

# CHAPTER 16

## PARKS, RECREATION AND FAIRS

### ARTICLE 1

### OUTDOOR RECREATION RESOURCES

#### 16-1-1. Short title.

This act [16-1-1 to 16-1-3 NMSA 1978] may be cited as the "Outdoor Recreation Act."

**History:** 1953 Comp., § 4-9B-1, enacted by Laws 1973, ch. 388, § 1.

#### 16-1-2. State supplemental fund.

There is hereby established the "state supplemental land and water conservation fund" in the office of the state treasurer.

**History:** 1953 Comp., § 4-9B-2, enacted by Laws 1973, ch. 388, § 2.

### ANNOTATIONS

**Appropriations.** - Laws 1994, ch. 147, § 7W, effective March 9, 1994, appropriates \$100,000 from the general fund to the state supplemental land and water conservation fund for expenditure in the eighty-second and eighty-third fiscal years to carry out the provisions of the Outdoor Recreation Act. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

#### 16-1-3. Administration; state-federal-local cost sharing formula; limitations.

A. The energy, minerals and natural resources department shall administer the state supplemental land and water conservation fund and shall process all applications for grants from the state supplemental land and water conservation fund. Funds from the state supplemental land and water conservation fund shall be made available only upon the condition that the proceeds are matched by federal funds and other funds on the following basis: at least fifty percent federal funds, not more than twenty-five percent state funds and the remainder by funds of political subdivisions.

B. Incorporated municipalities with a population of less than fifteen thousand persons according to the latest federal decennial census or counties sponsoring projects of unincorporated communities, including but not limited to Indian communities, shall be entitled to receive funds from the state supplemental land and water conservation fund as prescribed and approved by the recreation priorities committee. Projects proposed

must be in accordance with provisions of the Land and Water Conservation Fund Act of 1965, U.S.C. Section 460, and the regulations contained in the United States department of the interior, bureau of outdoor recreation and grants-in-aid manual. Funds shall be made available from the state supplemental land and water conservation fund only in the event that the United States department of the interior provides fifty percent of the project cost. State funds shall be made available for expenditure by the applicant political subdivision once the project is approved by the United States department of the interior and the applicant demonstrates the availability and source of funds required for its share in the total project cost.

**History:** 1953 Comp., § 4-9B-3, enacted by Laws 1973, ch. 388, § 3; 1977, ch. 254, § 40; 1987, ch. 234, § 10.

### ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, in Subsection A, inserted "energy, minerals and" preceding "natural resources" at the beginning; and, in Subsection B, in the second sentence deleted "bureau of outdoor recreation of the" preceding "United States department of the interior."

**Land and Water Conservation Fund Act.** - For provisions of the Federal Land and Water Conservation Fund Act of 1965, see 16 U.S.C. §§ 460d, 460l-4 to 460l-11 and note to 23 U.S.C. § 120.

### 16-1-4. Outdoor recreation plan.

The energy, minerals and natural resources department shall prepare, maintain and keep up to date a comprehensive plan for the development of the outdoor recreation resources of the state and may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation and enter into contracts and agreements with the United States or any appropriate agency thereof, keep financial or other records relating thereto and furnish to appropriate officials and agencies of the United States such reports and information as may be reasonably necessary to enable the officials and agencies to perform their duties under such programs.

**History:** 1953 Comp., § 4-9B-3.1, enacted by Laws 1977, ch. 254, § 41; 1987, ch. 234, § 11.

### ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, inserted "energy, minerals and" preceding "natural resources" near the beginning of the section.

## ARTICLE 2

# STATE PARK AND RECREATION DIVISION

### 16-2-1. Repealed.

#### ANNOTATIONS

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 16-2-1 NMSA 1978, as amended by Laws 1977, ch. 254, § 11, relating to the state park and recreation division, effective July 1, 1987. For provisions of the former section, see the original 1978 pamphlet. For creation of state park and recreation division of the energy, minerals and natural resources department, see 9-5A-3 NMSA 1978.

### 16-2-2. State park and recreation advisory committee created; membership; compensation; duties.

A. The "advisory committee" to the state park and recreation division of the energy, minerals and natural resources department is created. It shall be composed of seven to eleven members appointed by the governor.

B. The advisory committee shall provide advice and make recommendations relating to the administration of the state park and recreation division. It shall advise on all matters of policy, regulations, the formulation of a comprehensive statewide recreation plan and such other matters as may be requested by the director of that division.

C. The advisory committee shall meet quarterly or at the call of the chairman.

D. Each member of the advisory committee shall annually elect a chairman and vice chairman from its membership. The director of the state park and recreation division of the energy, minerals and natural resources department shall serve as the executive secretary of the committee.

**History:** 1978 Comp., § 16-2-2, enacted by Laws 1977, ch. 254, § 113; 1987, ch. 234, § 12.

#### ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, inserted "advisory" preceding "committee" once in each subsection; in Subsections A and D, inserted "energy, minerals and" preceding "natural resources"; in Subsection B, inserted "state park and recreation" preceding "division" near the end of the first sentence and made a minor language change in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - State's liability for personal injuries from criminal attack in state park, 59 A.L.R.4th 1236.

### **16-2-3. Meaning of designations.**

Wherever in the laws of New Mexico, whether or not the statutes have been compiled in NMSA 1978, reference is made to the "state park and recreation commission" or to the "commission", the term shall mean the state park and recreation division of the energy, minerals and natural resources department. As used in Chapter 16 NMSA 1978, "secretary" means the secretary of energy, minerals and natural resources.

**History:** 1953 Comp., § 4-9-2, enacted by Laws 1977, ch. 254, § 12; 1987, ch. 234, § 13.

#### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1977, ch. 254, § 12, repeals 4-9-2, 1953 Comp., relating to the appointment and terms of the members of the state park and recreation commission, and enacts the above section.

**The 1987 amendment,** effective July 1, 1987, substituted "1978" for "1953" near the middle of the first sentence and near the end inserted "energy, minerals and" preceding "natural resources," and added the second sentence.

### **16-2-4. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 16-2-4 NMSA 1978, as amended by Laws 1977, ch. 254, § 13, relating to the office of the state park and recreation division, effective July 1, 1987. For provisions of the former section, see the original 1978 pamphlet. For present comparable provisions, see 16-2-19 NMSA 1978.

### **16-2-5. Director of division; qualifications.**

The director of the state park and recreation division of the energy, minerals and natural resources department shall be qualified for that office if he has:

- A. education and practical field experience in the field of parks and recreation; and
- B. demonstrated administrative capabilities in parks management.

**History:** Laws 1935, ch. 57, § 4; 1941 Comp., § 4-104; 1953 Comp., § 4-9-4; Laws 1963, ch. 98, § 4; 1965, ch. 14, § 2; 1977, ch. 254, § 14; 1987, ch. 234, § 14.

#### **ANNOTATIONS**

**Cross-references.** - As to appointment of director, see 9-5A-6 NMSA 1978.

**The 1987 amendment**, effective July 1, 1987, rewrote the section to the extent that a detailed comparison is impracticable.

### **16-2-6. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 16-2-6 NMSA 1978, as amended by Laws 1977, ch. 254, § 16, relating to purchases by the state park and recreation division, effective July 1, 1987. For former provisions, see the original 1978 pamphlet. For present comparable provisions, see 16-2-19 NMSA 1978.

### **16-2-7. Rules and regulations.**

The secretary shall promulgate and adopt rules and regulations for each park as circumstances may demand to the end that each state park may be made as nearly self-supporting as possible.

**History:** Laws 1935, ch. 57, § 7; 1941 Comp., § 4-107; 1953 Comp., § 4-9-7; Laws 1963, ch. 98, § 7; 1977, ch. 254, § 17; 1987, ch. 234, § 15.

#### **ANNOTATIONS**

**Cross-references.** - For watercraft regulatory laws, administration and enforcement, see 66-12-1 NMSA 1978 et seq.

**The 1987 amendment**, effective July 1, 1987, substituted "the secretary shall promulgate and adopt" for "the division shall issue and publish rules and regulations pertaining to and governing the development, maintenance, upkeep, management and use of state park and recreation areas and may prescribe different" and deleted the former last sentence, which read "Every such rule or regulations shall be filed in accordance with the State Rules Act."

### **16-2-8. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 16-2-8 NMSA 1978, as amended by Laws 1977, ch. 254, § 18 relating to the use of public parks and recreation areas, effective July 1, 1987. For former provisions, see the original 1978 pamphlet. For present comparable provisions, see 16-2-7 NMSA 1978.

### **16-2-9. Concessions in parks; contracts; board of finance approval.**

The secretary has the power to grant concessions in the state parks and recreation areas upon such rentals, fees or percentage of income or profits as he may prescribe, but not for a longer period than thirty years. All concessions shall be evidenced by a written contract, the faithful performance of which shall be secured by such bond as the secretary may prescribe. No contract granting a concession shall be effective until it has been approved by the state board of finance.

**History:** Laws 1935, ch. 57, § 9; 1941 Comp., § 4-109; 1953 Comp., § 4-9-9; Laws 1961, ch. 114, § 1; 1963, ch. 98, § 9; 1973, ch. 81, § 1; 1977, ch. 254, § 19; 1987, ch. 234, § 16.

### ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "director" near the beginning of the first sentence and near the end of the second sentence.

**Procedure in granting concession contracts.** - The state park commission (now the state park and recreation division) need not advertise or invite bids from prospective licensees but may negotiate and exercise its discretionary authority in granting concession contracts. 1959-60 Op. Att'y Gen. No. 60-12.

### **16-2-10. Secretary and employees prohibited from having interest in concessions.**

Neither the secretary nor any member of the energy, minerals and natural resources department shall have any interest in, directly or indirectly, or in any manner be connected with any concession granted to any person within any state park or recreation area.

**History:** Laws 1935, ch. 57, § 10; 1941 Comp., § 4-110; 1953 Comp., § 4-9-10; Laws 1963, ch. 98, § 10; 1965, ch. 14, § 3; 1977, ch. 254, § 20; 1987, ch. 234, § 17.

### ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, inserted "energy, minerals and" preceding "natural resources."

### **16-2-11. Acquisition of lands for park and recreational purposes; criteria.**

A. The state is authorized to acquire lands or interests in lands for state park or state recreational purposes, by gift, donation, devise or purchase, for the use of the state and to develop, hold, maintain and operate the same as state parks or state recreational areas, in accordance with the provisions of this article and as it may be supplemented by other state laws. In acquiring real property or any interest therein, the power of

eminent domain shall not be used. The criteria for such acquisition and development shall be as provided in Subsections B through G of this section.

B. Sites which may be designated as state parks or state recreational areas shall be only those which:

- (1) contain a diversity of resources including areas of scientific, aesthetic, geologic, natural or historic value;
- (2) provide recreational opportunities significant enough to assure patronage from a region or preferably from the state as a whole; and
- (3) conform to the state comprehensive outdoor recreation plan.

C. Lands designated for acquisition or development as state parks or state recreational areas shall be those which:

- (1) are adjacent to existing parks or recreational areas and are necessary for successful park or recreational area protection and development;
- (2) help meet recreation and open space demands of metropolitan area residents by emphasizing park or recreational areas within easy access of population centers;
- (3) preserve the most significant examples of New Mexico natural scenic landscape; and
- (4) meet the pressure on primary vacation regions not adequately supplied with public recreation opportunities.

D. Lands which are acquired or developed as state parks or state recreational areas shall be managed and developed according to the following objectives:

- (1) outdoor recreation shall be recognized as the dominant or primary resources management objective;
- (2) physical development shall promote the outdoor recreation objective through the use of proper design, materials and construction to enhance and promote the use and enjoyment of the recreational resources in the area;
- (3) within economical limits, state parks or state recreational facilities shall be landscaped and developed to achieve an environment that is aesthetically pleasing, ecologically functional and complementary to the native environment;
- (4) use periods for parks or recreational facilities shall be extended by providing a variety of facilities that will attract visitors during all seasons of the year; and

(5) all significant historic structures contained in state parks or state recreational areas shall be, within economical limits, reconstructed, restored or stabilized to provide for continued user benefit.

E. Factors to be taken into consideration when lands are considered for acquisition or development as state parks or state recreational areas are:

(1) the character of the land resources, such as soil, vegetation, topography and water which affects the suitability of the lands for development as parks or recreational areas;

(2) facilities development to meet the average and slightly higher than average demands rather than the peak demands of summer and the holiday weekends; and

(3) development priority based upon demonstrated use and demand, balance and distribution of existing facilities and the availability of lands suitable for development.

Resources protection projects will also be considered a priority if they demand urgent attention and only according to the relative value of the resources involved.

F. The cost of lands to be proposed for acquisition or development as state parks or state recreational areas should be reasonable, with consideration given to the recreational value of the land on which the state park or state recreational area is to be located. No property shall be purchased which involves commitments, privileges or conditions to any private interest, except that property may be purchased which has restrictions limiting its use to that of a state park or state recreational area.

G. All lands considered for acquisition or development as state parks or state recreational areas shall have undergone a feasibility study prior to acquisition or development. If the state park and recreation division is unable to provide a feasibility study, the legislature shall appropriate the required funds to finance the cost of such a study. Ongoing projects which have already received an appropriation at the effective date of this act are exempted from the requirements of this act [this section]. Feasibility studies shall include:

(1) a determination that the proposed area meets the criteria set forth in this section;

(2) an estimate of the total development cost, including land acquisition, planning and construction. Methods of financing the development costs should be recommended;

(3) an estimate of the annual costs for operation and maintenance;

(4) an estimate of demand and a projection of visitor use for the proposed area; and

(5) an analysis of the proposed area as it relates to plans or development by other governmental agencies or the private sector in adjacent areas.



H. The state is also authorized and empowered, upon the execution of a written agreement by the director of the state park and recreation division with the department, service or agency of the United States having jurisdiction of lands of the United States, to develop, protect, maintain and operate in accordance with such agreement such federally owned lands as state parks or state recreational areas, although the state may not acquire by such an agreement the fee title to or a permanent right in such lands.

I. The designation of sites as suitable for state parks or recreation areas, or designation of certain lands for acquisition or development, or considering lands for acquisition [or] studying the feasibility of acquisition or development, shall not create a right of action on the part of any person or group to force action on the part of the state park and recreation division or the state.

J. Any acquisition of real property or any interest therein for state park or recreation purposes shall be approved by the legislature prior to the execution of any written agreement binding the state to expenditure of any funds for acquisition or development of state parks or recreation areas.

**History:** Laws 1935, ch. 57, § 11; 1941 Comp., § 4-111; Laws 1941, ch. 100, § 1; 1953 Comp., § 4-9-11; Laws 1963, ch. 98, § 11; 1977, ch. 254, § 21; 1981, ch. 93, § 1.

## ANNOTATIONS

**Cross-references.** - For distributions to the public project revolving fund from governmental gross receipts tax, see 7-1-6.38 NMSA 1978.

For New Mexico Youth Conservation Corps Act, see 9-5B-1 to 9-5B-11 NMSA 1978.

**Compiler's note.** - Laws 1981, ch. 93, § 2, makes the act effective on July 1, 1981.

**County ordinance cannot limit state's authority.** - County land use ordinances attempting to restrict traditional federal and state regulatory authority are preempted by this section which allows the state to acquire lands for park and recreational purposes and, thus, county ordinances are of no consequence. 1994 Op. Att'y Gen. No. 94-01.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Estate conveyed by deed for park or playground purposes, nature of, 15 A.L.R.2d 975.

Land developer: validity and construction of statute or ordinance requiring land developer to dedicate portion of land for recreational purposes, or make payment in lieu thereof, 43 A.L.R.3d 862.

## 16-2-12. Acquisition of federal land for park and recreational uses.

The legislature of New Mexico, taking cognizance that the federal government, under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as

amended, has authorized the department of the interior to sell to the states federal land at a price of two dollars fifty cents (\$2.50) per acre or to lease to the states land at the price of twenty-five cents (\$.25) per acre a year, for recreational purposes, and the legislature taking further cognizance of the fact that public park and recreation areas are of vital importance in the development and growth of this state, and noting that valuable and scenic land areas within New Mexico may be purchased or leased at minimal cost for development as park and recreational areas from either private or federal ownership, hereby authorizes the state park and recreation division to purchase or lease such lands in the name of the state.

**History:** 1953 Comp., § 4-9-11.1, enacted by Laws 1963, ch. 149, § 1; 1977, ch. 254, § 22.

### ANNOTATIONS

**Recreation and Public Purposes Act.** - For the Recreation and Public Purposes Act of June 14, 1926, see 43 U.S.C. §§ 869 to 869-4.

#### **16-2-13. Title to park and recreational lands; acceptance.**

Title to or right in property to be used for state park or state recreational purposes may be taken in the name of the "State of New Mexico" or in the name of the "Governor of the State of New Mexico and the people thereof". But no such property or rights therein shall be acquired by the state for state park or state recreational purposes until the property or rights therein have been duly accepted by written agreement of the secretary or by act of the state legislature and an appropriate name has been designated for such park or state recreational area.

**History:** Laws 1935, ch. 57, § 12; 1941 Comp., § 4-112; Laws 1941, ch. 100, § 2; 1953 Comp., § 4-9-12; Laws 1963, ch. 98, § 12; 1977, ch. 254, § 23; 1987, ch. 234, § 18.

### ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, in the second sentence substituted "secretary" for "state park and recreation director" and made minor changes in language in the sentence.

#### **16-2-14. Prior donations and grants accepted and confirmed.**

Lands heretofore donated or granted to the state or its governor and his successors in office, in trust for the state and the people thereof, for state park and recreation purposes, are hereby approved, ratified and accepted as state parks and recreation areas, and the state park and recreation division shall designate appropriate names for each of said state parks and recreation areas.

**History:** Laws 1935, ch. 57, § 13; 1941 Comp., § 4-113; 1953 Comp., § 4-9-13; Laws 1963, ch. 98, § 13; 1977, ch. 254, § 24.

## **16-2-15. Secretary's power to authorize transfer of park lands.**

The secretary has the right to authorize the commissioner of public lands to quitclaim to any state educational institution or other state agency, department or public body having authority to hold, and a use therefor, any lands acquired for state park or state recreational purposes for such nominal consideration and upon such conditions and subject to such reservations as in each case may be prescribed by the secretary; provided, however, that disposition of any such lands shall, in any case, relate only to lands held in excess of the reasonable needs of the state park and recreation division of the energy, minerals and natural resources department for public parks and recreational purposes.

**History:** 1941 Comp. Supp., § 4-120, enacted by Laws 1951, ch. 45, § 1; 1953 Comp., § 4-9-14; Laws 1963, ch. 98, § 14; 1977, ch. 254, § 25; 1987, ch. 234, § 19.

### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "state park and recreation director" both places it appears and inserted "of the energy, minerals and natural resources department" following "state park and recreation division" near the end of the section.

**Authority to sell, etc., state property.** - The state park commission (now the state park and recreation division), as well as any other commission or agency of the state, have the authority to sell, or otherwise dispose of, any property owned by the state, subject to the approval of the state board of finance. 1961-62 Op. Att'y Gen. No. 61-123.

### **16-2-15.1. Elephant Butte lake lease lot lands; release of lease with federal government.**

The director of the state park and recreation division of the natural resources department shall execute a written release to the United States secretary of the interior of the state's lease of the Elephant Butte lake lease lot lands under contract No. 14-06-500-2087 between the state of New Mexico and the United States, in order that the federal government can sell such land to the private citizens presently leasing said land, who with their successors in interest are hereinafter referred to as landowners, provided that within three years after the effective date of this act the federal government sells such land to the private citizens leasing it; further provided that if this sale does not take place the written release provided in this act shall be null and void; and further provided that:

A. in exchange for release of legal obligation and rights under the contract, the state shall first be reimbursed a reasonable amount for its loss of revenue from the lease by the United States government;

B. in order to insure that the land is not used in an incompatible or conflicting manner with the surrounding park land and that access to the park is maintained, the following provisions shall be included in any agreement with the bureau of reclamation:

(1) a continuous easement on all current roadways and utility crossings shall be retained through the lease lot areas as shall all other existing easements at the time of the agreement;

(2) future use of the property shall be restricted to noncommercial, single-family residential use. Any use or activity that endangers the water or air quality of the park shall not be allowed;

(3) the state shall no longer have any responsibility to provide the lease lot area any of the services now provided by the state park and recreation division of the natural resources department; and

(4) the landowners and any successors in interest shall be obligated by these provisions and any noncompliance shall result in reversion of the property to the bureau of reclamation.

**History:** Laws 1987, ch. 317, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1987, ch. 317 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 19, 1987.

### **16-2-16. Procedure for transfer of park lands or recreational areas to state agencies, institutions or public bodies.**

Upon receipt of written notification from the secretary containing a recommendation for transfer to a named grantee, a recitation of the nominal consideration and such reservations and conditions of transfer of specifically described lands as may be required, the commissioner of public lands, in conformity with the notification, shall execute and deliver to the named state educational institution or other state governmental agency, as grantee, a good and sufficient quitclaim deed conveying all the right, title and interest of the state in and to the lands described in the notification. The commissioner of public lands shall, in due course, transfer any receipts derived as consideration actually paid in the transaction to the state treasurer for credit to the proper fund.

**History:** 1941 Comp., § 4-121, enacted by Laws 1951, ch. 45, § 2; 1953 Comp., § 4-9-15; Laws 1963, ch. 98, § 15; 1977, ch. 254, § 26; 1987, ch. 234, § 20.

### ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, near the beginning of the first sentence substituted "secretary" for "state park and recreation director," at the end of the second sentence substituted "treasurer for credit to the proper fund" for "park and recreation fund" and made minor changes in language throughout the section.

### **16-2-17. Repealed.**

### ANNOTATIONS

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 16-2-17 NMSA 1978, as amended by Laws 1963, ch. 98, § 16, relating to use of emergency labor units, effective July 1, 1987. For former provisions, see original 1978 pamphlet. For present comparable provisions, see 16-2-19 NMSA 1978.

### **16-2-18. Acceptance of donations of money, equipment or material.**

A. The state is authorized to receive and accept gifts, donations or bequests of money, equipment or material, either for state park and recreation purposes generally or for any designated state park or recreation area or state park or recreation purposes or as an endowment for any particular state park or recreation area, and shall hold, expend and use the money, equipment or material for the purposes designated in the donation, gift, bequest or endowment.

B. The secretary is authorized to enter into agreements and contracts and to cooperate with the federal government in obtaining funds or other assistance for the acquisition, erection, maintenance and operation of state parks and recreation areas.

**History:** Laws 1935, ch. 57, § 15; 1941 Comp., § 4-115; 1953 Comp., § 4-9-17; Laws 1963, ch. 98, § 17; 1977, ch. 254, § 27; 1987, ch. 234, § 21.

### ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, in Subsection B, substituted "secretary" for "state park and recreation director" and made a minor change in language in Subsection A.

**Subsection B includes contracts for feasibility studies** on projects for the parks and recreation areas. The funds contracted for would be included within the cost of construction if such was determined to be feasible. 1963-64 Op. Att'y Gen. No. 63-80.

**Proper to acquire planning funds which become loan if project feasible.** - The parks and recreation commission (now state park and recreation division) has authority to acquire funds from federal or other agencies for use in planning park and recreation facilities under such terms that the funds become a loan if the project is found feasible and construction is started, and a grant if the project is found not to be feasible and abandoned; the use of funds in such manner is a necessary incident to the improvement of the state's parks and recreation areas. 1963-64 Op. Att'y Gen. No. 63-80.

## **16-2-19. State park and recreation revenues; source and disbursement.**

All money derived from the operation of state parks or recreation areas or from gifts, donations, bequests or endowments, except as the money may be pledged for the retirement of bonds issued under the State Park and Recreation Bond Act [16-2-20 to 16-2-29 NMSA 1978] or appropriated for state park and recreation purposes by the legislature or acquired from any other source whatsoever, shall not at any time or in any event revert or be transferred to general or other state funds; and such funds shall be used solely for the purpose of acquiring, developing, operating and maintaining state parks or recreation areas and maintenance, operation and expenditures of the state park and recreation division of the department of energy, minerals and natural resources, the payment of traveling expenses and salaries of officers, park superintendents and employees and the retirement of state park and recreation bonds. Expenditures shall be made in accordance with budgets approved by the department of finance and administration.

**History:** Laws 1935, ch. 57, § 16; 1941 Comp., § 4-116; 1953 Comp., § 4-9-18; Laws 1963, ch. 98, § 18; 1965, ch. 14, § 4; 1965, ch. 280, § 11; 1977, ch. 254, § 28; 1987, ch. 234, § 22.

### **ANNOTATIONS**

**Cross-references.** - As to special recreation and museum privileges for veterans and their immediate families on Veteran's Day, see 28-13A-1 NMSA 1978.

**The 1987 amendment,** effective July 1, 1987, in the middle of the first sentence substituted "shall not" for "shall be covered into a fund to be known as the 'state park and recreation fund', hereby created, which shall be a revolving fund and no part of which shall," inserted "of the department of energy, minerals and natural resources" near the end of the first sentence and "and the retirement of state park and recreation bonds" at the end of that sentence and made minor changes in language throughout the section.

**Appropriations.** - Subsections AA and BB of Laws 1993, ch. 366, § 3, effective June 18, 1993, appropriate \$370,000 and \$30,000, respectively, from the available cash balance in the state park and recreation division in the eighty-first and eighty-second

fiscal years to pay for unanticipated or emergency repairs to state parks and for normal maintenance and improvements at state parks occurring after February 1, 1994, and to provide safety training certification for state park employees.

Laws 1993, ch. 366, § 3CC, effective June 18, 1993, appropriates \$30,000 from the general fund to the state park and recreation division of the energy, minerals and natural resources department for expenditure in the eighty-first and eighty-second fiscal years to study the feasibility of developing a Mesilla Valley regional nature center, perform preliminary cleanup and fence the property. 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 1994, ch. 147, § 3M, effective March 9, 1994, appropriates \$1,000,000 from the general fund to the state park and recreation division for expenditure in the eighty-second through eighty-fourth fiscal years for maintenance and capital outlay for state park facilities and for the hire of temporary staff as required.

Subsections GGGG and HHHH of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate \$40,000 and \$100,000 from the general fund to the state park and recreation division for expenditure in the eighty-second through eighty-fifth fiscal years to improve and repair campsite and parking facilities and control streambank erosion at Hyde memorial park, and for renovations and improvements to facilities at Red Rock state park.

Laws 1994, ch. 148, § 45, effective March 9, 1994, appropriates \$200,000 and \$50,000 to the state park and recreation division of the energy, minerals and natural resources department for expenditure in the eighty-second through eighty-fourth fiscal years for planning, constructing, and furnishing a wildlife park in Santa Fe county, and for capital improvements at Caprock amphitheater in Quay county, respectively. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the general fund.

### **16-2-19.1. Motorboat fuel tax fund; appropriation.**

There is created in the state treasury the "motorboat fuel tax fund". Money in the fund is appropriated to the state park and recreation division of the natural resources department for use under the regular budgeting procedure of the state. Seventy-five percent of the money in the fund is to be used to construct, purchase, improve and maintain boating and related facilities or equipment in this state under the jurisdiction of the state park and recreation division. Twenty-five percent of the money in the fund is to be used for any boating-related purpose whatsoever under the jurisdiction of the state park and recreation division.

**History:** 1978 Comp., § 16-2-19.1, enacted by Laws 1983, ch. 211, § 38; 1987, ch. 234, § 23; 1987, ch. 322, § 1.

## ANNOTATIONS

**Cross-references.** - For distribution from gasoline tax, see 7-1-6.8 NMSA 1978.

**The 1987 amendments.** - Laws 1987, ch. 234, § 23, effective July 1, 1987, in the middle of the second sentence inserting "energy, minerals and" preceding "natural resources," was approved April 9, 1987. However, Laws 1987, ch. 322, § 1, effective June 19, 1987, deleting "to construct, improve and furnish boating and related facilities in this state under the jurisdiction of the state park and recreation division" at the end of the second sentence and adding the last sentence, was approved April 10, 1987. The section is set out as amended by Laws 1987, ch. 322, § 1. See 12-1-8 NMSA 1978.

### 16-2-20. Short title.

This act [16-2-20 to 16-2-29 NMSA 1978] may be cited as the "State Park and Recreation Bond Act."

**History:** 1978 Comp., § 16-2-20, enacted by Laws 1965, ch. 280, § 1.

### 16-2-21. Purpose of act.

The purpose of the State Park and Recreation Bond Act [16-2-20 to 16-2-29 NMSA 1978] is to provide for the use of revenues derived from the operation of state parks or recreation areas or from gifts, donations, bequests or endowments for state park and recreation purposes and to issue bonds to provide for the acquiring, developing, operating and maintaining of state parks or recreation areas.

**History:** 1978 Comp., § 16-2-21, enacted by Laws 1965, ch. 280, § 2.

### 16-2-22. Bonding authority.

Whenever the secretary determines by written order that it is necessary to raise funds to provide for developing, operating and maintaining state parks or recreation areas, the state park and recreation division of the energy, minerals and natural resources department may issue and sell bonds of the state as provided for in the State Park and Recreation Bond Act [16-2-20 to 16-2-29 NMSA 1978]. The purposes for which the bonds are to be issued and the amount of each bond issue shall be approved by the state board of finance before issuance of the bonds.

**History:** 1978 Comp., § 16-2-22, enacted by Laws 1965, ch. 280, § 3; 1977, ch. 254, § 119; 1987, ch. 234, § 24.

## ANNOTATIONS



**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "state park and recreation director" near the beginning of the first sentence and, towards the end, "the state park and recreation division of the energy, minerals, and natural resources department" for "the division" and made minor changes in language in the first sentence.

### **16-2-23. Form of bonds.**

The state park and recreation division, except as otherwise specifically provided in the State Park and Recreation Bond Act [16-2-20 to 16-2-29 NMSA 1978], shall determine at its discretion the terms, covenants and conditions of state park and recreation bonds, including but not limited to date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering general and technical aspects of the issuance of the bonds. The bonds shall be in such form as the state park and recreation division shall determine, and successive issues shall be identified by alphabetical, numerical or other proper series or designation. Except with respect to bonds issued in book entry or similar form without the delivery of physical securities, signatures of the governor, state treasurer and director of the state park and recreation division shall be affixed in compliance with the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978], and the coupons, if any, attached to the bonds shall bear the facsimile signature of the state treasurer in office at the time of the preparation of the bonds.

**History:** 1978 Comp., § 16-2-23, enacted by Laws 1965, ch. 280, § 4; 1977, ch. 254, § 120; 1983, ch. 265, § 34.

### **16-2-24. Sale of bonds.**

Bonds issued under this State Park and Recreation Bond Act [16-2-20 to 16-2-29 NMSA 1978] shall be sold at not less than par value plus accrued interest to the date of delivery, and may be sold at public or private sale, as determined by the state park and recreation director. If sold at public sale, the director shall give notice of the time, place and terms of the sale by publication in a newspaper published in Santa Fe, New Mexico, not less than ten days prior to date of sale. Bonds issued under the State Park and Recreation Bond Act shall not be purchased by the state investment officer or state investment council.

**History:** 1978 Comp., § 16-2-24, enacted by Laws 1965, ch. 280, § 5; 1977, ch. 254, § 121.

### **16-2-25. Proceeds from sale of bonds.**

Proceeds from the sale of bonds issued under this State Park and Recreation Bond Act [16-2-20 to 16-2-29 NMSA 1978] shall be deposited in a special fund in the state treasury and used solely for the purpose for which the bonds were authorized. Purchasers of the bonds are not responsible in any way for the application of the

proceeds. The cost of preparing, advertising and selling the bonds, including any necessary expense for financial and legal services, shall be paid out of the proceeds.

**History:** 1978 Comp., § 16-2-25, enacted by Laws 1965, ch. 280, § 6.

### **16-2-26. Construction.**

This State Park and Recreation Bond Act [16-2-20 to 16-2-29 NMSA 1978] is sole authority for the authorization and issuance by the state park and recreation division of bonds authorized by the state board of finance, and the division may do anything necessary to carry out the powers granted by this State Park and Recreation Bond Act.

**History:** 1978 Comp., § 16-2-26, enacted by Laws 1965, ch. 280, § 7; 1977, ch. 254, § 122.

### **16-2-27. Tax exemptions.**

The principal and income of bonds issued under the State Park and Recreation Bond Act [16-2-20 to 16-2-29 NMSA 1978] are exempt from all taxation by the state or any of its political subdivisions, except for inheritance and succession taxes.

**History:** 1978 Comp., § 16-2-27, enacted by Laws 1965, ch. 280, § 8.

### **16-2-28. Refunding.**

Any bonds issued under the State Park and Recreation Bond Act [16-2-20 to 16-2-29 NMSA 1978] may be refunded under the terms of written orders issued by the director subject to any contractual limitations involved with outstanding bonds, claims or other obligations. Proceeds of refunding bonds shall be applied to retirement of the bonds to be retired or refunded, or placed in escrow to be applied to payment of the bonds upon presentation for payment by the holders. Refunding bonds shall be issued under all applicable conditions prescribed in the State Park and Recreation Bond Act for the issuance of original bonds.

**History:** 1978 Comp., § 16-2-28, enacted by Laws 1965, ch. 280, § 9; 1977, ch. 254, § 123.

### **16-2-29. Security; retirement of bonds.**

The state park and recreation division may pledge for the retirement of bonds issued, all or any part of the revenues to be produced from any project to be constructed with bond funds and, except as may be prohibited by existing contractual arrangements, may also pledge money derived from the operation of present or future state parks or recreation areas or from gifts, donations, bequests or endowments for state park or recreation

purposes or any portion of the same. Bonds are payable solely from the above funds and are not general obligations of the state.

**History:** 1978 Comp., § 16-2-29, enacted by Laws 1965, ch. 280, § 10; 1977, ch. 254, § 124.

### **16-2-30. Police powers vested in director and park and recreation employees designated by the secretary.**

The director and such state park and recreation division employees as may be designated by the secretary are vested with general police power and with the authority of conservators of the peace within state parks and recreation areas; and it shall be their duty to enforce the laws of the state and the rules and regulations of the energy, minerals and natural resources department within the state parks and recreation areas; and they shall have the further power of forcibly ejecting from any state park or recreation area any and all persons who knowingly, willfully or wantonly violate any rule or regulation of the department within a state park or recreation area.

**History:** Laws 1935, ch. 57, § 17; 1941 Comp., § 4-117; 1953 Comp., § 4-9-19; Laws 1963, ch. 98, § 19; 1965, ch. 14, § 5; 1977, ch. 254, § 29; 1987, ch. 234, § 25.

#### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "director," "energy, minerals and natural resources department" for "state park and recreation division" and "of the department" for "of the state park and recreation division" and made minor changes in language throughout the section.

### **16-2-31. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 16-2-31 NMSA 1978, as enacted by Laws 1983, ch. 18, § 9, relating to attorneys for the state park and recreation division, effective July 1, 1987. For provisions of the former section, see the 1978 original pamphlet. For present comparable provisions, see 16-2-30, 16-2-32 NMSA 1978.

### **16-2-32. Criminal offenses; penalty.**

Each person who shall:

A. cut, break, injure, destroy, take or remove any tree, shrub, timber, plant or natural object in any state park or recreation area;

B. kill, cause to be killed or pursue with intent to kill any bird or animal in any state park or recreation area, except in areas designated by the secretary and except in conformity with the provisions of general law and the regulations of the state game commission;

C. take any fish from the waters of any state park or recreation area, except in conformity with the provisions of general law and the regulations of the state game commission;

D. willfully mutilate, injure, deface or destroy any guidepost, notice, tablet, fence, enclosure or work which is for the protection or ornamentation of any state park or recreation area;

E. light any fire upon any state park or recreation area, except in such places as the secretary has authorized, or willfully or carelessly permit any fire which he has lighted or caused to be lighted or which is under his charge to spread or extend to or burn any of the shrubbery, trees, timber, ornaments or improvements upon any state park or recreation area or leave any campfire which he has lighted or which has been left in his charge unattended by a competent person without extinguishing the same;

F. place within any state park or recreation area or affix to any object therein contained, without a written license from the secretary, any word, character or device designed to advertise any business, profession, article, thing, exhibition, matter or event; or

G. violate any rule or regulation adopted, promulgated or issued by the secretary pursuant to the provisions of Chapter 16, Article 2 NMSA 1978, shall be guilty of a misdemeanor and upon conviction thereof before a court of competent jurisdiction shall be fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100) or punished by imprisonment in the county jail for any term not more than thirty days or both such fine and imprisonment in the discretion of the court.

**History:** Laws 1935, ch. 57, § 19; 1941 Comp., § 4-119; 1953 Comp., § 4-9-21; Laws 1963, ch. 98, § 21; 1967, ch. 31, § 1; 1977, ch. 254, § 31; 1987, ch. 234, § 26.

## ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "state park and recreation division" in Subsections B and E through G and "Chapter 16, Article 2 NMSA 1978" for "this article" in Subsection G and made minor changes in language throughout the section.

**State park and recreational areas.** - Laws 1937, ch. 157, provides for the Bluewater lake state park.

Laws 1937, ch. 207, provides for the Bluewater-Toltec irrigation district lands.

Laws 1941, ch. 118, provides for the Conchas dam recreational area.

Laws 1943, ch. 49, provides for the Bataan memorial of New Mexico.

Laws 1949, ch. 86, provides for the Running Water Draw state park.

Laws 1949, ch. 127, provides for the Kit Carson memorial state park.

Laws 1951, ch. 213, provides appropriations for the enlargement of the Kit Carson memorial state park.

Laws 1953, ch. 110, provides for the city of Rocks state park.

Laws 1953, ch. 181, provides for the Old Fort Union military reservation.

Laws 1959, ch. 24, provides for the Pancho Villa state park.

Laws 1959, ch. 37, provides for the Rio Grande state park, the Storrie lake state park, and the Mora county recreational facilities.

Laws 1961, ch. 71, provides for the restoration of the church of Santa Maria at Ojo Caliente.

Laws 1961, ch. 112, provides for the Oasis state park.

Laws 1963, ch. 187, provides for the Valley of Fires state park.

Laws 1967, ch. 200, provides for the Villanueva state park.

Laws 1971, ch. 315, provides for the Carlsbad botanical/zoological gardens.

Laws 1972, ch. 48, provides for the Manzano state park.

## **ARTICLE 3**

### **STATE TRAILS SYSTEM**

#### **16-3-1. Short title.**

This act [16-3-1 to 16-3-9 NMSA 1978] may be cited as the "State Trails System Act."

**History:** 1953 Comp., § 4-9A-1, enacted by Laws 1973, ch. 372, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 59 Am. Jur. 2d Parks, Squares, and Playgrounds §§ 5 to 7, 10 to 12.

81A C.J.S. States § 147.

### **16-3-2. Definitions.**

As used in the State Trails System Act [16-3-1 to 16-3-9 NMSA 1978]:

A. "local government" means any county, municipality or other political subdivision of the state and includes rural communities and unincorporated towns or villages in the state; and

B. "secretary" means the secretary of energy, minerals and natural resources.

**History:** 1953 Comp., § 4-9A-2, enacted by Laws 1973, ch. 372, § 2; 1977, ch. 254, § 32; 1987, ch. 234, § 27.

### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, deleted former Subsections A and B, which defined "division" and "director," respectively; redesignated former Subsection C as present Subsection A; and added Subsection B.

### **16-3-3. Purpose.**

The purpose of the State Trails System Act [16-3-1 to 16-3-9 NMSA 1978] is to provide public access to, and the enjoyment and appreciation of, the New Mexico outdoors in order to conserve, develop and use the natural resources of the state for purposes of health and recreation. It is the intent and purpose of the State Trails System Act to encourage horseback riding, hiking, bicycling and other recreational activities.

**History:** 1953 Comp., § 4-9A-3, enacted by Laws 1973, ch. 372, § 3.

### **16-3-4. State trails system created; types of trails; planning.**

A. There is created a "state trails system" composed of:

(1) "state scenic trails" which are extended trails so located as to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological or cultural qualities of the areas through which such trails pass;

(2) "state recreation trails" which are trails designed to provide a variety of outdoor recreational uses in or reasonably accessible to urban areas and, where appropriate, shall connect parks, scenic areas, historical points and neighboring communities;

(3) "state historical trails" which are trails designed to identify and interpret routes which were significant in the prehistoric settlement or historical development of the state; and

(4) "special use trails" which are trails that may provide uses also provided by scenic, recreation and historical trails but which shall not be limited to such uses. The secretary may designate special use trails in such locations as it deems appropriate and may limit the use of such trails to such special users as he determines. In designating special use trails, the secretary shall give due regard to the interests of users who have needs of a special nature which are not fulfilled by other trail types comprising the state trails system.

B. State trails shall be supplemented by support facilities deemed necessary and feasible by the secretary. These facilities shall comply with health and environment department [department of environment] standards and regulations.

C. In the planning and designation of trails, the secretary shall give due regard to the interests of federal or state agencies, counties, municipalities, private landowners and interested individuals and recreational and conservation organizations. The secretary shall give full consideration to the inclusion of trails from all categories within the system.

D. The secretary shall prescribe the uses and limits of each type of trail.

E. Separate trails may be established for motorized vehicles but shall not be trails designated for horseback riding, hiking or bicycling.

F. Before making a final designation of any trail, the secretary shall:

(1) hold a public hearing after proper notice within the affected county and area; and

(2) as a result of the hearing, adopt a finding approving or disapproving the trail based upon evidence as to the adverse effects that the trail has on the holders of any interest in the lands in the proximity of the trail.

**History:** 1953 Comp., § 4-9A-4, enacted by Laws 1973, ch. 372, § 4; 1977, ch. 254, § 33; 1987, ch. 234, § 28.

## ANNOTATIONS

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

**The 1987 amendment,** effective July 1, 1987, substituted "secretary" for "division" in Subsections A(4), B, C, D, and F; in Subsection B, in the second sentence substituted "health and environment department" for "environmental improvement agency"; and made minor changes in language throughout the section.

## **16-3-5. Secretary to supervise planning, construction, operation and maintenance of trails system; powers and duties.**

A. The secretary shall:

(1) adopt and regularly review and revise in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] such rules and regulations as may be necessary to carry into effect and enforce the provisions of the State Trails System Act [16-3-1 to 16-3-9 NMSA 1978];

(2) plan, establish, acquire, purchase, develop, construct, enlarge, improve, maintain, equip, operate, protect and police the state trails system;

(3) acquire by lease, deed or contract rights-of-way or easements for trails across private, municipal, county, state or federal lands. In selecting the rights-of-way, every consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user. Acquisition shall be, wherever possible, in the form of an easement obtained by gift, exchange or purchase with donated funds. When such devices fail, the secretary may authorize the expenditure of state appropriations for acquisition in fee. Any agreement for acquisition of rights in land shall be for terms of not less than twenty-five years whenever possible; and

(4) coordinate trail development by assisting counties, municipalities and other political subdivisions in the formation of their trail plans. In carrying out this responsibility, the secretary shall review records of easements and other interests in lands which are available for use as trails, including public lands, utility easements, flood plains, railroad rights-of-way, arroyos, other rights-of-way and surplus public proprietary lands as may be adaptable for such use, and shall ensure that uniform construction standards, compatible with allowed usage, are made available to local governments.

B. The secretary may abandon any portion or all of a trail or easement acquired for trail purposes which is no longer needed for such purposes, or he may transfer any trail or easement to a local government having jurisdiction over the area in which the trail or easement is located for so long as the local government agrees to maintain and operate the trail.

C. The secretary shall notify the owner of the land through which any trail or easement passes prior to entering into any agreement with a local government for the operation of a trail and shall secure the consent of the landowner prior to the transfer of any trail or easement to a local government.

D. The secretary shall review all formal declarations of railroad right-of-way abandonments by the interstate commerce commission for possible inclusion into the state trails system.



E. Within the boundaries of a right-of-way, the secretary may acquire on behalf of the state lands in fee title, any interest in lands in the form of scenic or other easements or any interest in lands under cooperative or other agreement. Acquisition of land or of any interest in land may be by gift, purchase, exchange or by the assumption of obligations. Acquisition may be through the use of funds obtained by donation, federal grants, proceeds of the sale of bonds, legislative appropriation or otherwise. In acquiring real property or any interest therein, the power of eminent domain shall not be used.

F. The secretary shall prepare and publish trail plans and standards and make them available to participating local governments and interested members of the public upon request. The secretary shall also prepare a state trails map and shall make copies available to members of the public upon request.

G. The secretary shall prepare and publish a comprehensive intermediate and long-range state trails plan on a continuing basis in accordance with the state comprehensive outdoor recreation plan. Included in these plans shall be an inventory of existing trails and potential trail routes on all lands within the state. Such plans may include general routes or corridors within which specific trails or segments of trails may be considered for inclusion in the state trails system.

H. The secretary shall annually submit a written report on recreational, scenic, historical and special use trails to the governor by December 31. Copies of the annual reports shall be furnished to participating local governments and shall be made available to interested members of the public upon request.

**History:** 1953 Comp., § 4-9A-6, enacted by Laws 1973, ch. 372, § 6; 1977, ch. 254, § 35; 1987, ch. 234, § 29.

## ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "division" throughout the section; in Subsection A(3), deleted from the end of the second sentence "and his operations"; and made minor language changes throughout the section.

### **16-3-6. Trails on federal lands; coordination with national trails system.**

A. The secretary may establish and designate state recreational, scenic, historical and special use trails on lands under the jurisdiction of a federal agency when, in the opinion of the federal agency and the secretary, such lands may be so developed under the provisions of federal law and the provisions of Section 16-3-4 NMSA 1978.

B. Nothing in the State Trails System Act [16-3-1 to 16-3-9 NMSA 1978] shall preclude a component of the state trails system from being a part of the national trails system. The secretary shall coordinate the state trails system with the national trails system and is directed to encourage and assist any federal studies for inclusion of New Mexico trails

in the national trails system. The secretary may enter into written cooperative agreements for joint federal-state administration of any New Mexico component of the national trails system, provided such agreements for administration of land uses are not less restrictive than those set forth in the State Trails System Act.

**History:** 1953 Comp., § 4-9A-7, enacted by Laws 1973, ch. 372, § 7; 1977, ch. 254, § 36; 1987, ch. 234, § 30.

## ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "division" throughout the section, "16-3-4 NMSA 1978" for "4-9A-4 NMSA 1953" at the end of Subsection A and "the State Trails System Act" for "this article" at the beginning of the first sentence in Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - "Compliance with state standards" as requirement to granting right-of-way over federal public lands under § 505(a)(iv) of the Federal Land Policy and Management Act of 1976 (43 USCS § 1765(a)(iv)), 60 A.L.R. Fed. 386.

### **16-3-7. Violations; penalties.**

Each person is guilty of a misdemeanor who shall:

A. willfully mutilate, deface or destroy any guidepost, notice, tablet, fence or other work which is for the protection or ornamentation of any state trail;

B. place along any trail or affix to any object in the right-of-way, without a written license from the secretary, any word, character or device designed to advertise any business, trade, profession, article, thing, matter or event; or

C. violate any rule or regulation adopted by the secretary in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] to regulate the use of and prevent damage to lands within and adjacent to the state trails system.

**History:** 1953 Comp., § 4-9A-8, enacted by Laws 1973, ch. 372, § 8; 1977, ch. 254, § 37; 1987, ch. 234, § 31.

## ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "division" in Subsections B and C.

### **16-3-8. Additional means of enforcement.**

As an additional means of enforcing the provisions of the State Trails System Act [16-3-1 to 16-3-9 NMSA 1978] and rules and regulations adopted by the secretary pursuant to that act, the secretary may seek injunctive relief, in the district court of the county where the violation occurs, against any violation or threatened violation of the act or any rules and regulations adopted pursuant thereto, and such relief shall be subject to the continuing jurisdiction and supervision of the district court and the court's powers of contempt. Any party aggrieved by any final judgment of the district court under this section may appeal to the court of appeals as in other civil actions.

**History:** 1953 Comp., § 4-9A-9, enacted by Laws 1973, ch. 372, § 9; 1977, ch. 254, § 38; 1987, ch. 234, § 32.

### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, in the first sentence substituted "secretary" for "division" both places it appears, deleted the former second sentence, which read "The attorney general shall represent the division," and made minor language changes in the first sentence.

### **16-3-9. Limitation of liability of owners of land used for recreational purposes.**

No person or corporation, or their successors in interest, who has granted a right-of-way or easement across his land to the energy, minerals and natural resources department for use in the state trails system shall be liable to any user of the trail for injuries suffered on the right-of-way or easement unless the injuries are caused by the willful or wanton misconduct of the grantor.

**History:** 1953 Comp., § 4-9A-10, enacted by Laws 1973, ch. 372, § 10; 1977, ch. 254, § 39; 1987, ch. 234, § 33.

### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, substituted "energy, minerals and natural resources department" for "division" and made a minor language change.

**No duty to maintain trails or warn of dangerous conditions.** - Where a traveler has a right to ride a motorcycle over the trails on a landowner's property, the landowner has no duty to maintain the trails and has no duty to warn of dangerous trail conditions not created by the landowner. *Moore v. Burn Constr. Co.*, 98 N.M. 190, 646 P.2d 1254 (Ct. App. 1982).

# **ARTICLE 4**

## **EL RIO CHAMA SCENIC AND PASTORAL RIVER AND RIO GRANDE VALLEY STATE PARK**

### **16-4-1. Short title.**

This act [16-4-1 to 16-4-8 NMSA 1978] may be cited as "El Rio Chama Scenic and Pastoral Act."

**History:** 1953 Comp., § 75-34A-1, enacted by Laws 1977, ch. 242, § 1.

### **16-4-2. Declaration of policy.**

The preservation, protection and maintenance of the natural and scenic beauty of a designated portion of the Chama river and its immediate corridor is in the public interest and is compatible with the multiple use of New Mexico's natural resources. The designation of El Rio Chama scenic and pastoral river will enable the people of the area to enjoy the recreational, environmental and wildlife benefits of the river. Therefore, the legislature declares it to be in the public interest, in furtherance of sound environmental policy and for the good of the people, to establish a scenic and pastoral river known as El Rio Chama.

**History:** 1953 Comp., § 75-34A-2, enacted by Laws 1977, ch. 242, § 2.

### **16-4-3. Definitions.**

As used in El Rio Chama Scenic and Pastoral Act [16-4-1 to 16-4-8 NMSA 1978]:

A. "corridor" means those lands immediately adjacent to the riverbed essentially from rim to rim or four hundred feet back from the river banks of the Rio Chama, whichever is less;

B. "pastoral" means those free-flowing segments of the river which are affected by the works of man but which still possess natural and scenic value. Included are areas with developed or partially developed shorelines;

C. "river" means a flowing body of water or any segment, portion or tributary thereof within the corridor, including rivers, streams, creeks, branches or small lakes;

D. "scenic" means those sections of the river that are free of impoundments, with shorelines remaining largely undeveloped, but which may be accessible in places by primitive roads; and

E. "secretary" means the secretary of energy, minerals and natural resources.

**History:** 1953 Comp., § 75-34A-3, enacted by Laws 1977, ch. 242, § 3; 1987, ch. 234, § 34.

## ANNOTATIONS

The 1987 amendment, effective July 1, 1987, added Subsection E.

### 16-4-4. Designation.

The Chama river and its immediate corridor, from the boundary line between section 10 and 15, township 27 north, range 2 east just south of the El Vado dam downstream approximately thirty miles to where it is crossed by the U.S. forest service boundary in section 24, township 24 north, range 3 east, is designated as a scenic and pastoral river.

**History:** 1953 Comp., § 75-34A-4, enacted by Laws 1977, ch. 242, § 4.

### 16-4-5. Management.

A. The secretary shall administer the state-administered segment of El Rio Chama Scenic and Pastoral River and shall develop, by rule and regulation and after public hearings, a management plan and guidelines to realize the scenic and pastoral objectives of El Rio Chama Scenic and Pastoral Act [16-4-1 to 16-4-8 NMSA 1978]. The plan shall be prepared in cooperation with the appropriate federal agencies and shall include among other things:

(1) consideration for cooperative management arrangements between state and federal authorities; and

(2) measures to control recreational use of the designated river to protect the river's natural values.

B. The secretary shall seek the assistance and aid of the state game commission for resource and recreation management within the state-administered segment of El Rio Chama Scenic and Pastoral River.

C. The secretary shall report annually to the governor and to the legislature concerning the development and the administration of the cooperative federal-state management plan.

**History:** 1953 Comp., § 75-34A-5, enacted by Laws 1977, ch. 242, § 5; 1987, ch. 234, § 35.

## ANNOTATIONS

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "state park and recreation commission" once in each subsection and made a minor language change in Subsection A.

#### **16-4-6. Land use and acquisition.**

A. The secretary shall not condemn any land or interests in lands within El Rio Chama Scenic and Pastoral River under state jurisdiction.

B. The secretary may acquire, in furtherance of the objectives of El Rio Chama Scenic and Pastoral Act [16-4-1 to 16-4-8 NMSA 1978] and on behalf of the state, land, improvements or any interest within the boundaries of El Rio Chama Scenic and Pastoral River by purchase, lease, exchange or gift and enter into agreements with private landholders concerning the same at fair market value.

C. The secretary may accept and receive gifts and bequests of money or other property, including funds from the federal government, for purposes consistent with El Rio Chama Scenic and Pastoral Act.

D. El Rio Chama Scenic and Pastoral River shall be administered in such a manner as to protect and enhance the scenic and natural values which caused the river to be designated as a state scenic and pastoral river.

E. Nothing in El Rio Chama Scenic and Pastoral Act shall be construed as being incompatible with existing state property laws. Nothing shall be construed to be incompatible with regulation of river flow for flood control or beneficial uses of water.

**History:** 1953 Comp., § 75-34A-6, enacted by Laws 1977, ch. 242, § 6; 1987, ch. 234, § 36.

#### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "state park and recreation commission" at the beginning of Subsections A, B and C.

#### **16-4-7. Inclusion in national system.**

Nothing in El Rio Chama Scenic and Pastoral Act [16-4-1 to 16-4-8 NMSA 1978] shall preclude the designated river from becoming part of the national wild and scenic rivers system. The secretary shall encourage and assist any federal studies for inclusion of El Rio Chama Scenic and Pastoral River in the national system and may enter into written cooperative agreements for joint federal and state administration of El Rio Chama Scenic and Pastoral River as a component of the national system. Such agreements shall recognize the established rights and culture of the area.

**History:** 1953 Comp., § 75-34A-7, enacted by Laws 1977, ch. 242, § 7; 1987, ch. 234, § 37.

#### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "state park and recreation commission" near the beginning of the second sentence and made minor language changes.

#### **16-4-8. Violations; injunctions.**

Any person may be restrained and enjoined from engaging or continuing in an act which violates any provision of El Rio Chama Scenic and Pastoral Act [16-4-1 to 16-4-8 NMSA 1978] or any rule or regulation adopted pursuant to that act.

**History:** 1953 Comp., § 75-34A-8, enacted by Laws 1977, ch. 242, § 8; 1987, ch. 234, § 38.

#### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, deleted "by proceedings instituted in the name of the state by the state attorney general or any district attorney of the state or by a special attorney of the state park and recreation commission at the request of the commission" following "any person may be restrained and enjoined" and made a minor language change at the end of the section.

#### **16-4-9. Short title.**

This act [16-4-9 to 16-4-17 NMSA 1978] may be cited as the "Rio Grande Valley State Park Act."

**History:** Laws 1983, ch. 18, § 1.

#### **16-4-10. Declaration of policy.**

The preservation, protection and maintenance of the natural and scenic beauty of a designated portion of the Rio Grande and its immediate corridor is in the public interest. The designation of the Rio Grande valley state park will enable people to enjoy the recreational, environmental, educational and wildlife benefits of the river. Therefore, the legislature declares it to be in the public interest, in furtherance of sound environmental policy and for the good of the people to establish the Rio Grande valley state park.

**History:** Laws 1983, ch. 18, § 2.

#### **16-4-11. Definitions.**

As used in the Rio Grande Valley State Park Act [16-4-9 to 16-4-17 NMSA 1978]:

- A. "conservancy district" means the middle Rio Grande conservancy district;
- B. "operating party" means the party designated by the secretary to manage the state park; and
- C. "secretary" means the secretary of energy, minerals and natural resources.

**History:** Laws 1983, ch. 18, § 3; 1987, ch. 234, § 39.

### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, deleted former Subsection B, which defined "division"; redesignated former Subsection C as current Subsection B and, in that subsection, substituted "secretary" for "division"; and added Subsection C.

### **16-4-12. Designation of boundaries.**

The Rio Grande valley state park shall include lands owned and controlled by the middle Rio Grande conservancy district in the floodway of the Rio Grande, adjacent levees, service roads, riverside drains and conservancy district lands contiguous to the river in Bernalillo county, with the following exceptions:

- A. private land in and adjacent to the floodway of the river;
- B. lands held by public agencies other than the conservancy district;
- C. lands of the Sandia and Isleta Indian pueblos in Bernalillo county;
- D. lands within the municipal boundaries of the village of Corrales unless the governing body of the village of Corrales subsequently requests inclusion; and
- E. a two-hundred foot strip on either side of the final center line of existing and proposed bridges whose alignment has been or may be approved by the urban transportation policy planning board of the middle Rio Grande council of governments.

**History:** Laws 1983, ch. 18, § 4.

### **16-4-13. Management.**

A. The provisions of the Rio Grande Valley State Park Act [16-4-9 to 16-4-17 NMSA 1978] shall not take effect until the secretary has fully executed a management agreement with an operating party, and shall cease to be in effect if the management agreement is terminated. The management agreement shall include a map delineating the boundaries of the park. The park shall be established when the management



agreement is signed by the secretary and the designated representative of the operating party. A provision of the management agreement shall require twelve months' written notice prior to any termination taking effect.

B. The operating party shall administer the Rio Grande Valley state park. The operating party shall develop, after public hearings, a management plan for approval by the secretary which is consistent with the provisions of the feasibility study previously prepared that satisfies the requirements of Subsection G of Section 16-2-11 NMSA 1978, to realize the objectives of the Rio Grande Valley State Park Act. The plan shall be prepared in cooperation with the appropriate federal, state and local agencies and shall include among other things:

(1) consideration for cooperative management arrangements between state, federal, conservancy, flood control and municipal authorities;

(2) measures to control recreational use of the designated river to protect the river's natural values; and

(3) measures to minimize any adverse impact to the park caused by public transportation or other public improvement projects to be located in close proximity to the park.

C. The operating party may seek the assistance and aid of the game and fish department for resource and wildlife management within the Rio Grande Valley state park.

**History:** Laws 1983, ch. 18, § 5; 1987, ch. 234, § 40.

### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "division" near the beginning of both Subsections A and B, "secretary" for "representative of the division" in the third sentence in Subsection A and "game and fish division of the energy, minerals and natural resources department" for "department of game and fish" in Subsection C.

### **16-4-14. Land use and acquisition.**

A. The secretary shall not condemn any land or interests in lands within the Rio Grande Valley state park under state jurisdiction.

B. The operating party may acquire, in furtherance of the objectives of the Rio Grande Valley State Park Act [16-4-9 to 16-4-17 NMSA 1978] and on behalf of the state, land, improvements or any interest within the boundaries of the Rio Grande Valley state park by purchase, lease, exchange or gift and enter into agreements with private landholders concerning the same at fair market value.

C. The secretary or operating party may accept and receive gifts and bequests of money or other property, including funds from the federal government, for purposes consistent with the Rio Grande Valley State Park Act.

D. The Rio Grande Valley state park shall be administered in such a manner as to protect and enhance the scenic and natural values of the Rio Grande.

E. Nothing in the Rio Grande Valley State Park Act shall be construed as being incompatible with existing state property laws. Nothing shall be construed to be incompatible with regulation of river flow for flood control, sediment control or beneficial uses of water or with the need for life saving, fire suppression, public health or emergency flood management.

F. Future public utility crossings, including but not limited to sewer lines, sewer outfalls, and water lines and facilities, are permitted uses in the park, subject to the following: such facilities shall be placed underground or in existing easements, provided that if such placement is determined by the utility not to be practical due to unusual environmental, economic or technical problems, the utilities shall make such findings and present them to the secretary for approval of placing the proposed facilities above ground or outside existing easements. The utility shall also demonstrate to the secretary that location of the proposed facility outside the park would cause undue hardship to the utility.

G. The Rio Grande Valley State Park Act shall not prohibit existing or future drainage or flood control projects approved by a county, municipality or flood control agency. Such projects shall be reviewed by the secretary, and the secretary, the operating party and the county, municipality or flood control agency shall cooperate to minimize adverse impact on the park caused by such projects.

**History:** Laws 1983, ch. 18, § 6; 1987, ch. 234, § 41.

#### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "division" in Subsections A, C, F, and G.

#### **16-4-15. Violations; injunctions.**

Any person may be restrained and enjoined from engaging or continuing in an act which violates any provision of the Rio Grande Valley State Park Act [16-4-9 to 16-4-17 NMSA 1978] or any rule or regulation of the secretary or any additional rule or regulation adopted pursuant to the Rio Grande Valley State Park Act.

**History:** Laws 1983, ch. 18, § 7; 1987, ch. 234, § 42.

#### **ANNOTATIONS**

**The 1987 amendment**, effective July 1, 1987, deleted "by proceedings instituted in the name of the state or the operating party by the attorney general or any district attorney of the state or by a special attorney of the division or the operating party at the request of the division or the operating party" following "any person may be restrained and enjoined" at the beginning and substituted "secretary" for "division" near the end.

### **16-4-16. Joint powers.**

The operating party, subsequent to satisfying the provisions of Subsection A of Section 5 [16-4-13 NMSA 1978] of the Rio Grande Valley State Park Act, and the conservancy district shall enter into a joint powers agreement to effectuate the provisions of the Rio Grande Valley State Park Act [16-4-9 to 16-4-17 NMSA 1978]; provided, however, that nothing in the Rio Grande Valley State Park Act shall be construed in such a way as to obstruct or interfere with the duties, operations, obligations, construction of new works or functions of the middle Rio Grande conservancy district as provided in Chapter 73, Articles 14 and 18 NMSA 1978 or the duties and obligations of the state of New Mexico under the Rio Grande Compact [72-15-23 NMSA 1978] or agreements or contracts between the conservancy district and federal agencies such as the United States department of interior, the bureau of reclamation and the United States army corps of engineers.

In the event the operating party and the conservancy district fail to negotiate a mutually acceptable joint powers agreement within one year from complying with the provisions of Subsection A of Section 5 [16-4-13 NMSA 1978] of the Rio Grande Valley State Park Act, the operating party and the conservancy district shall submit any unresolved disputes to a mutually agreeable impartial arbitrator for binding arbitration.

**History:** Laws 1983, ch. 18, § 8.

### **16-4-17. No state appropriations.**

It is the intent of the Rio Grande Valley State Park Act [16-4-9 to 16-4-17 NMSA 1978] not to call upon this or future legislatures for state financial help.

**History:** Laws 1983, ch. 18, § 9.

## **ARTICLE 5 CUMBRES AND TOLTEC SCENIC RAILROAD**

### **16-5-1. Execution of compact.**

The legislature hereby approves and the governor is authorized to enter into a compact on behalf of this state with the state of Colorado in the form substantially as follows:

CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT

The state of New Mexico and the state of Colorado, desiring to provide for the joint acquisition, ownership and control of an interstate narrow gauge scenic railroad, known as the Cumbres and Toltec scenic railroad, within Rio Arriba county in New Mexico and Archuleta and Conejos counties in Colorado, to promote the public welfare by encouraging and facilitating recreation and by preserving, as a living museum for future generations, a mode of transportation that helped in the development and promotion of the territories and states, and to remove all causes of present and future controversy between them with respect thereto, and being moved by considerations of interstate comity, have agreed upon the following articles:

#### **Article I**

The states of New Mexico and Colorado agree jointly to acquire, own and make provision for the operation of the Cumbres and Toltec scenic railroad.

#### **Article II**

The states of New Mexico and Colorado hereby ratify and affirm the agreement of July 1, 1970, entered between the railroad authorities of the states.

#### **Article III**

The states of New Mexico and Colorado agree to make such amendments to the July 1, 1970 agreement and such other contracts, leases, franchises, concessions or other agreements as may hereafter appear to both states to be necessary and proper for the control, operation or disposition of the said railroad.

#### **Article IV**

The states of New Mexico and Colorado agree to the consideration of the enactment of such laws or constitutional amendments exempting the said railroad or its operations from various laws of both states as both states shall hereafter mutually find necessary and proper.

#### **Article V**

Nothing contained herein shall be construed so as to limit, abridge or affect the jurisdiction or authority, if any, of the interstate commerce commission over the said railroad, or the applicability, if any, of the tax laws of the United States to the said railroad or its operations.

**History:** 1953 Comp., § 69-12-4, enacted by Laws 1972, ch. 19, § 1.

#### **ANNOTATIONS**

**Bi-state agency immune from property tax.** - The Cumbres and Toltec Railroad, a bi-state agency of New Mexico and Colorado, is immune from property taxes in the two states. 1990 Op. Att'y Gen. No. 90-18.

### **16-5-1.1. Short title.**

Sections 16-5-1 through 16-5-7 NMSA 1978 and Sections 1 through 7 of this act [16-5-1.1, 16-5-8 to 16-5-13 NMSA 1978] may be cited as the "Cumbres and Toltec Scenic Railroad Act".

**History:** Laws 1989, ch. 26, § 1.

## **ANNOTATIONS**

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

**Emergency clauses.** - Laws 1989, ch. 26, § 8 makes the act effective immediately. Approved March 10, 1989.

### **16-5-2. Ratification of compact.**

The legislature hereby ratifies the "Cumbres and Toltec Scenic Railroad Compact" as it is set forth in Section 16-5-1 NMSA 1978 (being Laws 1972, Chapter 19, Section 1) signed at the city and county of Santa Fe, state of New Mexico, on the 11th day of December, A.D. 1974, by Bruce King, as governor of the state of New Mexico, pursuant to Section 16-5-1 NMSA 1978 and signed at the city and county of Denver, state of Colorado, on the 26th day of December, A.D. 1974, by John D. Vanderhoof, as governor of the state of Colorado, under authority of and in conformity with the provisions of Chapter 254 of the Session Laws of Colorado 1973. The consent of congress was given by Public Law 93-467, approved October 24, A.D. 1974, by the senate and house of representatives.

**History:** 1953 Comp., § 69-12-4.1, enacted by Laws 1977, ch. 350, § 1.

### **16-5-3. Cumbres and Toltec scenic railroad commission created.**

There is created the "Cumbres and Toltec scenic railroad commission," an interstate agency authorized by the Cumbres and Toltec Scenic Railroad Compact. The commission shall be composed of four members, two of whom serve for the state of New Mexico and two of whom serve for the state of Colorado.

**History:** 1953 Comp., § 69-12-5, enacted by Laws 1977, ch. 350, § 2.

## **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1977, ch. 350, § 2, repeals 69-12-5, 1953 Comp., relating to the effective date of the compact, and enacts the above section.

#### **16-5-4. Appointment of members.**

The two New Mexico members of the Cumbres and Toltec scenic railroad commission shall be appointed by the governor and shall serve at his pleasure. The members shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 69-12-6, enacted by Laws 1977, ch. 350, § 3.

#### **16-5-5. Payment of the expenses of commission.**

The New Mexico share of the expenses of the Cumbres and Toltec scenic railroad commission and the reimbursement of the New Mexico members may be paid out of funds appropriated by the legislature.

**History:** 1953 Comp., § 69-12-7, enacted by Laws 1977, ch. 350, § 4.

### **ANNOTATIONS**

**Appropriations.** - Laws 1986, ch. 115, § 1H appropriates \$14,700 of the total proceeds from the sale of severance tax bonds to the Cumbres and Toltec scenic railroad commission to rehabilitate the Los Pinos water tank, contingent upon the state of Colorado providing matching funds.

Laws 1986, ch. 115, § 11 provides that authorizations for the funding of any project enumerated in Chapter 115 shall be reduced by the amount contained in those acts of the second session of the thirty-seventh legislature which authorize funding for the same projects and provides that, if the agency responsible for certifying to the state board of finance the need for the issuance of bonds for a specific enumerated project does not so certify by the end of the seventy-sixth fiscal year, the issuance of bonds for that project, with the exception of authorizations for projects that require federal matching funds, is void.

Laws 1986, ch. 115, § 12 provides that unless otherwise specified, any unexpended or unencumbered balance remaining from the proceeds of severance tax bonds issued pursuant to Section 1 of that act shall revert to the severance tax bonding fund six months after completion of the project.

#### **16-5-6. Exemptions.**

The Cumbres and Toltec scenic railroad commission is exempt from compliance with the Personnel Act and the Public Purchases Act.

**History:** 1953 Comp., § 69-12-8, enacted by Laws 1977, ch. 350, § 5.

## ANNOTATIONS

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

**Public Purchases Act.** - Former 13-1-1 NMSA 1978 was the short title for the Public Purchases Act (former 13-1-1 through 13-1-27 NMSA 1978), referred to in this section. Sections 13-1-1 to 13-1-20, and 13-1-23 to 13-1-27 NMSA 1978, were repealed in 1984, leaving only 13-1-21 and 13-1-22 NMSA 1978 of the former Public Purchases Act remaining. See now 13-1-28 NMSA 1978 et seq., the Procurement Code.

### **16-5-7. Commission powers.**

The Cumbres and Toltec scenic railroad commission shall have all powers necessary to effectuate the provisions of the Cumbres and Toltec Scenic Railroad Compact.

**History:** 1953 Comp., § 69-12-9, enacted by Laws 1977, ch. 350, § 6.

### **16-5-8. Definitions.**

As used in the Cumbres and Toltec Scenic Railroad Act [16-5-1 to 16-5-13 NMSA 1978]:

- A. "commission" means the Cumbres and Toltec scenic railroad commission; and
- B. "railroad" means the Cumbres and Toltec scenic railroad.

**History:** Laws 1989, ch. 26, § 2.

## ANNOTATIONS

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

**Emergency clauses.** - Laws 1989, ch. 26, § 8 makes the act effective immediately. Approved March 10, 1989.

### **16-5-9. Authority of commission to incur indebtedness.**

A. The commission has authority to incur indebtedness for the following purposes:

- (1) expenditures to make emergency repairs, replacements or additions to the railroad's equipment or facilities; and

(2) capital expenditures for development, improvement and acquisition of facilities and equipment for the railroad.

B. Before the authority to incur indebtedness may be exercised, a majority of the commission members shall vote in favor of a resolution that:

(1) specifies the amount of indebtedness to be incurred;

(2) specifies in detail the purposes for the loan; and

(3) authorizes the chairman of the commission to execute all documents on behalf of the commission to incur the indebtedness by negotiating a loan from a financial institution.

C. The total indebtedness existing at any time under the authority granted in this section shall not exceed two hundred fifty thousand dollars (\$250,000).

D. Any indebtedness incurred under the authority of this section shall not create a debt of the state or pledge the general credit of the state or commission. It shall not constitute personal indebtedness of any member of the commission. Except as provided in Subsection E of this section, the indebtedness shall not be secured by any type of security interest in the real or personal property of the railroad, nor shall that property be subject to any legal process to satisfy a judgment for the indebtedness in the event of nonpayment of the indebtedness.

E. The commission may pledge as security for the repayment of indebtedness incurred and outstanding under the authority of this section all of the railroad user fees authorized to be charged under Section 5 [16-5-11 NMSA 1978] of the Cumbres and Toltec Scenic Railroad Act.

**History:** Laws 1989, ch. 26, § 3.

## ANNOTATIONS

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

**Emergency clauses.** - Laws 1989, ch. 26, § 8 makes the act effective immediately. Approved March 10, 1989.

### **16-5-10. Railroad loan retirement fund.**

A. There is created the "railroad loan retirement fund". All railroad user fees authorized under Section 5 [16-5-11 NMSA 1978] of the Cumbres and Toltec Scenic Railroad Act shall be deposited in this fund. The commission shall by resolution authorize the placement of the fund in an appropriate financial institution and shall also authorize the



investment of money in the fund. Income earned from investment of the fund shall become part of the fund.

B. The money in the railroad loan retirement fund is irrevocably pledged to the retirement of any indebtedness incurred by the commission under the authority of Section 3 [16-5-9 NMSA 1978] of the Cumbres and Toltec Scenic Railroad Act. During the time that any indebtedness is outstanding, the commission shall not reduce or eliminate any user fees that were in effect at the time the indebtedness was incurred.

**History:** Laws 1989, ch. 26, § 4.

#### **ANNOTATIONS**

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

**Emergency clauses.** - Laws 1989, ch. 26, § 8 makes the act effective immediately. Approved March 10, 1989.

#### **16-5-11. Authorization to set and collect user fees.**

The commission may establish user fees to be charged to passengers on the railroad. The fee schedule may provide for different fees for different classes of passengers.

**History:** Laws 1989, ch. 26, § 5.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1989, ch. 26, § 8 makes the act effective immediately. Approved March 10, 1989.

#### **16-5-12. Tax exemption of interest charged on loan.**

Any interest charged and collected by a financial institution for extending a loan to the commission is exempt from all taxes imposed by the state and its political subdivisions.

**History:** Laws 1989, ch. 26, § 6.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1989, ch. 26, § 8 makes the act effective immediately. Approved March 10, 1989.

#### **16-5-13. Liberal interpretation.**

The Cumbres and Toltec Scenic Railroad Act [16-5-1 to 16-5-13 NMSA 1978] shall be liberally construed to carry out its purpose.

**History:** Laws 1989, ch. 26, § 7.

## ANNOTATIONS

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

**Emergency clauses.** - Laws 1989, ch. 26, § 8 makes the act effective immediately. Approved March 10, 1989.

## ARTICLE 6 STATE AND COUNTY FAIRS

### 16-6-1. State fair commission; members; appointment; number; qualification; terms; oath; bond.

A. The governor shall appoint, with the advice and consent of the senate, a "state fair commission", consisting of seven members, for terms of five years each; provided that the first appointments shall be made of two commissioners for one-year terms, two for two-year terms, one for a three-year term, one for a four-year term and one for a five-year term. All state fair commissioners shall be bona fide residents of the state. No less than two commissioners shall be engaged in the business of livestock raising, and no less than two commissioners shall be engaged in agricultural vocations and pursuits other than livestock raising.

B. Before entering upon the duties of his office, each state fair commissioner shall take and subscribe an oath that he will faithfully and impartially discharge the duties of his office, which oath shall be filed in the office of the secretary of state. Each commissioner shall furnish a good and sufficient surety bond as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978].

C. No member of the commission shall be removed during the term for which he is appointed, except for cause, following notice and an opportunity for a hearing, unless the notice and hearing are, in writing, expressly waived.

**History:** Laws 1913, ch. 46, § 2; Code 1915, § 5005; C.S. 1929, § 127-101; Laws 1941, ch. 71, § 1; 1941 Comp., § 48-2101; Laws 1953, ch. 81, § 1; 1953 Comp., § 45-20-1; Laws 1971, ch. 167, § 1; 1994, ch. 143, § 4.

## ANNOTATIONS

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

**The 1994 amendment,** effective July 1, 1994, subdivided the section and added Subsection C; in Subsection A, inserted "with the advice and consent of the senate" near the beginning of the first sentence and rewrote the second sentence which read, "All such commissioners shall be bona fide residents of the state of New Mexico; provided, however, that the commissioners now serving will continue until the expiration of their appointed terms", and made stylistic changes; and, in Subsection B, substituted "as provided in the Surety Bond Act" for "in the sum of two thousand five hundred dollars (\$2,500) for the faithful performance of his duties".

**Severability clauses.** - Laws 1994, ch. 143, § 9 provides for the severability of the act if any part or application thereof is held invalid.

**Temporary provisions.** - Laws 1994, ch. 143, § 7 provides that "[i]t is in the intent of the legislature that the state personnel office conduct a comprehensive study of the appropriate status of all temporary positions at the New Mexico state fair."

Laws 1994, ch. 143, § 8, effective July 1, 1994, provides that the provisions of this Act "which amend Subsection A of Section 16-6-1 NMSA 1978 to provide for senate confirmation of state fair commissioners, shall apply to commissioners whose terms of office expire after the effective date of this act [July 1, 1994]. Commissioners serving on the effective date of this act shall continue to serve until the expiration of their appointed terms."

**Appropriations.** - Laws 1994, ch. 147, § 8, effective March 9, 1994, appropriates \$12,063,100 from New Mexico state fair receipts and other income of the state fair commission to the state fair commission for expenditure in the eighty-third fiscal year for specified purposes in specified amounts.

**Status of commission members under Workmen's Compensation Act.** - Prior to 1972, members of the New Mexico state fair commission were public officers, not employees, and not entitled to benefits under the Workmen's Compensation Act. 1968 Op. Att'y Gen. No. 68-109.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 14.

## **16-6-2. [Payment of premiums on bonds.]**

The premiums on all bonds required to be furnished by the officers or members of the said commission shall be paid out of the funds of the said commission.

**History:** Laws 1913, ch. 46, § 14; Code 1915, § 5006; C.S. 1929, § 127-102; 1941 Comp., § 48-2102; 1953 Comp., § 45-20-2.

### **16-6-3. Disqualification of commissioners; organization of commission; secretary and treasurer.**

A. If any state fair commissioner changes his residence to any place outside the state, such change of residence shall operate ipso facto to vacate the office he holds.

B. The secretary and treasurer shall qualify by furnishing the commission with a good and sufficient bond pursuant to the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978], conditioned for the faithful performance of his duties as secretary and treasurer and that he will faithfully account for and pay over to the person entitled thereto all money that comes into his hands as such officer. The secretary and treasurer shall hold office for a period of one year and until his successor is elected and qualified.

**History:** Laws 1913, ch. 46, § 3; Code 1915, § 5007; C.S. 1929, § 127-103; 1941 Comp., § 48-2103; 1953 Comp., § 45-20-3; 1994, ch. 143, § 5.

#### **ANNOTATIONS**

**Cross-references.** - For corporations authorized to issue surety bonds, see 46-6-1 NMSA 1978 et seq.

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

**The 1994 amendment**, effective July 1, 1994, added the section heading; subdivided the section; in Subsection A, inserted "state fair" and made stylistic changes; and, in Subsection B, substituted "pursuant to the Surety Bond Act" for "in the sum of twenty thousand dollars in some surety company authorized to do business in this state", deleted "which said bond shall be filed with the secretary of state" following "officer" at the end of the first sentence, and made stylistic changes.

#### **16-6-3.1. Budget review requirements.**

Beginning with the eighty-third fiscal year, the state fair commission is required to submit to the department of finance and administration for review a monthly budget status report, a list of all checks issued and all supporting documentation for each expenditure.

**History:** 1978 Comp., § 16-6-3.1, enacted by Laws 1994, ch. 143, § 6.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1994, ch. 143, § 10 makes the act effective on July 1, 1994.

#### **16-6-4. Powers and duties of commission; annual fair; exhibits; premiums.**

A. The state fair commission shall have power and authority to hold annually on suitable grounds a state fair at which shall be exhibited livestock, poultry, vegetables, fruits, grains, grasses and other farm products, minerals, ores and other mining exhibits, mining machinery and farm implements and all other things which the commissioners or a majority thereof deem consonant with the purposes of a state fair for the purposes of advancing the agricultural, horticultural and stock raising, mining, mechanical and industrial pursuits of the state and shall have the care of its property and be entrusted with the entire direction of its business and its financial affairs consistent with the provisions of Sections 16-6-15 and 16-6-16 NMSA 1978.

B. The commission, among other duties, shall prepare, adopt, publish and enforce all necessary rules for the management of the New Mexico state fair, its meetings and exhibitions and for the guidance of its officers, employees and exhibitors. The commission shall determine the duties, compensation and tenure of office of all of its officers and employees and may remove from office or discharge any person appointed or employed by it at will and shall have the power to appoint all necessary fairgrounds police to keep order on the grounds and in the buildings of the state fair. The fairgrounds police so appointed shall be vested with the same authority for such purposes as peace officers. The commission shall have the power to charge entrance fees and admissions and lease stalls, stand and restaurant sites, give prizes and premiums, arrange entertainments and do all things which by the commission may be considered proper for the conduct of the state fair not otherwise prohibited by law. The commission shall prohibit the sale or consumption of alcoholic beverages on the grounds of the state fair except in controlled access areas within the licensed premises. The commission or its designees shall meet with the director of the alcohol and gaming division of the department of regulation and licensing and other parties in interest to designate the controlled access areas on which the sale and consumption of alcoholic beverages may be permitted. As used in this subsection, "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters.

**History:** Laws 1913, ch. 46, § 4; Code 1915, § 5008; C.S. 1929, § 127-104; 1941 Comp., § 48-2104; 1953 Comp., § 45-20-4; Laws 1961, ch. 34, § 1; 1975, ch. 108, § 1; 1993, ch. 68, § 2.

#### **ANNOTATIONS**

**Cross-references.** - For sale, service and consumption of alcoholic beverages on the state fair grounds, see 60-6A-31 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, inserted the Subsection A and B designations; substituted "Sections 16-6-15 and 16-6-16 NMSA 1978" for "Sections 45-20-14 and 45-20-15 NMSA 1953" at the end of Subsection A; added the final two sentences in Subsection B; and made minor stylistic changes throughout the section.

**Holding of other offices.** - Members of the legislature may not serve on the following boards and commissions: (1) livestock board; (2) state police board; (3) capitol buildings improvement commission; (4) board of regents - El Rito normal; (5) state fair commission; (6) miners' hospital of New Mexico. 1959-60 Op. Att'y Gen. No. 59-140.

**State fair commission need not advertise nor invite bids from prospective concessionaires** but may negotiate the award of a concession contract; provided, however, the commission obtains fair market value in exchange for the concessionaire's right to do business on the state fairgrounds. 1980 Op. Att'y Gen. No. 80-7.

**Commission may choose any reasonable method of making services available.** - The commission may choose any reasonable method it deems appropriate and expedient to ensure the availability of food and beverage services to the general public attending functions at the state fair or on the state fairgrounds. 1980 Op. Att'y Gen. No. 80-7.

**Granting of liquor concessions.** - The state fair commission has authority to grant concessions for the sale of liquor upon the state fair grounds, if the provisions of law are complied with. 1914 Op. Att'y Gen. 158.

**Carrying of general liability insurance.** - State fair commission is empowered under this section to carry general liability insurance. 1941-42 Op. Att'y Gen. No. 3852.

### **16-6-5. State fair commission administratively attached to tourism department.**

The state fair commission is administratively attached, as defined in the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978], to the tourism department.

**History:** 1953 Comp., § 45-20-4.1, enacted by Laws 1977, ch. 245, § 18; 1991, ch. 21, § 32.

### **ANNOTATIONS**

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

**The 1991 amendment**, effective March 27, 1991, substituted "tourism department" for "commerce and industry department" in the catchline and in the text of the section.

## **16-6-6. [Annual meeting; election of officers; financial report to governor.]**

The commission shall hold annual meetings on the first Monday in January of each year, at which meeting the chairman and the secretary and treasurer shall be selected and such other business shall be transacted as the interests of said state fair shall require. On the first Monday in January in each year after said fair is held, the state fair commission shall prepare and transmit to the governor of the state, a full financial statement, signed by each member of the commission, showing all funds received and disbursed, all assets and liabilities, being a full and detailed account of its transactions and containing such statistics and information as may be of value to the various industries of the state.

**History:** Laws 1913, ch. 46, § 5; Code 1915, § 5009; C.S. 1929, § 127-105; 1941 Comp., § 48-2105; 1953 Comp., § 45-20-5.

## **16-6-7. [Annual appropriation; Albuquerque contribution.]**

For the purpose of carrying out the provisions of this article, the sum of five thousand dollars (\$5,000) is appropriated annually; provided, that the sum of five thousand dollars [(\$5,000)] herein appropriated shall be paid only upon condition that the citizens of Albuquerque shall annually raise, contribute and cause to be made available to the commission herein created a like sum of five thousand dollars [(\$5,000)].

**History:** Laws 1913, ch. 46, § 6; Code 1915, § 5010; C.S. 1929, § 127-106; 1941 Comp., § 48-2106; 1953 Comp., § 45-20-6.

### **ANNOTATIONS**

**Compiler's note.** - This section would appear to have been abrogated by Laws 1917, ch. 109, § 4, which read: "The appropriations herein made or heretofore made by any legislature of the state, except as to unexpended portions carried forward shall cease and determine on and after December 1, 1919."

**Meaning of "this article".** - The words "this article" were substituted by the 1915 compiler for "this act" and refer to the 1915 Code, ch. 100, §§ 5005 to 5017, compiled herein as 16-6-1 to 16-6-4, 16-6-6 to 16-6-9, 16-6-11, 16-6-12 NMSA 1978.

**Appropriating state funds to state fair is constitutional** for such fair is an instrumentality and under the control of the state. 1937-38 Op. Att'y Gen. 62.

## **16-6-8. [Disbursement of funds.]**

The treasurer of the said fair commission shall make disbursements of the funds in his hands, on the order of the commission which order shall be countersigned by the

president of the commission, and shall state upon what account the disbursement is made.

**History:** Laws 1913, ch. 46, § 7; Code 1915, § 5011; C.S. 1929, § 127-107; 1941 Comp., § 48-2107; 1953 Comp., § 45-20-7.

### **16-6-9. Appropriation; how paid to the commission.**

The secretary of finance and administration, on the request in writing of such board of commissioners, shall, and it is hereby made his duty to, draw his warrant in favor of the treasurer of said commission upon the state treasurer for the payment of the appropriations provided in this article, and the said state treasurer shall pay such warrants out of any money on hand, appropriated for the purposes herein set forth.

**History:** Laws 1913, ch. 46, § 8; Code 1915, § 5012; C.S. 1929, § 127-108; 1941 Comp., § 48-2108; 1953 Comp., § 45-20-8; Laws 1977, ch. 247, § 156.

#### **ANNOTATIONS**

**Meaning of "this article".** - See same catchline in notes to 16-6-7 NMSA 1978.

### **16-6-10. Fair commission; expenses.**

Members of the state fair commission shall receive no salary but each member shall receive fifteen dollars (\$15.00) per diem while engaged in the performance of his official duties for the commission. Members shall also receive reimbursement for travel expenses at the rate of eight cents (\$.08) a mile for attending meetings or traveling in connection with their duties.

**History:** 1953 Comp., § 45-20-9, enacted by Laws 1961, ch. 110, § 1.

#### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1961, ch. 110, § 1, repeals 45-20-9, 1953 Comp., relating to compensation for commissioners, and enacts the above section.

### **16-6-11. [Corporate powers of fair commission.]**

The members of the New Mexico state fair commission and their successors in office, shall constitute a body corporate under the name and style of the "New Mexico State Fair" with the right as such of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering the same at pleasure.

**History:** Laws 1913, ch. 46, § 11; Code 1915, § 5015; C.S. 1929, § 127-110; 1941 Comp., § 48-2110; 1953 Comp., § 45-20-10.



## ANNOTATIONS

**Constitutionality of county appropriations to commission or fair.** - Though counties cannot, under N.M. Const., art. IX, § 14, make a donation to the state fair commission, a corporation, they may make appropriations with which to install displays at the state fair which, presumably, will be of benefit to the counties. 1915-16 Op. Att'y Gen. 155.

**Counties may appropriate money for constructing building** in which to show exhibits installed by the counties at the state fair. 1915-16 Op. Att'y Gen. 248.

**Tort liability of fair and employees.** - Though the state fair is a body corporate with right to sue and to be sued, liability for torts of its employees does not follow therefrom, but can only be imposed by a statute in clear and unambiguous language. 1941-42 Op. Att'y Gen. 3852 (opinion rendered prior to present Tort Claims Act, 41-4-1 NMSA 1978 et seq.)

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Liability of owner or operator for injury to patron of fair, carnival, or the like, from operation of sideshows, games, or similar concessions, 24 A.L.R.3d 945.

### **16-6-12. [Contracts; financial interest by commissioner; effect; penalty.]**

No commissioner shall either directly or indirectly be financially interested in any contract made by the commission and any such contract in which a commissioner shall be interested either directly or indirectly, shall be void. Any violation of the provisions of this article, shall be punishable by imprisonment in the state prison for one year.

**History:** Laws 1913, ch. 46, § 12; Code 1915, § 5016; C.S. 1929, § 127-111; 1941 Comp., § 48-2111; 1953 Comp., § 45-20-11.

## ANNOTATIONS

**Meaning of "this article".** - See same catchline in notes to 16-6-7 NMSA 1978.

### **16-6-13. [Additional powers of fair commission; definitions.]**

The following terms, wherever used or referred to in this act [16-6-13 to 16-6-22 NMSA 1978], shall have the following meaning unless a different meaning clearly appears from the context:

A. the term "bonds" shall mean any bonds of the New Mexico state fair issued pursuant to this act;

B. the term "project" shall mean and include buildings, structures, improvements and equipment of every kind, nature and description, which may be required by or

convenient for the purpose of the New Mexico state fair, including, without limiting the generality of the foregoing, administration, exhibition, recreation, or parts thereof, or additions thereto, heat, light, or systems, or parts thereof, or extensions thereto; greenhouses, farm exhibition building, stock pens, stable, grounds or parts thereof; or additions thereto; or any one, or more than one, or all of the foregoing, or any combination thereof; or such other buildings, pens, stalls or improvements as the fair commission shall by a majority of the members deem necessary to carry out the provisions of this act and of Chapter 46, Laws of 1913 (Sections 16-6-1 to 16-6-4, 16-6-6 to 16-6-9, 16-6-11, 16-6-12 NMSA 1978), and all amendments thereof;

C. the term "to acquire" shall include to purchase, to erect, to build, to construct, to reconstruct, to repair, to replace, to extend, to better, to equip, to develop, to improve and to embellish a project;

D. the term "Recovery Act" shall mean the act of the congress of the United States of America, approved June 16, 1933, entitled: "An act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works and for other purposes," and acts amendatory thereof and acts supplemental thereto, and revisions thereof, and any further acts of the congress of the United States to encourage public works or to reduce unemployment and providing for the making of loans or grants or both;

E. the term "federal agency" shall mean the United States of America, the president of the United States of America, the federal emergency administrator of public works, or such other agency or agencies as may have been designated or may be designated or created to make loans or grants or both pursuant to the Recovery Act;

F. the term "commission" shall mean the fair commission as appointed by the governor under Chapter 46 of the Laws of 1913.

**History:** Laws 1935, ch. 69, § 1; 1941 Comp., § 48-2112; 1953 Comp., § 45-20-12.

## **ANNOTATIONS**

**National Industrial Recovery Act unconstitutional.** - The National Industrial Recovery Act of June 16, 1933, referred to in Subsections D and E, was declared unconstitutional. Present provisions relating to economic recovery are compiled as 15 U.S.C. § 712a et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Exemption from taxation of property of agricultural fair society or association, 89 A.L.R.2d 1104.

**16-6-14. [Creating New Mexico state fair, a separate and independent legal entity.]**

The New Mexico state fair, is hereby constituted and confirmed a body politic and corporate and separate and confirmed as a governmental instrumentality for the purpose of carrying out the provisions of Chapter 46, Laws of 1913 (Sections 16-6-1 to 16-6-4, 16-6-6 to 16-6-9, 16-6-11, 16-6-12 NMSA 1978), and all amendments thereto and the provisions of this act [16-6-13 to 16-6-22 NMSA 1978]. A corporate purpose of New Mexico state fair, in addition to any other purposes thereof, shall be to acquire any project. The powers of the said New Mexico state fair delegated to it by this act and the Act of Chapter 46, Laws of 1913, and all amendments thereto, shall be vested in and exercised by a majority of the members of the commission, and a majority of all the members of such commission shall be a quorum for the transaction of any business authorized by this act, but a lesser number may adjourn and compel the attendance of absent members.

**History:** Laws 1935, ch. 69, § 2; 1941 Comp., § 48-2113; 1953 Comp., § 45-20-13.

### **ANNOTATIONS**

**New Mexico state fair is a legal entity** which is a part of the state of New Mexico. 1964 Op. Att'y Gen. No. 64-70.

**Where donation of horse race profits illegal.** - It is not legal for the state fair to donate the proceeds, in excess of costs, from horse races to the community chest. 1955-56 Op. Att'y Gen. No. 6279.

**Where state fair not liable.** - The New Mexico state fair, as a corporate body of the state of New Mexico, is not liable for its torts. 1964 Op. Att'y Gen. No. 64-70 (opinion rendered prior to adoption of current version of Tort Claims Act, 41-4-1 NMSA 1978 et seq.).

**Tort liability of fair and employees.** - Though the state fair is a body corporate with right to sue and be sued, liability for torts of its employees does not follow therefrom, but can only be imposed by a statute in clear and unambiguous language. 1941-42 Op. Att'y Gen. No. 3852 (opinion rendered prior to present Tort Claims Act, 41-4-1 NMSA 1978 et seq.).

### **16-6-15. Additional powers.**

In addition to the powers which it may now have, the New Mexico state fair shall have power to:

A. acquire, by purchase, gift or the exercise of the right of eminent domain, and hold and dispose of real or personal property or rights or interests therein except as limited by Section 13-6-2.1 NMSA 1978, which provisions requiring state board of finance approval of certain actions are applicable to the state fair. The right of eminent domain, whenever sought to be exercised under the provisions of this article, shall be exercised

in the same manner as is now or may hereafter be provided for the exercise of such power by the state or any county, municipality or school district;

B. build, construct, improve, repair or maintain buildings, structures, improvements, grounds and equipment which may be required by or convenient for the purpose of operating a state fair;

C. acquire any project and to own, operate and maintain such project;

D. accept grants of money, materials or property of any kind from a federal agency upon such terms and conditions as the federal agency may impose;

E. borrow money and issue bonds and provide for the payment of the same and for the rights of the holders thereof, provided that the commission shall not issue bonds, negotiate loans or renegotiate loans without the prior approval of the state board of finance; and

F. perform all acts and do all things necessary or convenient to carry out the powers granted in this article, or heretofore granted, to obtain loans or grants or both from any federal agency and to accomplish the purposes of this article and secure the benefits of the Recovery Act.

**History:** Laws 1935, ch. 69, § 3; 1941 Comp., § 48-2114; 1953 Comp., § 45-20-14; Laws 1975, ch. 108, § 2; 1989, ch. 380, § 4.

### ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, substituted the present catchline for "Powers additional to the powers granted by Sections 45-20-1 through 45-20-8, 45-20-10 and 45-20-11 NMSA 1953"; in Subsection A added all of the language of the first sentence beginning with "except" and substituted "this article" for "this act" in the second sentence; substituted "this article" for "this act" in Subsection F; and made minor stylistic changes throughout the section.

**National Industrial Recovery Act unconstitutional.** - The National Industrial Recovery Act of June 16, 1933, referred to in Subsection F, was declared unconstitutional. Present provisions relating to economic recovery are compiled as 15 U.S.C. § 712a et seq.

**Bonds not general obligations.** - Bonds issued under the provisions of this act (16-6-13 to 16-6-22 NMSA 1978) are not general obligations of the state. 1935-36 Op. Att'y Gen. 80.

**Where levy not mandatory.** - It was not mandatory for the state tax commission (now the property tax division of the taxation and revenue department) to make a levy for the year 1935 for the state fair. 1935-36 Op. Att'y Gen. 80.

**No provision for tax levy.** - No provision is made in this act (16-6-13 to 16-6-22 NMSA 1978) for any tax levy. 1935-36 Op. Att'y Gen. 80.

**State fair commission need not advertise nor invite bids from prospective concessionaires** but may negotiate the award of a concession contract; provided, however, the commission obtains fair market value in exchange for the concessionaire's right to do business on the state fairgrounds. 1980 Op. Att'y Gen. No. 80-7.

**Commission may choose any reasonable method of making services available.** - The commission may choose any reasonable method it deems appropriate and expedient to ensure the availability of food and beverage services to the general public attending functions at the state fair or on the state fairgrounds. 1980 Op. Att'y Gen. No. 80-7.

### **16-6-16. Issuance of negotiable bonds; terms.**

The New Mexico state fair, with the prior approval of the state board of finance, is hereby authorized from time to time to issue negotiable bonds in the aggregate principal amount of not to exceed three million five hundred thousand dollars (\$3,500,000). The bonds shall be authorized by resolution of the commission. The bonds may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times not exceeding fifty years from the respective dates thereof, may mature in such amount or amounts, shall bear interest in accordance with the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978], may be in such form, as the state fair commission may determine and, may be executed in such manner, may be payable in such medium of payment at such place or places and may be subject to such terms of redemption with or without premium as such resolution or other resolutions may provide. The bonds shall be sold at public sale for not less than par value and in the manner provided by law for the sale of municipal bonds. The bonds shall be negotiable instruments notwithstanding the form or tenor thereof.

**History:** Laws 1935, ch. 69, § 4; 1941 Comp., § 48-2115; Laws 1953, ch. 37, § 1; 1953 Comp., § 45-20-15; Laws 1957, ch. 98, § 1; 1975, ch. 108, § 3; 1983, ch. 106, § 1.

### **ANNOTATIONS**

**State appropriation to fair constitutional.** - A bill appropriating state funds to state fair is constitutional, for such fair is an instrumentality and under the control of the state. 1937-38 Op. Att'y Gen. 62.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Governmental unit's power to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

### **16-6-17. Powers to secure bonds.**

New Mexico state fair in connection with the issuance of the bonds, or in order to secure the payment of such bonds and interest thereon, shall have power by resolution of its commission:

A. to fix and maintain fees, rentals and other charges, of stalls, rentals of pens, rentals of space for concessions, automobile parking fees, rental of stables and rental of other buildings or stalls as may be on said grounds, but in no case shall any fee be charged for exhibits of agricultural, dairy, horticultural, culinary, apiary and handwork products of the state of New Mexico, unless the same be for sale (which fees and charges shall be uniform to all those similarly situated);

B. to provide that bonds issued hereunder shall be secured by a first, exclusive and closed lien on the income and revenue derived from, and shall be payable from, fees, rentals and other charges as set out in preceding subsections;

C. to pledge and assign to, or in trust for the benefit of, the holder or holders of the bonds issued hereunder, an amount of the income and revenue derived from fees, rentals and other charges set out in Paragraph A of this section, which shall be sufficient to pay when due, the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor;

D. to covenant with or for the benefit of the holder or holders of bonds issued hereunder to acquire any project, with such bondholder or holders, that so long as any such bonds shall remain outstanding and unpaid, New Mexico state fair will fix, maintain and collect, as may be agreed upon;

E. to covenant with or for the benefit of the holder or holders of bonds issued hereunder to acquire any project, that so long as any such bonds shall remain outstanding and unpaid, New Mexico state fair will set aside and pledge, for the purpose of paying the principal of and interest on any such bonds issued hereunder, such an amount of any appropriation of state funds made to and received by New Mexico state fair as may be agreed upon with said bondholder or holders;

F. to covenant that so long as any of the bonds issued hereunder shall remain outstanding and unpaid, it will not, except upon such terms and conditions as may be determined, voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the bonds issued hereunder upon any of the income and revenues derived from fees, rentals and other charges, as set out in Paragraph A of this section; or convey or otherwise alienate the project to acquire which bonds shall have been issued, or the real estate upon which such project shall be located, except at a price sufficient to pay all the bonds then outstanding issued hereunder to acquire such project and interest accrued thereon, and then only in accordance with any agreements with the holder or holders of such bonds; or mortgage or otherwise voluntarily create or cause to be created any encumbrance or charge on any property, real, personal or mixed, of said New Mexico state fair;

G. to covenant as to the procedure by which the terms of any contract with a holder or holders of such bonds may be amended or abrogated, the amount or percentage of bonds the holder or holders of which must consent thereto and the manner in which such consent may be given;

H. to vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued hereunder, and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute events of default and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage of such bonds may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate;

I. to vest in a trustee or trustees or the holder or holders of any specified amount or percentage of bonds the right to apply to any court of competent jurisdiction for and have granted the appointment of a receiver or receivers of the income and revenue pledged and assigned to or for the benefit of the holder or holders of such bonds, which receiver or receivers may have and be granted such powers and duties as such court may order or decree for the protection of the bondholders;

J. to make covenants with any federal agency to perform any and all acts and to do any and all such things as may be necessary or convenient or desirable in order to secure its bonds, or as may in the judgment of the board tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated herein, it being the intention hereof to give New Mexico state fair pursuant to this act [16-6-13 to 16-6-22 NMSA 1978] power to make all covenants, to perform all acts and to do all things, not inconsistent with the constitution of the state of New Mexico, in the issuance of the bonds and for their security, including any and all powers granted to a private corporation under the laws of the state of New Mexico.

**History:** Laws 1935, ch. 69, § 5; 1941 Comp., § 48-2116; 1953 Comp., § 45-20-16.

### **16-6-18. Moneys of New Mexico state fair.**

No moneys derived from the sale of the bonds or otherwise borrowed by such institution under provisions of this act [16-6-13 to 16-6-22 NMSA 1978], shall be required to be paid into the state treasury but shall be deposited by the treasurer or other fiscal officer of the New Mexico state fair in a separate bank account or accounts in such bank or banks or trust company or trust companies as may be designated by the commission, and all deposits of such moneys shall, if required by the commission, be secured by obligations of the United States of America, of a market value equal at all times to the amount of the deposit; and all banks and trust companies are hereby authorized to give such security. Such money shall be disbursed as may be directed by the commission

and in accordance with the terms of any agreements with the holder or holders of any bonds. This section shall not be construed as limiting the power of the New Mexico state fair to agree in connection with the issuance of any of its bonds as to the custody and disposition of the moneys received from the sale of such bonds or the income and revenue of New Mexico state fair pledged and assigned to or in trust for the benefit of the holder or holders thereof.

**History:** Laws 1935, ch. 69, § 6; 1941 Comp., § 48-2117; 1953 Comp., § 45-20-17.

## **ANNOTATIONS**

**Handling of state fair funds.** - The state fair is a body politic and corporate and is not required to handle its funds in usual method required of other state agencies. 1937-38 Op. Att'y Gen. 249.

### **16-6-19. Validity of bonds.**

The bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be commissioners. The validity of the bond shall not be dependent on nor affected by the validity or regularity of any proceedings to acquire the project financed by the bonds or taken in connection therewith.

**History:** Laws 1935, ch. 69, § 7; 1941 Comp., § 48-2118; 1953 Comp., § 45-20-18.

### **16-6-20. Prohibitions against obligating state of New Mexico.**

Nothing in this act [16-6-13 to 16-6-22 NMSA 1978] contained shall be construed to authorize New Mexico state fair to contract a debt on behalf of, or in any way to obligate, the state of New Mexico.

**History:** Laws 1935, ch. 69, § 8; 1941 Comp., § 48-2119; 1953 Comp., § 45-20-19.

### **16-6-21. Bonds obligations of New Mexico state fair.**

All bonds issued pursuant to this act [16-6-13 to 16-6-22 NMSA 1978] shall be obligations of the New Mexico state fair, and such bonds shall be payable in accordance with the terms thereof and shall not be obligations general, special or otherwise of the state of New Mexico. Such bonds shall not constitute a debt, legal or moral, of the state of New Mexico, and shall not be enforceable against the state.

**History:** Laws 1935, ch. 69, § 9; 1941 Comp., § 48-2120; 1953 Comp., § 45-20-20.

### **16-6-22. Supplemental nature of act, construction and purpose.**



The powers conferred by this act [16-6-13 to 16-6-22 NMSA 1978] shall be in addition to and supplemental to the powers conferred by any other law, general or special.

**History:** Laws 1935, ch. 69, § 11; 1941 Comp., § 48-2121; 1953 Comp., § 45-20-21.

### **16-6-23. [Eastern New Mexico state fair; purposes; exhibits.]**

An annual eastern New Mexico state fair may be held in Chaves county, at which shall be exhibited livestock, poultry, vegetables, fruits, grains and other agricultural products, minerals, ores and other mining exhibits, machinery, farm implements and all other things which may be in the interest of advancing agricultural, horticultural, stock raising, mining, mechanical and other industrial pursuits of eastern New Mexico, and the state generally, and any county of the state may erect, maintain, furnish or donate exhibits consonant with the purposes and in furtherance of the interest of said fair.

**History:** Laws 1931, ch. 6, § 1; 1941 Comp., § 48-2122; 1953 Comp., § 45-20-22.

#### **ANNOTATIONS**

**Leasing of state fair property.** - The eastern New Mexico state fair would have the authority to lease the property owned by it to anyone and on such terms and conditions as it deems proper, provided that its articles of incorporation do not preclude this, and provided further that the terms of such lease provide a return reasonably in line with the value of the property leased and does not amount to a gift. 1957-58 Op. Att'y Gen. No. 57-256.

### **16-6-24. [Reorganization of Chaves county cotton carnival.]**

The directors of the Chaves county cotton carnival, a nonprofit corporation organized and existing under and by virtue of the laws of the state of New Mexico, may by resolution accept the provisions of Section One [16-6-23 NMSA 1978] of this act and upon filing with the secretary of state a certified copy of such resolution shall thereupon be and is hereby constituted and designated as the eastern New Mexico state fair and entitled to all rights, benefits and privileges as such and may change its corporate name to eastern New Mexico state fair by amending its articles of incorporation in the manner now by law provided for such amendments.

**History:** Laws 1931, ch. 6, § 2; 1941 Comp., § 48-2123; 1953 Comp., § 45-20-23.

#### **ANNOTATIONS**

**Authority of eastern New Mexico state fair.** - The eastern New Mexico state fair would have all the authority of any other nonprofit organization thus organized within the state of New Mexico. 1957-58 Op. Att'y Gen. No. 57-256.

**16-6-25. [Authorization for holding of an annual bi-state fair in Curry county.]**

That an annual bi-state fair may be held in Curry county, New Mexico, at which shall be exhibited livestock, poultry, vegetables, fruits, grains and other agricultural products; minerals, ores and other mining exhibits; machinery, farm implements and all other things which may be in the interest of advancing agricultural, horticultural, stock raising, mining, mechanical and other industrial pursuits of New Mexico generally, and any county of the state may erect, maintain, furnish or donate exhibits consonant with the purposes, and in furtherance of the interest of said fair.

**History:** 1941 Comp., § 48-2124, enacted by Laws 1947, ch. 152, § 1; 1953 Comp., § 45-20-24.

**16-6-26. [Bi-state fair association.]**

The directors of the Curry county fair association, a nonprofit corporation organized and existing by virtue of the laws of the state of New Mexico, may by resolution accept the provisions of this act [16-6-25 to 16-6-30 NMSA 1978] and upon filing with the secretary of state a certified copy of such resolution, is thereupon and is hereby constituted and designated as the bi-state fair association and entitled to all rights, benefits and privileges as such, and may change its corporate name to the bi-state fair association by amending its articles of incorporation in the manner now by law provided for such amendments.

**History:** 1941 Comp., § 48-2125, enacted by Laws 1947, ch. 152, § 2; 1953 Comp., § 45-20-25.

**16-6-27. [Bond issue election; ballot; notice; voters; sale of bonds.]**

The board of county commissioners of Curry county, New Mexico, may submit to the voters of said county at any regular election or at any special election called for that purpose the question of issuing bonds in a sum not to exceed one hundred thousand dollars (\$100,000) for the purpose of erecting a building or buildings at the bi-state fair grounds, such building or buildings to be used for the holding of the bi-state fair. The proposition to be voted upon shall be submitted to the voters by separate ballot and shall be in substantially the following form:

"For the issuance of bi-state fair association bonds in the sum of \$. . . . .; Against the issuance of bi-state fair association bonds in the sum of \$. . . . ."

The board of county commissioners shall give notice of such election by publication for at least three consecutive weeks in any newspaper published in said county; which notice shall set forth the time and place of holding such election, the fair building or buildings proposed to be built, the amount of bonds to be voted, the rate of interest to

be paid on such bonds and the length of time for which the bonds shall be issued, which shall not be less than five nor more than twenty years, and no issue of bonds shall be made under this act [16-6-25 to 16-6-30 NMSA 1978] in excess of one hundred thousand dollars (\$100,000).

Only the qualified electors of the county who paid a property tax during the preceding year shall be entitled to vote at such election, and if a majority of all votes at such election shall be in favor of the issue of said bonds, then said board shall issue bonds to the amount voted, but no bonds shall bear interest at a rate in excess of six percentum. Said bonds shall be known as the bi-state fair association bonds of Curry county, New Mexico, shall be signed by the chairman of the board of county commissioners, and countersigned by the county treasurer. They shall have interest coupons attached providing for the payment of interest either annually or semiannually. The board shall have power by contract to provide a place for the payment of the principal and interest of said bonds, and the terms upon which said interest shall be paid.

The county treasurer shall advertise for the sale of said bonds to the highest bidder in not less than two weekly issues in some newspaper published in the county, and said bonds shall be sold for no less than par and accrued interest and the proceeds thereof placed to the credit of the county in a fund to be known as the bi-state fair association fund, which fund shall be disbursed upon warrants drawn as in the case of the general funds of the county.

Provided, that said bonds or any part thereof may be sold to the state of New Mexico at private sale, without advertisement for not less than par and accrued interest.

The county treasurer shall stand charged upon his official bond for all bonds that may be delivered to him, and with all moneys that may be received by him under the provisions of this act.

**History:** 1941 Comp., § 48-2126, enacted by Laws 1947, ch. 152, § 3; 1953 Comp., § 45-20-26.

### **16-6-28. [Declaration that bi-state fair association buildings are necessary public buildings.]**

That the legislature of the state of New Mexico hereby declares that buildings of the bi-state fair association are necessary public buildings.

**History:** 1941 Comp., § 48-2127, enacted by Laws 1947, ch. 152, § 4; 1953 Comp., § 45-20-27.

### **16-6-29. [Contesting validity of proceedings; limitation.]**

Any person or corporation may institute in the district court of Curry county an action or suit to contest the validity of all proceedings taken including all acts prior or subsequent

to said bond election, but no suit or action shall be maintained unless the same be instituted within ten days after the holding of said bond election.

**History:** 1941 Comp., § 48-2128, enacted by Laws 1947, ch. 152, § 5; 1953 Comp., § 45-20-28.

### **16-6-30. [Tax levy; redemption fund; procedure for redeeming bonds.]**

Upon the issuance of bi-state fair association bonds the board of county commissioners shall forthwith levy a tax sufficient to pay the interest and to discharge said bonds, as and when same are due and payable.

It shall be the duty of the county treasurer to keep said interest and redemption fund separate and distinct, and when there are sufficient moneys in his hands to the credit of said fund to pay in full the principal and interest of any bonds issued under this act [16-6-25 to 16-6-30 NMSA 1978], to immediately call in and pay as many of such bonds, with accrued interest thereon, as such funds in his hands will liquidate. Such bonds shall be paid in order of their number, and when it is desired to redeem any of such bonds the county treasurer shall cause to be published in two weekly issues of some daily or weekly newspaper published in the county a notice stating that certain bi-state fair association bonds of Curry county by numbers and amounts will be paid on presentation, and that at the expiration of fifteen days after the last publication of notice herein provided such bonds shall cease to bear interest, and when any bonds or coupons issued under this act are redeemed, it shall be the duty of the county treasurer to certify his action to the board of county commissioners, who shall cancel the bonds by punching holes through all the signatures of the bonds and coupons, so that they can be plainly identified.

**History:** 1941 Comp., § 48-2129, enacted by Laws 1947, ch. 152, § 6; 1953 Comp., § 45-20-29.

### **16-6-31. [Ownership and maintenance of real and personal property.]**

It shall hereafter be lawful for counties of this state to own, maintain, operate and sell, real and personal property for the purpose of maintaining and conducting county fairs for the teaching and advancement of agricultural, horticultural and domestic arts, and the breeding and improvement of neat cattle, horses, sheep, goats and hogs.

**History:** Laws 1923, ch. 152, § 1; C.S. 1929, § 33-5405; 1941 Comp., § 48-2201; 1953 Comp., § 45-21-1.

## **ANNOTATIONS**

**Records subject to inspection.** - Since the legislature has specifically granted counties the authority to conduct county fairs, a county fair board is an arm of the county and its records are county records which are subject to inspection as provided in 14-2-1 and former 14-2-2 NMSA 1978. 1964 Op. Att'y Gen. No. 64-109.

**County fair board not suggested.** - No suggestion is made under this act (Laws 1923, ch. 152) for a county fair board. 1957-58 Op. Att'y Gen. No. 57-317.

**But not prohibited either.** - Control and use of county fairgrounds and buildings lies with the board of county commissioners. There is no prohibition against delegation of supervisory power to a county fair board should such be properly decided by the commissioners. 1957-58 Op. Att'y Gen. No. 57-317.

**Effect on incorporated municipality.** - An incorporated municipality may not constitute (construct) or cooperate in the erection of a county fair building (in the absence of specific legislative authority) which has been approved at a provided for county bond election. 1957-58 Op. Att'y Gen. No. 57-27.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 3 C.J.S. Agriculture § 14.