the amount of money owed by each department, institution and agency utilizing the central telephone system. State institutions and agencies shall adopt such accounting procedures as are prescribed by the department of finance and administration for the handling of payments with reference to the central telephone system.

**History:** 1953 Comp., § 6-1-27, enacted by Laws 1963, ch. 181, § 4; 1965, ch. 225, § 4; 1977, ch. 247, § 64; 1978, ch. 124, § 14; 1980, ch. 151, § 20; 1983, ch. 301, § 60.

### **15-5-5. Appropriation.**

All income to the central telephone services fund is appropriated to carry out the purposes of Sections 15-5-1 through 15-5-6 NMSA 1978. Payments from the central telephone services fund shall be made on vouchers signed by the secretary of general services or his designee.

**History:** 1953 Comp., § 6-1-28, enacted by Laws 1963, ch. 181, § 5; 1965, ch. 225, § 5; 1977, ch. 247, § 65; 1978, ch. 124, § 15; 1983, ch. 301, § 61.

### **15-5-6. Participation or exclusion of agency, department or institution.**

All departments, institutions and agencies of the state government to the extent that it is practical and feasible shall participate in the central telephone system. No agreement for any leased or purchased telephone service or for purchase of any telephone equipment shall be entered into by any department, institution or agency of the state participating in the central telephone system, except those institutions enumerated in Article 12, Section 11 of the New Mexico constitution, except upon prior written approval of the secretary of general services or the director of the communications division, acting as his designee. If, on the basis of a technical survey, it is found to be infeasible or impractical to include particular agencies, departments or institutions in the central telephone system, the director of the communications division may exclude them. In the event of exclusion of any agency, department or institution, the director of the communications division shall file a written statement, certifying the reasons therefor, with the state records center.

**History:** 1953 Comp., § 6-1-29, enacted by Laws 1963, ch. 181, § 6; 1965, ch. 225, § 6; 1973, ch. 79, § 1; 1977, ch. 247, § 66; 1978, ch. 124, § 16; 1980, ch. 151, § 21; 1983, ch. 301, § 62.

## **ARTICLE 6 PLANNING DIVISION**

**(Repealed by Laws 1983, ch. 296, § 5.)**

### **15-6-1 to 15-6-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 296, § 5, repeals 15-6-1 to 15-6-3 NMSA 1978, relating to the planning division of the department of finance and administration, effective July 1, 1983. For present provisions, see 9-14-1 to 9-14-4 NMSA 1978.

**Applicability.** - Laws 1983, ch. 296, § 6, provides that § 5 of the act, repealing 15-6-1 to 15-6-3 NMSA 1978, shall not apply to litigation pending on the effective date of the act, nor shall it apply to contracts extending beyond the seventy-first fiscal year.

## **ARTICLE 7 RISK MANAGEMENT DIVISION**

### **15-7-1. Definitions.**

As used in Chapter 15, Article 7 NMSA 1978:

- A. "board" means the risk management advisory board;
- B. "director" means the director of the risk management division of the general services department;
- C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions;
- D. "public employee" means any officer, employee or servant of a governmental entity, including elected or appointed officials, law enforcement officers and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation, but the term does not include an independent contractor; and
- E. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, including regional housing authorities.

**History:** 1953 Comp., § 5-14-20.4, enacted by Laws 1977, ch. 385, § 4; 1978, ch. 166, § 6; 1982, ch. 19, § 1; 1983, ch. 301, § 63; 1996, ch. 45, § 1.

### **ANNOTATIONS**

**The 1996 amendment**, effective March 4, 1996, substituted "Chapter 15, Article 7" for "Sections 15-7-1 through 15-7-10" in the introductory language and added "including regional housing authorities" at the end of Subsection E.

### **15-7-2. Risk management division.**

A. There is established a "risk management division" of the general services department. The director of the risk management division shall be appointed by the secretary of general services. The director shall be knowledgeable and experienced in general insurance practices. The director shall be responsible for the acquisition and administration of all insurance purchased by the state. Except as provided by this



section, no state agency may procure any kind of insurance other than through the risk management division.

B. The risk management division shall apportion to each state agency its contributions toward the purchase of insurance or for the providing of coverage for any risk not insured. The amount of contribution by each agency shall be determined by the risk management division and shall reflect the respective risks of each agency. All contributions toward the purchase of insurance or for the coverage of any risk not insured shall be paid into the public liability fund, the workers' compensation retention fund, the public property reserve fund or the group self-insurance fund, as appropriate. The department of finance and administration may collect or transfer funds from each agency to cover insurance or other costs, pursuant to the risk management division's instructions.

C. The director, upon a finding that efficiency and economy so require, may authorize any state agency to purchase insurance for, or otherwise cover, vision, dental, any group or individual health, life, accidental death and dismemberment or disability coverage. Any authorization granted shall be conditioned upon the prior approval by the director of any policy to be purchased and the premium to be paid by the agency.

**History:** Laws 1978, ch. 166, § 7; 1983, ch. 301, § 64; 1986, ch. 102, § 5; 1989, ch. 231, § 10.

## ANNOTATIONS

**Cross-references.** - For appointment of director, see 9-17-5 NMSA 1978.

**Prior History.** - In 1978, 15-7-2 NMSA 1978 was repealed and reenacted by Laws 1978, Chapter 166, § 7. For prior history, see Laws 1976, ch. 58, § 21; 1953 Comp., § 5-14-21; Laws 1977, ch. 247, § 54; 1977, ch. 385, § 5.

**Law reviews.** - For survey, "Torts: Sovereign and Governmental Immunity in New Mexico," see 6 N.M. L. Rev. 249 (1976).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 196.

### **15-7-3. Additional powers and duties of the risk management division.**

A. The risk management division of the general services department may:

(1) enter into contracts;

(2) procure insurance, reinsurance or employee group benefits; provided that any proposal or contract for the procurement of any group health care benefits shall be subject to the provisions of the Health Care Purchasing Act [13-7-1 to 13-7-4 NMSA

1978]; and provided further that reinsurance or excess coverage insurance may be placed by private negotiation, notwithstanding the provisions of the Procurement Code [13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978], if the insurance or reinsurance has a restricted number of interested carriers, the board determines that the coverage is in the interest of the state and cannot otherwise be procured for a reasonable cost and the director seeks the advice and review of the board in the placement and in designing private negotiation procedures;

(3) in the manner prescribed by Subsection E of Section 9-17-5 NMSA 1978, after a notice and a public hearing, prescribe by regulation reasonable and objective underwriting and safety standards for governmental entities and reasonable standards for municipal self-insurance pooling agreements covering liability under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] and adopt such other regulations as may be deemed necessary;

(4) compromise, adjust, settle and pay claims;

(5) pay expenses and costs;

(6) in the manner prescribed by Subsection E of Section 9-17-5 NMSA 1978, prescribe by rule or regulation the rating bases, assessments, penalties and risks to be covered by the public liability fund, the workers' compensation retention fund and the public property reserve fund and the extent such risks are to be covered;

(7) issue certificates of coverage in accordance with Paragraph (6) of this subsection:

(a) to any governmental entity for any tort liability risk covered by the public liability fund;

(b) to any governmental entity for any personal injury liability risk or for the defense of any errors or act or omission or neglect or breach of duty, including the risks set forth in Paragraph (2) of Subsection B and Paragraph (2) of Subsection D of Section 41-4-4 NMSA 1978; and

(c) to any governmental entity for any part of risk covered by the workers' compensation retention fund, the surety bond fund or the public property reserve fund;

(8) study the risks of all governmental entities;

(9) initiate the establishment of safety programs and adopt regulations to carry out such programs in the manner prescribed by Subsection E of Section 9-17-5 NMSA 1978;

(10) hire a safety program director who shall coordinate all safety programs of all state agencies;

(11) consult with and advise local public bodies on their risk management problems; and

(12) employ full-time legal counsel who shall be under the exclusive control and supervision of the director and the secretary of general services.

B. The risk management division of the general services department shall provide liability coverage for the following risks:

(1) a claim made pursuant to the provisions of 42 U.S.C. Section 1983 against a nonprofit corporation, members of its board of directors or its employees when the claim is based upon action taken pursuant to the provisions of a contract between the corporation and the department of health under which the corporation provides developmental disability services to clients of the department and the claim is made by or on behalf of a client; and

(2) a claim made pursuant to the provisions of 42 U.S.C. Section 1983 against a nonprofit corporation, members of its board of directors or its employees when the corporation operates a facility licensed by the department of health as an intermediate care facility for the mentally retarded and the claim is based upon action taken pursuant to the provisions of the license and is made by or on behalf of a resident of the licensed facility.

C. The director shall report his findings and recommendations, if any, for the consideration of each legislature. The report shall include the amount and name of any person receiving payment from the public liability fund of any claim paid during the previous fiscal year exceeding one thousand dollars (\$1,000). The report shall be made available to the legislature on or before December 15 preceding each regular legislative session.

**History:** Laws 1978, ch. 166, § 8; 1979, ch. 287, § 3, 1979, ch. 392, § 1; 1983, ch. 301, § 65; 1986, ch. 102, § 6; 1990, ch. 71, § 1; 1995, ch. 173, § 1; 1997, ch. 74, § 6.

## ANNOTATIONS

**The 1990 amendment**, effective May 16, 1990, rewrote Paragraph (2) of Subsection A which read "purchase insurance or reinsurance" and substituted "workers' compensation" for "workmen's compensation" in two places in Subsection A.

**The 1995 amendment**, effective June 16, 1995, added "and duties" in the section heading, substituted "9-17-5" for "9-6-5" in Paragraphs (3) and (6) of Subsection A, added Subsection B, and redesignated former Subsection B as Subsection C.

**The 1997 amendment**, effective July 1, 1997, inserted the proviso following "group benefits" at the beginning of the sentence in Paragraph A(2) and made minor stylistic changes.

**Prior History.** - In 1978, 15-7-3 NMSA 1978 was repealed and reenacted by Laws 1978, Chapter 166, § 8. For prior history, see Laws 1976, ch. 58, § 22; 1953 Comp., § 5-14-22; Laws 1977, ch. 247, § 55; 1977, ch. 385, § 6.

**Coverage limited by Tort Claims Act.** - Provision of this section regarding coverage for the defense of governmental entities is limited to the coverage required by the Tort Claims Act and does not extend to mandamus actions. Board of County Comm'rs v. Risk Mgt. Div., 120 N.M. 178, 899 P.2d 1132 (1995).

The risk management division's endorsement of a certificate of coverage issued to a county denying coverage for mandamus actions was a ministerial act, fulfilling the requirements of the Tort Claims Act, and not a discretionary decision altering the scope of the county's coverage; accordingly, the refusal to cover mandamus claims in the endorsement was not subject to rulemaking requirements. Board of County Comm'rs v. Risk Mgt. Div., 120 N.M. 178, 899 P.2d 1132 (1995).

### **15-7-3.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 319, § 1 repeals 15-7-3.1 NMSA 1978, as enacted by Laws 1986, ch. 114, § 1, relating to the public child contractor liability fund, effective June 19, 1987. For the provisions of the former section, see the 1986 Replacement Pamphlet.

### **15-7-4. Risk management advisory board.**

A. There is created the "risk management advisory board." The board shall be composed of:

- (1) the attorney general or his designee;
- (2) the superintendent of insurance;
- (3) the secretary of finance and administration or his designee;
- (4) the chief financial officer of a public school district who shall be appointed by the governor;
- (5) an attorney, who shall be named by the president of the state bar of New Mexico;
- (6) the director of the legislative council service or his designee;
- (7) the chief financial officer of an institution of higher education who shall be appointed by the governor;

(8) an insurance agent licensed to write property, casualty and life insurance in this state who shall be appointed by the governor; and

(9) the chief financial officer of a local public body or the chief administrator of an entity of a local public body, other than a school district, with a risk covered by the public liability fund, who shall be appointed by the governor.

B. Members of the board appointed by the governor or named by the president of the state bar of New Mexico shall serve for a term of four years. The insurance agent appointed by the governor and the attorney named by the president of the state bar of New Mexico shall be paid by the risk management division per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

C. A majority of the board shall constitute a quorum. The members of the board shall annually elect from among their membership a chairman and vice chairman.

**History:** Laws 1978, ch. 166, § 9.

### **ANNOTATIONS**

**Prior History.** - In 1978, 15-7-4 NMSA 1978 was repealed and reenacted by Laws 1978, Chapter 166, § 9. For prior history, see Laws 1976, ch. 58, § 23; 1953 Comp., § 5-14-23; Laws 1977, ch. 247, § 56; 1977, ch. 385, § 7.

**Law reviews.** - For survey, "Torts: Sovereign and Governmental Immunity in New Mexico," see 6 N.M. L. Rev. 249 (1976).

### **15-7-5. Powers and duties of the advisory board.**

The advisory board shall review:

A. specifications for all insurance policies to be purchased by the risk management division including specifications setting forth minimum capital and surplus requirements for any insurance company submitting a bid;

B. all professional service and consulting contracts or agreements to be entered into by the risk management division;

C. if insurance is to be purchased by negotiation, the companies and agents to be selected to submit proposals;

D. all rules and regulations to be promulgated by the risk management division;

E. the form, purpose and content of certificates of coverage to be issued by the risk management division; and

F. investments to be made by the risk management division.

**History:** Laws 1978, ch. 166, § 10.

## **ANNOTATIONS**

**Prior History.** - In 1978, 15-7-5 NMSA 1978 was repealed and reenacted by Laws 1978, Chapter 166, § 10. For prior history see, 1953 Comp., § 5-14-24, enacted by Laws 1977, ch. 385, § 8.

### **15-7-6. Workers' compensation retention fund.**

A. There is created in the state treasury the "workers' compensation retention fund".

B. Money deposited in, earned by or appropriated to the workers' compensation retention fund may be used by the director to:

(1) purchase workers' compensation insurance;

(2) pay workers' compensation claims in accordance with the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978];

(3) enter into consulting and other contracts as may be necessary or desirable in carrying out the provisions of this section; and

(4) pay any costs or expenses incurred in carrying out the provisions of this section.

C. For the purposes of this section, "covered educational entities" means school districts as defined in Section 22-1-2 NMSA 1978 and educational institutions established pursuant to Chapter 21, Articles 13, 16 and 17 NMSA 1978 that request and are granted coverage from the risk management division of the general services department, if the coverage is commercially unavailable; except that coverage shall be provided to a school district only through the public school insurance authority or its successor unless the district has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services.

D. On or before June 15 of each fiscal year, the risk management advisory board shall calculate the current cash balance in the workers' compensation retention fund, all revenue projected to be deposited into the fund during the next fiscal year and all expenditures projected to be made from the fund during the next fiscal year. Within fifteen days of the calculation, ninety percent of all projected excess cash balances shall be transferred to the risk reserve. Excess cash balances shall be calculated as the current cash balance plus projected revenue minus projected expenditures.

**History:** 1953 Comp., § 5-14-25, enacted by Laws 1977, ch. 385, § 9; 1978, ch. 166, § 11; 1983, ch. 301, § 66; 1986, ch. 102, § 7; 1989, ch. 324, § 10; 1996 (1st S.S.), ch. 3, § 4.

## ANNOTATIONS

**Cross-references.** - For the risk reserve fund within the general fund, see 6-4-2.4 NMSA 1978.

**The 1996 amendment**, effective March 21, 1996, in Subsection B, inserted "earned by" in the introductory paragraph, deleted former Paragraph (2), which provided that the director may establish appropriate reserves to provide workers' compensation coverage for employees of state agencies or employees of covered educational entities, and redesignated the remaining paragraphs; in the first sentence of Subsection C, substituted "that request" for "which request" near the beginning and deleted "group" preceding "insurance authority"; and added Subsection D.

### **15-7-7. Consulting and claims adjusting contracts.**

A. Notwithstanding any other provision of law, the risk management division of the department of finance and administration [general services department] may:

(1) contract, as may be necessary, with a recognized insurance consulting firm to assist in the implementation of the workmen's compensation retention fund and the public property reserve fund; and

(2) contract with a recognized insurance claims adjusting firm for the handling of all claims made against the workmen's compensation retention fund or the public property reserve fund.

B. No contract shall be entered into pursuant to this section unless proposals have been sought from two or more qualified firms. Contracts shall be awarded on the basis of cost, financial resources of the firm, service facilities in New Mexico, service reputation and experience.

**History:** 1953 Comp., § 5-14-26, enacted by Laws 1977, ch. 385, § 10; 1983, ch. 58, § 1.

## ANNOTATIONS

**Department of finance and administration.** - Laws 1983, ch. 301, § 7 states that references to the risk management division of the department of finance and administration are to be construed as references to the risk management division of the general services department. See 15-7-2 NMSA 1978.

### **15-7-8. Local public bodies; insurance policies; reports.**

A. Upon request, any local public body shall file with the director of the risk management division:

(1) a copy of every insurance policy currently in effect; and

(2) a detailed statement of the cost of such policies.

B. If a local public body has been unable to insure any risk or for any other reason has failed to insure any risk, it shall report the reason for such failure to the director of the risk management division on or before November 1 of each year.

**History:** 1953 Comp., § 5-14-27, enacted by Laws 1977, ch. 385, § 16; 1978, ch. 166, § 12; 1983, ch. 58, § 2.

### **15-7-9. Confidentiality of records; penalty.**

A. The following records created or maintained by the risk management division are confidential and shall not be subject to any right of inspection by any person not a state officer, member of the legislature or state employee within the scope of his official duties:

(1) records pertaining to insurance coverage; provided any record of a particular coverage shall be available to any public officer, public employee or governmental entity insured under such coverage; and

(2) records pertaining to claims for damages or other relief against any governmental entity or public officer or employee; provided such records shall be subject to public inspection by New Mexico citizens one hundred eighty days after the latest of the following dates:

(a) the date all statutes of limitation applicable to the claim have run;

(b) the date all litigation involving the claim and the occurrence giving rise thereto has been brought to final judgment and all appeals and rights to appeal have been exhausted;

(c) the date the claim is fully and finally settled; or

(d) the date the claim has been placed on closed status.

B. Records protected pursuant to Subsection A of this section shall be made available as necessary for purposes of audit or defense. Any person performing such audit or providing such defense shall keep such records confidential, except as required otherwise by law.



C. Any person who reveals records protected pursuant to Subsection A of this section to another person in violation of this section is guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars (\$1,000). The state shall not employ any person so convicted for a period of five years after the date of conviction.

**History:** 1978 Comp., § 15-7-9, enacted by Laws 1981, ch. 280, § 1.

## ANNOTATIONS

**Cross-references.** - For inspection of public records generally, see 14-2-1 et seq., 14-3-7 and 14-3-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - What preliminary data gathered by public departments or officials constitute "public records" within the right of access, inspection, and copying by private persons, 26 A.L.R.4th 639.

76 C.J.S. Records § 74 et seq.

### **15-7-10. Legal defense contracts; renewal.**

Any valid contract between the risk management division and any law firm, to defend claims against the state or any of its public employees pursuant to Subsection B of Section 41-4-4 NMSA 1978, shall be automatically extended for the purpose of and as long as necessary for completing and concluding any matter in litigation, including appeals, referred to the firm for defense prior to the termination date stated in the contract or any applicable amendment thereto. Automatic renewal pursuant to this section applies only to matters which were in litigation and were referred to the law firm prior to the contract termination date and does not apply to regular contract renewals. This section does not affect the director's discretion to assign or to terminate a prior assignment and reassign any matter to any law firm. This section does not apply where nonrenewal is approved:

A. by two-thirds majority vote of the board members present and voting and by consent of a majority of the state public employee defendants being represented in each matter; or

B. by simple majority vote of the board members present and voting, consent of the law firm and consent of a majority of the state public employee defendants being represented in each matter.

**History:** 1978 Comp., § 15-7-10, enacted by Laws 1982, ch. 19, § 2.

### **15-7-11. Temporary transfer of money among funds administered by risk management division.**

A. The director of the risk management division of the general services department may transfer money in accordance with this section among the following funds:

- (1) the local public body unemployment compensation reserve fund;
- (2) the public liability fund;
- (3) the public property reserve fund;
- (4) the state government unemployment compensation reserve fund;
- (5) the surety bond fund; and
- (6) the workers' compensation retention fund.

B. Money may be transferred among the funds specified in Subsection A of this section only upon the director's written certification that:

- (1) the money is required to maintain the financial stability and liquidity of the fund to which the money is to be transferred;
- (2) the money is not required to maintain the financial stability and liquidity of any fund from which the money is to be transferred;
- (3) the fund to which the money is to be transferred can reasonably be expected to have sufficient balances within one year of the date of the transfer to repay the amount transferred in full plus interest; and
- (4) all other requirements of this section will be fulfilled prior to transfer.

C. The secretary of general services and the state board of finance shall approve in advance any transfer of money pursuant to this section.

D. The total amount of money which may be transferred out of a particular fund shall not at any time exceed thirty percent of the total balance deposited in the fund including any money owed to the fund pursuant to this section.

E. Amounts of money transferred pursuant to this section shall be repaid to any fund from which transferred within one year from the date of transfer, together with interest. Interest shall be calculated on the basis of the average interest earned on money remaining in the fund during the duration of the transfer.

F. If amounts owing any fund cannot be repaid in accordance with this section, the director of the risk management division shall so certify to the secretary of general services and to the state board of finance. Repayment shall then be made as soon as money becomes available therefor.

G. Repayment of money to a particular fund shall not be deemed a transfer subject to the requirements of this section.

**History:** 1978 Comp., § 15-7-11, enacted by Laws 1983, ch. 292, § 1; 1990, ch. 28, § 1.

### **ANNOTATIONS**

**The 1990 amendment**, effective May 16, 1990, inserted "of the risk management division of the general services department" and "of the risk management division" following "director" in Subsections A and F, substituted "secretary of general services" for "secretary of finance and administration" in Subsections C and F and, in Subsection A, added present Paragraphs (1), (2) and (4) and redesignated former Paragraphs (1) to (3) as present Paragraphs (6), (3), and (5), respectively.

## **ARTICLE 8 TRANSPORTATION SERVICES**

### **15-8-1. Short title.**

Chapter 15, Article 8 NMSA 1978 may be cited as the "Transportation Services Act".

**History:** Laws 1994, ch. 119, § 1; 1995, ch. 161, § 3.

### **ANNOTATIONS**

**The 1995 amendment**, effective June 1, 1995, rewrote the section which read "Sections 1 through 12 of this act may be cited as the 'Motor Pool Act'."

**Personal use of state vehicles prohibited.** - Although Rule 78-9 of the department of finance and administration (now general services department) does not specifically prohibit the use of state vehicles for hauling or pulling personal vehicles while on official business, it is apparently intended to prohibit any personal use of state vehicles. 1980 Op. Att'y Gen. No. 80-4.

### **15-8-2. Findings and purpose.**

The legislature finds that centralized control of state vehicles is in the best interest of the state because it permits the state to use its transportation resources in the most efficient and effective manner. The primary purposes of the Transportation Services Act [this article] are:

A. to provide a centralized agency to purchase state vehicles and to control their use;

B. to implement and administer the State Aircraft Act [Chapter 15, Article 9 NMSA 1978];

C. to supervise and monitor the alternative fuel conversion program; and

D. to supervise and administer a state travel coordination program, including coordinating and monitoring the in-state and out-of-state travel of official state business.

**History:** Laws 1994, ch. 119, § 2; 1995, ch. 161, § 4.

### **ANNOTATIONS**

**The 1995 amendment**, effective June 1, 1995, subdivided the existing language to form Subsection A, added Subsections B through D, and substituted "The primary purposes of the Transportation Services Act are" for "the purpose of the Motor Pool Act is" in the introductory language.

### **15-8-3. Definitions.**

As used in the Transportation Services Act [this article]:

A. "department" means the general services department;

B. "director" means the director of the division;

C. "division" means the transportation services division of the department;

D. "secretary" means the secretary of general services;

E. "state agency" means a state department, agency, board or commission except the legislative and judicial branches, public schools and institutions of higher education; and

F. "state vehicle" means an automobile, van, sport-utility truck, pickup truck or other vehicle used by a state agency to transport passengers or property.

**History:** Laws 1994, ch. 119, § 3; 1995, ch. 161, § 5.

### **ANNOTATIONS**

**The 1995 amendment**, effective June 1, 1995, substituted "transportation services" for "motor pool" in the introductory language and in Subsection C.

### **15-8-4. Division created.**

The "transportation services division" is created in the department. The director shall be appointed by the secretary with the consent of the governor. Staff of the division shall be covered by the provisions of the Personnel Act.

**History:** Laws 1994, ch. 119, § 4; 1995, ch. 161, § 6.

## ANNOTATIONS

**The 1995 amendment**, effective June 1, 1995, substituted "transportation services" for "motor pool" in the first sentence.

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

### **15-8-5. Division; general powers and duties.**

The division shall:

- A. have control over all state vehicles;
- B. regulate the use of the state vehicles;
- C. hold the titles of all state vehicles and provide for the security of the titles;
- D. register all state vehicles in the custody of the division and ensure that state vehicles assigned to other state agencies have current and correct registrations;
- E. control the issuance of state government plates assigned to a state agency and ensure that government plates are used only on state vehicles;
- F. maintain a complete and accurate inventory of all state vehicles, including those in the custody of another state agency, and the location of all state vehicles;
- G. establish and enforce maintenance standards for state vehicles in the custody of other state agencies;
- H. require periodic use and maintenance reports from other state agencies that have custody of state vehicles;
- I. purchase, through the state purchasing agent, all state vehicles and assign their use;
- J. perform periodic announced and unannounced inspections of state vehicles in the custody of other state agencies;
- K. establish a motor pool and provide an adequate fleet of state vehicles;
- L. provide for the maintenance of state vehicles in the motor pool;
- M. establish and enforce standards for drivers of state vehicles, including revoking driver privileges;
- N. maintain individual state driver records, including all tickets received by drivers of state vehicles for violations of the Motor Vehicle Code;

O. maintain a record of all accident reports and insurance claims;

P. maintain a history of state vehicles, including purchases, maintenance and sales;

Q. carry out the provisions of the Alternative Fuel Conversion Act [13-1B-1 to 13-1B-7 NMSA 1978]; and

R. have the power to sell or otherwise dispose of property pursuant to the provisions of Sections 13-6-1 and 13-6-2 NMSA 1978 after approval of the secretary.

**History:** Laws 1994, ch. 119, § 5.

## **ANNOTATIONS**

**Motor Vehicle Code.** - See 66-1-1 NMSA 1978 and notes thereto.

### **15-8-6. State vehicles; use; markings; state government plates.**

A. The division shall adopt regulations governing the use of state vehicles, including driver requirements and responsibilities, under what circumstances someone can be assigned a state vehicle on a permanent or semi-permanent basis and when custody of a state vehicle can be vested in another state agency pursuant to the provisions of this section.

B. The division may determine that it is impractical to retain custody of certain state vehicles, and it may provide that custody reside in another state agency in the following cases:

(1) the state vehicle is used for emergency or law enforcement purposes;

(2) the state vehicle is of a special design or construction that effectively limits its use to a particular purpose;

(3) the money used in the acquisition of the state vehicle is subject to constitutional or trust limitations that prevent its use as a part of the motor pool;

(4) the state vehicle is not based in Santa Fe;

(5) the state vehicle is a state highway and transportation department truck or tractor or heavy road equipment; or

(6) the state agency requires the use of a vehicle on a regular basis, as defined by regulation of the division.

C.

Except as provided in Subsection E of this section, all state vehicles shall be marked as state vehicles. Each side of the vehicle shall have painted, in letters not less than two inches in height, the following designation of ownership: "State of New Mexico, ... Department" and naming the department. If the department has more than one vehicle assigned for its use, each vehicle shall be conspicuously numbered in consecutive order. The division shall include the words "State Motor Pool" and consecutive number of the vehicle on the designation for its vehicles.

D. Except as provided in Subsection E of this section, all state vehicles shall have specially designed government registration plates.

E. Only state vehicles used for legitimate undercover law enforcement purposes are exempt from the requirements of Subsections C and D of this section. All other state vehicles owned or in the custody of state agencies that have law enforcement functions shall be marked and have state government registration plates.

**History:** Laws 1994, ch. 119, § 6.

#### **ANNOTATIONS**

**Cross-references.** - For state government registration plates, see 66-3-28 NMSA 1978.

#### **15-8-7. Purchase of state vehicles; procurement code; equipment.**

A. All state vehicle purchases shall be pursuant to the provisions of the Procurement Code. All purchases of state vehicles, even those not assigned to the motor pool, shall be approved by the director.

B. Subject to legislative appropriations and directives and the approval of the secretary, the director shall determine the type and number of state vehicles to be purchased each year and how they shall be equipped.

**History:** Laws 1994, ch. 119, § 7.

#### **ANNOTATIONS**

**Appropriations.** - Laws 1994, ch. 147, § 3G, effective March 9, 1994, appropriates \$1,200,000 from the general fund to the general services department for expenditure in the eighty-third fiscal year to purchase vehicles for state agencies and provide for required alternative fuels conversion. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1996, ch. 14, § 21, effective March 4, 1996, provides that the encumbered balance from the general fund appropriation pursuant to Laws 1994, ch. 147, § 3G is reappropriated to the general services department to purchase vehicles for state agencies and provide for required alternative fuels conversion.

**Procurement Code.** - See 13-1-28 NMSA 1978 and notes thereto.

**Purchase through budget transfers.** - This section does not provide that motor vehicle purchases may be approved only if specifically provided in the agency budget in its originally approved form, and where the general appropriation act gives the state budget division the authority to increase agency budgets and to transfer funds between budget categories, vehicle acquisitions may be provided either in the originally approved operating budget submitted by the state agency to the state budget division and then provided to the legislature, or in the approval budget as amended by approved budget transfers and increases that the state budget division approves, provided that the budget and any amendments to it must provide that the funds are to be used specifically for the purchase or lease of motor vehicles. 1987 Op. Att'y Gen. No. 87-32 (rendered under former 15-3-26 NMSA 1978).

The use of budget adjustment requests to place funds in the capital outlay budget category for the purpose of purchasing vehicles does not infringe upon or usurp the legislature's authority to make agency appropriations. 1987 Op. Att'y Gen. No. 87-32 (rendered under former 15-3-26 NMSA 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Use of automobile as corporate or governmental function, 110 A.L.R. 1117, 156 A.L.R. 714.

81A C.J.S. States § 145.

### **15-8-8. Lease with state funds.**

No motor vehicle shall be leased with state money unless such lease is first specifically approved by the division.

**History:** Laws 1994, ch. 119, § 8.

### **15-8-9. Vehicle title.**

Title to all state vehicles shall be held in the name of the state. Titles, even to state vehicles not in the custody of the division, shall be kept by the division. The division shall provide for the security of vehicle titles.

**History:** Laws 1994, ch. 119, § 9.

### **15-8-10. Rules and regulations.**



The division shall adopt and file in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules and regulations to carry out the provisions of the Transportation Services Act [this article].

**History:** Laws 1994, ch. 119, § 10; 1995, ch. 161, § 7.

#### **ANNOTATIONS**

**The 1995 amendment**, effective June 1, 1995, substituted "Transportation Services Act" for "Motor Pool Act".

#### **15-8-11. Report to legislature.**

The division shall provide an annual report to the legislature that includes information on the operations of the division, including reports on Motor Vehicle Code violations, accidents and insurance claims involving state vehicles; major maintenance costs; purchases and sales of motor vehicles; and progress of the division in carrying out the provisions of the Alternative Fuel Conversion Act [13-1B-1 to 13-1B-7 NMSA 1978]. The report shall be deemed to have been provided to the legislature when filed with the legislative council service and the legislative finance committee. The division shall make copies available to individual legislators upon request.

**History:** Laws 1994, ch. 119, § 11.

#### **ANNOTATIONS**

**Motor Vehicle Code.** - See 66-1-1 NMSA 1978 and notes thereto.

## **ARTICLE 9 STATE AIRCRAFT**

#### **15-9-1. Short title.**

Chapter 15, Article 9 NMSA 1978 may be cited as the "State Aircraft Act".

**History:** Laws 1994, ch. 135, § 1; 1995, ch. 49, § 1.

#### **ANNOTATIONS**

**The 1995 amendment**, effective June 16, 1995, substituted "Chapter 15, Article 9 NMSA 1978" for "This act".

#### **15-9-2. Definitions.**

As used in the State Aircraft Act [this article]:

- A. "department" means the general services department; and
- B. "state aircraft" means all state airplanes used primarily to transport passengers.

**History:** Laws 1994, ch. 135, § 2.

### **15-9-3. Aircraft consolidation; department duties.**

A. All state aircraft shall be consolidated in the department for the use of the state's agencies, departments, branches and institutions.

B. The department shall:

(1) adopt and file in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules and regulations to carry out the provisions of the State Aircraft Act [this article];

(2) own, operate and maintain the state's aircraft fleet;

(3) provide centralized statewide scheduling of aircraft;

(4) designate destination airports;

(5) determine travel charges for state aircraft services;

(6) determine use requirements, including the number of required passengers per flight and under what conditions persons other than state officers and employees are allowed to travel in state aircraft; and

(7) determine other requirements it deems appropriate or fiscally responsible.

C. The department may refuse a request for state aircraft scheduling.

**History:** Laws 1994, ch. 135, § 3.

### **ANNOTATIONS**

**Cross-references.** - For transfer of state-owned aircraft and related personnel, property and obligations, see 15-9-5 NMSA 1978.

### **15-9-4. Travel charges.**

The department shall charge for the use of state aircraft. Charges shall be sufficient to offset the costs of operation, maintenance and depreciation of state aircraft. Money collected for travel charges shall be deposited in the aviation services fund.

**History:** Laws 1994, ch. 135, § 4; 1995, ch. 49, § 2.

#### **ANNOTATIONS**

**The 1995 amendment**, effective June 16, 1995, substituted "aviation services fund" for "general fund" in the third sentence.

#### **15-9-4.1. Aviation services fund.**

There is created in the state treasury the "aviation services fund". Money in the fund is appropriated to the general services department for the purpose of operating, maintaining and repairing state aircraft, including fuel, insurance, pilot compensation and other basic support costs. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the motor pool division of the general services department. Money in the fund shall not revert at the end of any fiscal year.

**History:** Laws 1995, ch. 49, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1995, ch. 49 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1995, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### **15-9-5. Temporary provision; transfer of aircraft, personnel, money, appropriations, furniture, supplies and other property and contractual obligations.**

On the effective date of the State Aircraft Act [this article], the passenger aircraft owned by the state corporation commission, the energy, minerals and natural resources department and the state highway and transportation department shall be transferred to the general services department, and title to the aircraft shall be transferred to the general services department. On the effective date of the State Aircraft Act, the personnel, money, appropriations, furniture, supplies and other property attributable to the ownership, operation or maintenance of passenger aircraft in the state corporation commission, the energy, minerals and natural resources department and the state highway and transportation department shall be transferred to the general services department. On the effective date of the State Aircraft Act, contractual obligations related to the ownership, operation or maintenance of passenger aircraft of the state corporation commission, the energy, minerals and natural resources department and the state highway and transportation department shall be binding on the general services department.

**History:** Laws 1994, ch. 135, § 5.

## **ARTICLE 10**

### **CAPITOL BUILDINGS PLANNING COMMISSION**

#### **15-10-1. Capitol buildings planning commission created.**

A. The "capitol buildings planning commission" is created to study and plan for the long-range facilities needs of state government in Santa Fe. The commission shall review prior long-range facilities needs assessments and develop an initial master plan for the state facilities in Santa Fe.

B. The commission shall be composed of four members of the legislature, two from each house, appointed by the New Mexico legislative council, the secretary of general services, the New Mexico staff architect, the secretary of finance and administration or his designee, the commissioner of public lands or his designee and the chairman of the supreme court building commissioner or his designee.

C. The legislative council service shall provide staff for the commission in coordination with the staff of the general services department.

D. The commission shall meet and shall report annually to the legislature on an annual update of the master plan for the long-range facilities needs for state government in Santa Fe.

**History:** Laws 1997, ch. 178, § 5.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 178 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Appropriations.** - Laws 1997, ch. 178, § 6C, effective June 20, 1997, appropriates \$65,000 from the cash balances of the legislative council service from Subsection J of Section 2 of Chapter 1 of Laws of 1995 to the legislative council service for expenditure in fiscal years 1998 and 1999 to coordinate with the general services department to provide staff support and planning expertise to the capital buildings planning commission and provides that any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.