

CHAPTER 15

ADMINISTRATION OF GOVERNMENT

ARTICLE 1

INFORMATION AND COMMUNICATIONS

MANAGEMENT

15-1-1. Short title. (Effective until July 1, 1996.)

Chapter 15, Article 1 NMSA 1978 may be cited as the "Information and Communication Management Act".

History: Laws 1986, ch. 81, § 1; 1993, ch. 197, § 1.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

The 1993 amendment, effective July 1, 1993, substituted "Chapter 15, Article 1 NMSA 1978" for "Sections 1 through 13 of this act" and substituted "and Communication Management" for "Systems."

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

15-1-2. Information systems division created. (Effective until July 1, 1996.)

The "information systems division" is created within the general services department.

History: Laws 1986, ch. 81, § 2.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

Repeals. - Laws 1986, ch. 81, § 15 repeals former 15-1-2 NMSA 1978, as enacted by Laws 1984, ch. 64, § 5, creating the "information systems division," effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

15-1-3. Purpose. (Effective until July 1, 1996.)

The purpose of the Information and Communication Management Act [this article] is to coordinate the central and individual state agency information and communication services, resources and systems in a manner that ensures that the most cost-effective and efficient information and communication management tools are being used by executive agencies. Coordination will be achieved through the development of a five-year strategic plan for information and communication management that is developed and updated annually by the commission on information and communication management. The plan shall include an inventory of current services, resources and systems.

History: Laws 1986, ch. 81, § 3; 1993, ch. 197, § 2.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

The 1993 amendment, effective July 1, 1993, substituted "and Communication Management" for "Systems" and substituted the language following "state agency information" for "systems and the necessary private sector facilities in the interest of a fully informative, efficient, integrated and orderly processing, purchasing and recording system."

Repeals. - Laws 1986, ch. 81, § 15 repeals former 15-1-3 NMSA 1978, as enacted by Laws 1984, ch. 64, § 6, relating to the purpose of the Information Systems Act, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

15-1-4. Definitions. (Effective until July 1, 1996.)

As used in the Information and Communication Management Act [this article]:

A. "commission" means the commission on information and communication management;

B. "information and communication services, resources and systems" means computer and voice and data communication software and hardware, including imaging systems, terminals and communications networks and facilities, staff information systems services and professional service contracts;

C. "secretary" means the secretary of general services; and

D. "executive agency" means those state agencies that are exclusive of the judicial branch and legislative branch of state government, state educational institutions and local political subdivisions.

History: 1978 Comp., § 15-1-4, enacted by Laws 1993, ch. 197, § 3.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

Repeals and reenactments. - Laws 1993, ch. 197, § 3 repeals former 15-1-4 NMSA 1978, as enacted by Laws 1986, ch. 81, § 4 and enacts the above section, effective July 1, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

Repeals. - Laws 1986, ch. 81, § 15 repeals former 15-1-4 NMSA 1978, as enacted by Laws 1984, ch. 64, § 7, relating to definitions, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

15-1-5. Commission on information and communication management created; composition; staffing; administrative attachment. (Effective until July 1, 1996.)

A. The "commission on information and communication management" is created and administratively attached to the general services department pursuant to the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978]. The commission shall consist of eight members appointed by the governor as follows:

- (1) two representatives from the major information and communication units of Los Alamos national laboratory and Sandia national laboratories;
- (2) two cabinet secretaries from executive agencies, one of whom represents a large information systems user and one a medium or small information systems user and who shall serve on a rotating basis for terms not to exceed two years;
- (3) two public members who shall not be employees of the state or its political subdivisions and shall not contract with the state but who shall have experience in information and communication technology and management;
- (4) the secretary of finance and administration, who shall serve ex officio; and
- (5) the secretary of general services who shall be chairman of the commission and who shall not vote on any question or action before the commission.

B. After the initial appointments of the laboratory representatives and public members, succeeding appointments shall be for five-year terms and any vacancy filled shall be for the balance of the unexpired term. Public members shall be reimbursed for per diem and mileage expenses in accordance with the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

C. Executive agencies represented on the commission shall provide staff for their respective members of the commission. In addition, the commission is authorized to hire the following permanent staff:

(1) a director;

(2) three information and communication management analysts with responsibilities for a certain set of assigned agencies, agency plans and emerging technologies;

(3) two performance auditors to conduct performance audits of all executive agency information management and technology resources; and

(4) one support staff.

History: 1978 Comp., § 15-1-5, enacted by Laws 1993, ch. 197, § 4.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

Repeals and reenactments. - Laws 1993, ch. 197, § 4 repeals former 15-1-5 NMSA 1978, as enacted by Laws 1986, ch. 81, § 5, relating to the council on information systems, and enacts the above section, effective July 1, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

Temporary provisions. - Laws 1994, ch. 29, § 1, effective May 18, 1994, provides that the commission on information and communications management shall make a study to assess capabilities, determine needs and develop a comprehensive plan for statewide computer, technology and information networks to enable state participation in the national information infrastructure.

Laws 1994, ch. 66, § 1, effective March 4, 1994, provides that 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 make recommendations to the DWI oversight task force, the legislative finance committee and the governor. The commission on information and communication management shall cooperate with the DWI process and data standards committee, to be appointed by the governor, to coordinate a statewide DWI information system.

Appropriations. - Laws 1993, ch. 366, § 3K, effective June 18, 1993, appropriates \$400,000 from the general fund to the office of secretary of general services for expenditure in the eighty-first and eighty-second fiscal years to begin implementation of the commission on information and communications management, contingent upon enactment of house bill 576 of the forty-first legislature, first session (Chapter 197 of Laws 1993). Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 3L, effective June 18, 1993, appropriates \$1,500,000 from internal funds/interagency transfers to the information systems division of the general

services department for expenditure in the eighty-second fiscal year to pay costs associated with the central financial reporting and accounting system, human resources system, the taxation and revenue information management system, ISD-2 system and other major state agency systems. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Subsections K and L of Laws 1994, ch. 147, § 2, effective March 9, 1994, appropriate \$350,000 and \$300,000, respectively, 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, and for an automated document management/imaging system and planning assistance. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

Laws 1994, ch. 147, § 7Q, effective March 9, 1994, appropriates \$350,000 from the general fund to the commission on information and communication management for expenditure in the eighty-second and eighty-third fiscal years to conduct a study assessing the state's current computer, technology and network capabilities and determining the state's overall needs, particularly in the areas of health care, education, environmental industries, manufacturing and business industry; and to develop a comprehensive plan for state government and private industry to meet those needs and allow for effective state participation in the development of the national information infrastructures. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Repeals. - Laws 1986, ch. 81, § 15 repeals former 15-1-5 NMSA 1978, as enacted by Laws 1984, ch. 64, § 8, relating to the "information systems council," effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

15-1-6. Powers and duties of chairman and commission. (Effective until July 1, 1996.)

A. The chairman, with the advice of the commission, shall develop and update annually a detailed five-year strategic plan on information and communication management to be presented to the governor and the legislative finance committee. The plan shall include the development of policies, standards and procedures for the management of information and communication technology for all executive agencies. The annual updates of the plan shall be based upon the details of the individual agency plans submitted pursuant to Section 8 [15-1-8 NMSA 1978] of the Information and Communication Management Act.

B. The first strategic plan developed under the provisions of the Information and Communication Management Act [this article] shall provide the framework from which to develop, analyze and approve individual executive agency information management plans and resource allocations. The strategic plan shall define the strategic policy direction for executive agencies and the responsibilities of those agencies in the acquisition and use of information and communication management and technologies.

History: 1978 Comp., § 15-1-6, enacted by Laws 1993, ch. 197, § 5.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

Repeals and reenactments. - Laws 1993, ch. 197, § 5 repeals former 15-1-6 NMSA 1978, as enacted by Laws 1986, ch. 81, § 6, and enacts the above section, effective July 1, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

Repeals. - Laws 1986, ch. 81, § 15 repeals former 15-1-6 NMSA 1978, as enacted by Laws 1984, ch. 64, § 9, relating to the powers and duties of the chairperson and information systems council effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

15-1-7. Powers and duties of commission. (Effective until July 1, 1996.)

The commission shall:

- A. coordinate the preparation and facilitate the implementation of executive agency plans for information management and technology;
- B. review and approve such plans and document the approval to the governor and legislature;
- C. monitor information and communication systems development and conduct performance audits of information management and technological resources;
- D. advise the governor and legislature on information management and technology matters;
- E. develop a strategic information management annual plan review policy and process that requires each executive agency to develop an acceptable information management annual plan no later than July 1 of each year for review and approval by the commission no later than September 1 of each year to ensure appropriate input into the executive and legislative budget processes;

F. review and evaluate the agency plans against a specific set of criteria, set forth in Section 8 [15-1-8 NMSA 1978] of the Information and Communication Management Act;

G. review and approve all rate structures for information and communication services in the review and evaluation of the plan for the general services department; provided, however, that the approval authority will allow the secretary of general services the flexibility in rate designs for a variation of plus or minus five percent without commission approval; and

H. approve the acquisition of information and communication services, resources and systems, including services relating to project or contract management.

History: 1978 Comp., § 15-1-7, enacted by Laws 1993, ch. 197, § 6.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

Repeals and reenactments. - Laws 1993, ch. 197, § 6 repeals former 15-1-7 NMSA 1978, as enacted by Laws 1986, ch. 81, § 7 and enacts the above section, effective July 1, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

Repeals. - Laws 1985, ch. 81, § 15 repeals former 15-1-7 NMSA 1978, as enacted by Laws 1984, ch. 64, § 10, relating to the powers and duties of the information systems council, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

15-1-7.1. Powers and duties of commission and executive agencies pursuant to development of agency plans. (Effective until July 1, 1996.)

A. The commission shall ensure, through the development of specific policies, procedures and guidelines, that agency plans include strategic and operational assessments; provide a formal linkage between information management planning and department strategies and processes; use standard formats when appropriate; allow for stratification of projects to require less detail for smaller projects and an increasingly detailed level of analysis and justification as project size, cost and risk increase; and have an increased and enhanced emphasis on evaluation of the economics of all information and communication systems investments.

B. The commission shall specifically ensure the following:

(1) that the plan is the product of a continuous institutional process;

(2) that the primary responsibility for general supervision of information and communication management resides within each department;

(3) that each executive agency establishes a strategic planning process closely linked to its program planning activities;

(4) that rigorous management processes are applied to ensure that implementation of information and communication systems and resources represents an investment for the state that yields specific, measurable services and financial objectives;

(5) that efficient and judicious incorporation of information and communication technology innovations supports executive agency operations to control expenses, increase productivity, improve service and improve controls; and

(6) that the requirement for prudent risk management practices preserves the integrity and security of information and information management facilities and ensures timely resumption of operations following a disaster.

C. The commission shall require each executive agency's plan to include the following:

(1) an executive agency overview;

(2) an information systems unit baseline analysis;

(3) a strategic information systems plan, including cost and benefit analyses;

(4) a tactical information systems plan, including specific budget data prepared;

(5) a method for revising and reporting on the plan;

(6) the requirement for a feasibility study to be included in the plan for all projects with a total cost equal to or greater than five hundred thousand dollars (\$500,000) or for any ongoing project the scope of which will exceed five hundred thousand dollars (\$500,000) as well as include a detailed assessment of project management; and

(7) contingency planning and disaster recovery.

D. Each executive agency plan shall be evaluated against the following criteria:

(1) the agency has created a discernible direction for information services as represented by improving the level of services to citizens, establishing pragmatic measurements, identifying cost and benefit estimates, demonstrating concern for quality products and performance, establishing feasible, relevant, attainable and measurable objectives;

(2) the plan demonstrates a consistent, interrelated action plan of the executive agency's mission and strategic objectives in conjunction and coordination with its information services projects;

(3) the plan puts forth a demonstrated leadership or management factor as represented by awareness of training needs, recognition of and response to issues and challenges, successful completion of projects, consideration of alternative courses of action and development of strategies that are results oriented for executive agency programs;

(4) the plan identifies sound technical direction based on proven technology, with current technical resources leveraged to gain maximum value, and the plan demonstrates a comprehensive knowledge of the potential limits of current and proposed technology;

(5) the plan focuses on effective and efficient use of available resources, including staff, funds, existing capital and time;

(6) the plan clearly isolates risks and recognizes and mitigates risks by providing for a realistic assessment of risks, careful evaluation of alternative action, flexibility to respond to changes and opportunities, application of new concepts and techniques and systematic evaluation of options in terms of results;

(7) the plan clearly demonstrates value of projects to the agency, state government and the citizens of the state as well as other customers and associates in the form of costs, tangible benefits and intangible benefits;

(8) the plan specifically details communities of interest, internal and external, for potential duplication of effort and data sharing;

(9) conformance to planning processes as set forth by the commission; and

(10) the plan demonstrates conformance to the direction of the plans and policies of the overall strategic plan, including, but not limited to, conformance for methods and procedures for disaster recovery, provision of management information from each system, provision that information and communication bases are designed to work with communities of interest to facilitate the sharing of information across agencies and system conformance to overall information and communication management and technology strategies.

History: Laws 1993, ch. 197, § 8.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

Effective dates. - Laws 1993, ch. 197, § 14 makes the act effective on July 1, 1993.

Temporary provisions. - Laws 1994, ch. 29, § 1, effective May 18, 1994, provides that the commission on information and communications management shall make a study to assess capabilities, determine needs and develop a comprehensive plan for statewide

computer, technology and information networks to enable state participation in the national information infrastructure.

Appropriations. - Laws 1994, ch. 147, § 7Q, effective March 9, 1994, appropriates \$350,000 from the general fund to the commission on information and communication management for expenditure in the eighty-second and eighty-third fiscal years to conduct a study assessing the state's current computer, technology and network capabilities and determining the state's overall needs, particularly in the areas of health care, education, environmental industries, manufacturing and business industry; and to develop a comprehensive plan for state government and private industry to meet those needs and allow for effective state participation in the development of the national information infrastructures. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

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.

Emergency clauses. - Laws 1994, ch. 66, § 2 makes the act effective March 4, 1994.

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. Purchasing; information and communication services, resources and systems. (Effective until July 1, 1996.)

A. The state purchasing agent shall serve as the central purchasing agency for all information and communication services, resources and systems. The state purchasing agent shall seek advice and support from the commission concerning system procurements and price agreements.

B. All information system services and professional services contracts shall be processed in accordance with appropriate rules and regulations of the department of finance and administration; provided, however, that the commission shall review and approve all information system services and professional service contracts for management of information and communication system projects prior to final approval by the department of finance and administration.

History: 1978 Comp., § 15-1-8, enacted by Laws 1993, ch. 197, § 7.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

Repeals and reenactments. - Laws 1993, ch. 197, § 7 repeals former 15-1-8 NMSA 1978, as enacted by Laws 1986, ch. 81, § 8, and enacts the above section, effective July 1, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

Repeals. - Laws 1986, ch. 81, § 15 repeals former 15-1-8 NMSA 1978, as enacted by Laws 1984, ch. 64, § 11, relating to purchasing by the information systems council, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 64 Am. Jur. 2d Public Works and Contracts §§ 1, 2, 8.

72 Supp. C.J.S. Public Contracts §§ 2 to 6.

15-1-9. Records of state agencies; public records; copy fees; computer data bases; criminal penalty. (Effective until July 1, 1996.)

A. Except as otherwise provided by federal or state law, information contained in information systems data bases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency that has inserted that

information into the data base, in accordance with the Public Records Act [14-3-1 to 14-3-16 NMSA 1978], upon the payment of a reasonable fee for the service.

B. The secretary shall recommend to the state commission of public records the procedures, schedules and technical standards for the retention of computer data bases.

C. The state agency that has inserted data in a data base, with the approval of the secretary, may authorize a copy to be made of a computer tape or other medium containing a computerized data base of a public record for any person if the person agrees:

(1) not to make unauthorized copies of the data base;

(2) not to use the data base for any political or commercial purpose unless the purpose and use is approved in writing by the secretary and the state agency that created the data base;

(3) not to use the data base for solicitation or advertisement when the data base contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;

(4) not to allow access to the data base by any other person unless the use is approved in writing by the commission and the state agency that created the data base; and

(5) to pay a royalty or other consideration to the state as may be agreed upon by the secretary and the state agency that created the data base.

D. If more than one state agency is responsible for the information inserted in the data base, a single state agency shall be designated by the secretary to carry out the responsibilities set forth in this section.

E. Subject to any confidentiality provisions of law, any state agency may permit another state agency access to all or any portion of a computerized data base created by a state agency.

F. If information contained in a data base is searched, manipulated or retrieved or a copy of the data base is made for any private or nonpublic use, a fee to be prescribed by rule of the secretary shall be charged by the state agency permitting access or use of the data base.

G. Except as authorized by law or rule of the secretary, any person who reveals to any unauthorized person information contained in a computer data base or who uses or permits the unauthorized use or access of any computer data base is guilty of a misdemeanor, and upon conviction the court shall sentence that person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand

dollars (\$5,000) or both. That person shall not be employed by the state for a period of five years after the date of conviction.

History: Laws 1986, ch. 81, § 9; 1993, ch. 197, § 11.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

Cross-references. - For Computer Crimes Act, 30-45-1 to 30-45-7 NMSA 1978.

The 1993 amendment, effective July 1, 1993, substituted "commission" for "council" in Paragraph (4) of Subsection C and made minor stylistic changes in Subsections A, C and G.

Repeals. - 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 data bases, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 50 Am. Jur. 2d Larceny § 62; 66 Am. Jur. 2d Records and Recording Laws §§ 1 to 3, 10, 12 to 15, 19.

Enforceability by mandamus of right to inspect public records, 60 A.L.R. 1356, 169 A.L.R. 653.

Proof of public records kept or stored on electronic computing equipment, 71 A.L.R.3d 232.

Criminal liability for theft of, interference with or unauthorized use of, computer programs, files, or systems, 51 A.L.R.4th 971.

52A C.J.S. Larceny § 129(2); 76 C.J.S. Records § 1 et seq.

15-1-10. Data processing equipment revolving fund created; disbursement. (Effective until July 1, 1996.)

A. There is created in the state treasury the "data processing equipment revolving fund". The balances remaining in the fund at the end of any fiscal year shall not revert to the general fund.

B. Expenditures from the data processing equipment revolving fund shall be made for the purpose of acquiring and replacing data processing equipment. Such expenditures shall be made only upon vouchers approved by the director of the information systems division of the general services department and shall be disbursed pursuant to a five-

year plan prepared by the division and approved by the commission and presented annually to the department of finance and administration and the legislature.

C. When changes in the five-year plan are necessary, justification for such changes shall be presented to the commission for approval, with copies to the department of finance and administration and the legislative finance committee.

History: Laws 1986, ch. 81, § 10; 1989, ch. 324, § 7; 1993, ch. 197, § 12.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

The 1993 amendment, effective July 1, 1993, substituted "commission" for "council" in Subsections B and C.

Repeals. - Laws 1986, ch. 81, § 15 repeals former 15-1-10 NMSA 1978, as enacted by Laws 1984, ch. 64, § 13, terminating the information systems council on July 1, 1985, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

15-1-11. Communications equipment revolving fund created; disbursement. (Effective until July 1, 1996.)

A. There is created in the state treasury the "communications equipment revolving fund". The balances remaining in the fund at the end of any fiscal year shall not revert to the general fund.

B. Expenditures from the communications equipment revolving fund shall be made for the purpose of acquiring and replacing communications equipment. Such expenditures shall be made only upon vouchers approved by the director of the information systems division of the general services department and shall be disbursed pursuant to a five-year plan prepared by the division and approved by the commission and presented annually to the department of finance and administration and the legislature.

C. When changes in the five-year plan are necessary, justification for such changes shall be presented to the commission for approval, with copies to the department of finance and administration and the legislative finance committee.

History: Laws 1986, ch. 81, § 11; 1989, ch. 324, § 8; 1993, ch. 197, § 13.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

The 1993 amendment, effective July 1, 1993, substituted "commission" for "council" in Subsections B and C.

15-1-12. Depreciation and replacement fees; assessment; collection; crediting to funds. (Effective until July 1, 1996.)

A. Each officer, agency, department, division, board or commission of the state that uses state data processing equipment or state communications equipment shall pay monthly depreciation and replacement fees, assessed through the information systems division rate structure, to the information systems division of the general services department for such equipment. Such fees shall be deposited in the information systems division operating fund.

B. Depreciation and replacement fees shall be set by the director of the information systems division and shall be based upon the costs of acquisition, depreciation and replacement of the equipment and the related services supplied to such officers and agencies by the information systems division.

C. Except as provided in Subsection D of this section, money in the information systems division operating fund that is attributable to depreciation and replacement fees shall be deposited quarterly into the data processing equipment revolving fund and the communications equipment revolving fund, respectively. Money in the funds shall be disbursed pursuant to Sections 15-1-10 and 15-1-11 NMSA 1978.

D. For the period beginning July 1, 1988 and ending June 30, 1990, depreciation and replacement fees attributable to data processing equipment may be retained in the information systems division operating fund and may be appropriated by the legislature for operation of the information systems division. Any unencumbered balance in excess of seven hundred thousand dollars (\$700,000) in the information systems division operating fund as of June 30, 1990 shall be transferred to the data processing equipment revolving fund.

History: Laws 1986, ch. 81, § 12; 1989, ch. 191, § 1.

ANNOTATIONS

Delayed repeals. - For delayed repeal, see 15-1-13 NMSA 1978.

15-1-13. Termination of commission life. (Effective until July 1, 1996.)

The commission on information and communication management is terminated on July 1, 1995 pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The commission shall continue to operate until July 1, 1996. Effective July 1, 1996, the Information and Communication Management Act [this article] is repealed.

History: 1978 Comp., § 15-1-13, enacted by Laws 1993, ch. 197, § 9.

ANNOTATIONS

Repeals and reenactments. - Laws 1993, ch. 197, § 9 repeals former 15-1-13 NMSA 1978, as enacted by Laws 1986, ch. 81, § 13, and enacts the above section, effective July 1, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

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. For present provisions relating to automated data processing, see 15-1-1 NMSA 1978 et seq.

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

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.

15-2-3. 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.

Temporary provisions. - House Joint Resolution No. 11 (Laws 1994) ratifies, pursuant to the provisions of 13-6-3 NMSA 1978, the sale by the property control division of the general services department of five and six-tenths acres at the southeast corner of St. Michael's drive at St. Francis drive in the city of Santa Fe in Santa Fe county.

Appropriations. - Laws 1993, ch. 366, § 3M, effective June 18, 1993, appropriates \$2,500,000 from the general fund to the general services department for expenditure in the eighty-first and eighty-second fiscal years to pay necessary costs associated with bringing state buildings into compliance with the Americans with Disabilities Act. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 3N, effective June 18, 1993, appropriates \$750,000 from the general fund to the general services department for expenditure in the eighty-first and eighty-second fiscal years to fund a state library, records and archives building study committee and a comprehensive state library, records and archives building plan. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 4O, effective June 18, 1993, appropriates \$4,000,000 from the general fund operating reserve to the property control division of the general services department for expenditure in the eighty-second fiscal year to construct and equip a state library, archives and records building. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1993, ch. 367, § 39, effective April 8, 1993, appropriates \$93,400 from the employment security department fund to the capital program fund for expenditure by the property control division in the eighty-first through eighty-third fiscal years to renovate and repair the Farmington office of the labor department located in San Juan county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the employment security department fund.

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.

Extension of expenditure period. - 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.

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 buildings of the state highway department.

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 shall have filed with the legislative finance committee a detailed statement of his evaluation and approval of the proposed building.

C. The secretary of general services shall establish a schedule of rental fees at rates consistent with rates charged for comparable space in the area for state agencies occupying space in state-owned buildings and require such fees to be included in the budgets of such agencies at such time as the money is available, but not later than the budget for the sixty-eighth fiscal year. Such amounts shall be transferred periodically by the department of finance and administration into the "long-term lease guarantee fund" hereby created, for the purpose of effectuating the purposes of this section. The fund shall be used to guarantee leases which have been approved as provided in Subsection B of this section, but not to pay lease payments or any part thereof unless the legislature fails to appropriate any funds to the agency for space, and the payment is required to prevent default or legal action. Each lease guaranteed by the fund shall be considered an encumbrance of the fund for a specified sum, in an amount equal to the balance of payments remaining on the lease, and no lease shall be entered into until such lease can be guaranteed by unencumbered balances in the fund to the extent of the payments remaining on the lease. No fees shall be established for or paid by state institutions of higher learning, hospitals and institutions for the mentally or physically handicapped, the supreme court, the land office, correctional institutions or the state highway and transportation department.

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.

ANNOTATIONS

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

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.

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.

15-3-13. 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 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 long-term lease guarantee fund. All leases shall be made in accordance with Sections 13-6-2 and 13-6-3 NMSA 1978.

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.

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 park and recreation 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

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.

State park and recreation commission. - 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 park and recreation division. See 9-5A-1 NMSA 1978 et seq.

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

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 1991, ch. 259, § 11, effective April 5, 1991, provides that \$78,977 remaining from insurance proceeds that were acquired to reimburse an appropriation from the capital program fund to the Fort Bayard medical center, pursuant to Laws 1980, ch. 129, § 1B, shall not be expended, but \$29,000 of that amount is appropriated to the local government division of the department of finance and administration for the seventy-ninth through eighty-second fiscal years for planning and designing an initial construction for a community center in the village of Ruidoso located in Lincoln county and provides that any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the capital program fund.

Laws 1991, ch. 259, § 16, effective April 5, 1991, provides that \$78,977 remaining from insurance proceeds that were acquired to reimburse an appropriation from the capital program fund to the Fort Bayard medical center, pursuant to Laws 1980, ch. 129, § 1B,

shall not be expended, but \$49,977 of that amount is appropriated to the board of regents of western New Mexico university for the seventy-ninth through eighty-second fiscal years for planning and designing handicapped accessibility and for related building improvements at the university located in Grant county and provides that any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the capital program fund.

Laws 1992, ch. 85, § 1, effective May 20, 1992, appropriates \$750,000 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 eightieth through eighty-second fiscal years in the following amounts for the following purposes: (1) \$66,000 to purchase and install a heating and air conditioning system and to renovate the Silver City office of the labor department in Grant county, (2) \$46,000 to renovate the Hobbs office of the labor department in Lea county, (3) \$97,000 to purchase land and to plan and design a building for the labor department in the Gallup area in McKinley county, (4) \$89,000 to purchase and install a heating and air conditioning system in and to renovate, equip and landscape the Alamogordo office of the labor department in Otero county, (5) \$81,000 to renovate and landscape the Espanola office of the labor department in Rio Arriba county, (6) \$73,000 to purchase, pave and landscape the lot adjacent to the Farmington service center of the labor department in San Juan county, (7) \$59,000 to purchase and install a heating and air conditioning system in, to complete minor renovation of and to landscape the Las Vegas office of the labor department in San Miguel county, (8) \$112,000 to replace carpet at the Tiwa building of the labor department in Bernalillo county, and (9) \$127,000 to renovate and furnish the Albuquerque office of the labor department in Bernalillo county; and provides that any unexpended or unencumbered balance remaining from the appropriations at the end of the eighty-second fiscal year shall revert to the employment security department fund.

Laws 1992, ch. 113, § 29, effective March 10, 1992, appropriates \$177,000 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 eightieth through eighty-second fiscal years to renovate the Artesia office of the labor department in Eddy county, and provides that any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the employment security department fund.

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.

Extension of expenditure period. - 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.

Change in purpose. - Laws 1994, ch. 148, § 72, effective March 9, 1994, 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 land acquisition and to plan and design an office for the labor department in the Deming area in Luna county. Additionally, the period of time for expenditure is extended through the eighty-fourth fiscal year.

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 all income, including earnings on investments, 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.

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.

Appropriations. - Laws 1987, ch. 180, § 2 appropriates an amount equal to one-half of the available cash balances of the capitol buildings repair fund as of June 30, 1986, and one-half of the total receipts to the capitol buildings repair fund in the seventy-sixth and seventy-seventh fiscal years from the capitol buildings repair fund to the legislative

council service for expenditure in the seventy-fifth, seventy-sixth and seventy-seventh fiscal years for the purpose of repairing and making capital improvements necessary to restore the state capitol and the state library and protect the public health and safety. The repairs and capital improvements shall include: (1) installation of a working security system; (2) any needed change of electrical systems and ventilation systems; (3) repair of any structural deterioration; (4) repair of cement work, walks, steps, exterior walls and parking lots; (5) replacement of PCB transformers; and (6) proper protection from or removal of asbestos. The legislative council shall appoint a subcommittee to supervise the building superintendent in making the necessary repairs and capital improvements provided for in this section, which repairs and improvements shall be completed by the end of the seventy-seventh fiscal year, and any unexpended or unencumbered balance remaining at the end of the seventy-seventh fiscal year shall revert to the capitol buildings repair fund.

Laws 1991 (1st S.S.), ch. 1, § 2, effective September 12, 1991, amends Laws 1987, ch. 180, § 2, as amended.

Laws 1992, ch. 94, § 7, effective March 10, 1992, appropriates \$4,768,256 from the operating reserve to the legislative council service upon certification by the legislative council service director that the cash flow is insufficient to pay the contracted-for amounts for the capitol renovation and that the required payments cannot feasibly be delayed until the next regular legislative session, provides that the legislative council service shall reimburse the operating reserve fund semi-annually beginning in the eighty-first fiscal year upon receipt by the legislative council service of its share of the proceeds of the capitol buildings repair fund until the loan is repaid, and provides that unexpended or unencumbered balances from the receipts of the capitol buildings repair fund remaining at the end of the eighty-third fiscal year shall revert to the capitol buildings repair fund.

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 1989, ch. 315, §§ 2 and 3, effective April 7, 1989, appropriate specified amounts for specified purposes from the capital projects fund to specified agencies or funds for expenditure in the seventy-eighth through eightieth fiscal years, and provide that any unexpended or unencumbered balances remaining at the end of the eightieth fiscal year shall revert to the capital projects fund.

Laws 1990, ch. 116, § 1 provides that, in lieu of the purpose specified in Laws 1989, ch. 315, § 2A(35) for which the appropriation was authorized, the appropriation of \$18,689 to the state agency on aging is reauthorized for the seventy-eighth through eightieth fiscal years by the state agency on aging for the purpose of miscellaneous kitchen equipment for the Sandoval county senior citizen centers and further provides that any unexpended or unencumbered balance remaining at the end of the eightieth fiscal year shall revert to the capital projects fund.

Laws 1990, ch. 119, § 1, effective May 16, 1990, provides that, in lieu of the amount required from local revenue sources in Laws 1989, ch. 315, § 2F(1) upon which the appropriation was contingent, the appropriation to the state department of education is reauthorized and may be expended or encumbered to continue phase two construction of the Pojoaque high school upon the Pojoaque school district providing to the project from local revenue sources an amount equal to fifteen percent of the amount of the appropriation.

Laws 1990, ch. 132, § 3, effective March 7, 1990, appropriates specified amounts for specified purposes from the capital projects fund to specified agencies or funds for expenditure in the seventy-eighth through eightieth fiscal years.

Laws 1990, ch. 132, § 19, effective March 7, 1990, amends Laws 1989, ch. 315, § 2 to expand the purposes of various appropriations specified therein.

Laws 1990, ch. 132, § 20, effective March 7, 1990, amends Laws 1989, ch. 315, §§ 2F(1) and 2G(9).

Laws 1990 (1st S.S.), ch. 6, § 1 appropriates \$13,110,200 from the general fund to the capital projects fund for expenditure in the seventh-eighth through eighty-first fiscal years and further provides that 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 the difference is authorized by the legislature to be expended from the general fund operating reserve pursuant to 6-4-2.1 NMSA 1978.

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.

Laws 1990 (1st S.S.), ch. 6, § 6 reauthorizes the appropriation in Laws 1989, ch. 315, § 2F(3), clarifying and changing certain provisions pertaining to the purpose of that appropriation as specified, and reauthorizes the appropriation in Laws 1989, ch. 315, § 2E(1).

Laws 1991, ch. 64, § 1, effective June 14, 1991, provides that the balance of the appropriation to the state agency on aging for repair of a drainage problem at the Blanco center in San Juan county made in Paragraph (33) of Subsection A of Section 2 of Chapter 315 of Laws 1989 may be used and is appropriated in the amount of \$10,000 for equipment and for heating and cooling repairs at the Aztec center in San Juan county and \$8,471 to the lower valley senior citizens for miscellaneous kitchen equipment.

Laws 1991, ch. 98, § 1 effective April 2, 1991, provides that the appropriation of \$12,000 for the purpose of improving the El Rancho center in Santa Fe county by providing sidewalks and handicap ramps as specified in Laws 1989, ch. 315, § 2, par (41) is reappropriated in the same amount and for the same purpose to be used for providing other building improvements at the El Rancho center in Santa Fe county in addition to the sidewalks and handicap ramps previously authorized.

Laws 1991, ch. 101, § 1, effective April 2, 1991, appropriates the balance of the appropriation made in Laws 1989, ch. 315, § 2, subsec. L, para. (3) from the capital projects fund to the health and environment department for expenditure in the seventy-eighth through eightieth fiscal years for additional water supply and wastewater system purposes in the Tijeras canyon area in Bernalillo county and provides that provisions of the 1989 law regarding matching funds and reversion apply to the appropriation.

Laws 1991, ch. 186, § 1, effective June 14, 1991, appropriates the balance of the appropriation made in Laws 1989, ch. 315, § 2D for the purpose of remodeling of existing facilities, purchase of equipment and other expenses necessary to establish a motor fuel testing facility to be operated in Dona Ana county.

Laws 1991, ch. 259, §§ 3, 4, 5, 7, 13, 15, 17, 19, 21, 25, 28, 32 and 33 make changes in the purposes of the appropriations made by Laws 1989, ch. 315, § 2 and Laws 1990 (1st S.S.), ch. 6, § 2 to specified agencies for specified purposes.

Laws 1992, ch. 113, § 35, effective March 10, 1992, provides that the period for expenditure of the appropriation of \$65,000 from the capital projects fund to the office of cultural affairs to restore, rehabilitate, and repair the Mountainair community center in

Torrance county pursuant to Paragraph (1) of Subsection E of Laws 1989, ch. 315, § 2 is extended through the eighty-first fiscal year.

Laws 1992, ch. 113, § 38, effective March 10, 1992, amends Paragraph (90) of Subsection A of Laws 1989, ch. 315, § 2 to clarify that the appropriation is contingent upon the city of Lovington providing only \$50,000 and Lea county providing at least \$125,000 for the senior citizens center in Lovington.

Laws 1992, ch. 113, § 41, effective March 10, 1992, provides that the period for expenditure of the appropriation in Paragraph (3) of Subsection F of Laws 1989, ch. 315, § 2 for renovation of a school building in Las Cruces for use as a youth center is extended through the eighty-first fiscal year.

Laws 1993, ch. 367, § 55, effective April 8, 1993, amends Laws 1991, ch. 259, § 3 to make changes in the agency and the purpose of the appropriation in Laws 1989, ch. 315, § 2J.

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 Sections 15-7-1 through 15-7-10 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.

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.

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 1976, ch. 58, § 21; 1953 Comp., § 5-14-21; Laws 1977, ch. 247, § 54; 1977, ch. 385, § 5; 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.

Appropriations. - Laws 1993, ch. 366, § 3O, effective June 18, 1993, appropriates \$425,000 from the public liability fund to the risk management division of the general services department for expenditure in the eighty-first and eighty-second fiscal years to pay for certain litigation costs. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the public liability fund.

Laws 1993, ch. 366, § 4N, effective June 18, 1993, appropriates \$1,600,000 from the general fund and \$3,000,000 from the public liability fund to the risk management division of the general services department for deposit in the "corrections employee settlement fund" created by that Subsection. Money deposited in the fund shall be expended in the eighty-first, eighty-second and eighty-third fiscal years exclusively for payment of wage and employee benefits, damages, court costs and attorneys' fees arising out of the settlement of *AFSCME v. Corrections Department of the State of New Mexico*. Subsection N also provides the procedure for expending the money in the fund, and sets forth certain contingencies for the appropriation. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the fund from which it was appropriated.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

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 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 reinsurance or excess coverage insurance may be placed by private negotiation, notwithstanding the provisions of the Procurement Code, if such insurance or reinsurance has a restricted number of interested carriers, the board determines that such 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 such placement and in designing private negotiation procedures;

(3) in the manner prescribed by Subsection E of Section 9-6-5 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 9-6-5 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 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 1976, ch. 58, § 22; 1953 Comp., § 5-14-22; Laws 1977, ch. 247, § 55; 1977, ch. 385, § 6; 1978, ch. 166, § 8; 1979, ch. 287, § 3, 1979, ch. 392, § 1; 1983, ch. 301, § 65; 1986, ch. 102, § 6; 1990, ch. 71, § 1.

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.

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

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 1976, ch. 58, § 23; 1953 Comp., § 5-14-23; Laws 1977, ch. 247, § 56; 1977, ch. 385, § 7; 1978, ch. 166, § 9.

ANNOTATIONS

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: 1953 Comp., § 5-14-24, enacted by Laws 1977, ch. 385, § 8; Laws 1978, ch. 166, § 10.

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

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

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

(1) purchase workers' compensation insurance;

(2) establish appropriate reserves to provide workers' compensation coverage for employees of state agencies or employees of covered educational entities;

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

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

(5) 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 which 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 group 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.

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.

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 MOTOR POOL

15-8-1. Short title.

Sections 1 through 12 [9-7-13, 15-8-1 to 15-8-11 NMSA 1978] of this act may be cited as the "Motor Pool Act".

History: Laws 1994, ch. 119, § 1.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 purpose of the Motor Pool Act [9-7-13, 15-8-1 to 15-8-11 NMSA 1978] is to provide a centralized agency to purchase state vehicles and to control their use.

History: Laws 1994, ch. 119, § 2.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

15-8-3. Definitions.

As used in the Motor Pool Act [9-7-13, 15-8-1 to 15-8-11 NMSA 1978]:

- A. "department" means the general services department;
- B. "director" means the director of the division;
- C. "division" means the motor pool 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.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

15-8-4. Division created.

The "motor pool 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.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

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.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of

the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

15-8-10. Rules and regulations.

The division shall adopt and file in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] rules and regulations to carry out the provisions of the Motor Pool Act [9-17-13, 15-8-1 to 15-8-11 NMSA 1978].

History: Laws 1994, ch. 119, § 10.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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

Effective dates. - Laws 1994, ch. 119 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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

ARTICLE 9 STATE AIRCRAFT

15-9-1. Short title.

This act [15-9-1 to 15-9-5 NMSA 1978] may be cited as the "State Aircraft Act".

History: Laws 1994, ch. 135, § 1.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 135, § 6 makes the State Aircraft Act effective July 1, 1994.

15-9-2. Definitions.

As used in the State Aircraft Act [15-9-1 to 15-9-5 NMSA 1978]:

- 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.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 135, § 6 makes the State Aircraft Act effective July 1, 1994.

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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] rules and regulations to carry out the provisions of the State Aircraft Act [15-9-1 to 15-9-5 NMSA 1978];
- (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.

Effective dates. - Laws 1994, ch. 135, § 6 makes the State Aircraft Act effective July 1, 1994.

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 general fund.

History: Laws 1994, ch. 135, § 4.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 135, § 6 makes the State Aircraft Act effective July 1, 1994.

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, 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.

ANNOTATIONS

Effective dates. - Laws 1994, ch. 135, § 6 makes the State Aircraft Act effective July 1, 1994.