

CHAPTER 18

LIBRARIES AND MUSEUMS

ARTICLE 1

SUPREME COURT LAW LIBRARY

18-1-1. Board of trustees; membership.

There is hereby created a board of trustees, which shall consist of the chief justice and justices of the supreme court of the state of New Mexico, who shall have the management, control and supervision of the supreme court law library.

History: Laws 1915, ch. 47, § 1; C.S. 1929, § 133-101; 1941 Comp., § 3-701; 1953 Comp., § 4-10-1; Laws 1963, ch. 27, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 81A C.J.S. States §§ 144, 147.

18-1-2. Supreme court law library board of trustees; chairman and secretary.

The chief justice of the supreme court shall act as chairman of the board of trustees of the supreme court law library, and the clerk of the supreme court shall act as secretary for the board.

History: Laws 1915, ch. 47, § 2; C.S. 1929, § 133-102; Laws 1941, ch. 138, § 1; 1941 Comp., § 3-702; Laws 1949, ch. 97, § 1; 1951, ch. 158, § 1; 1953, ch. 133, § 1; 1953 Comp., § 4-10-2; Laws 1967, ch. 214, § 4.

Cross-references. - For salaries of justices of supreme court, see 34-2-2 NMSA 1978.

18-1-3. Power to prescribe rules and regulations.

Said board of trustees shall have the right to prescribe such rules and regulations for the management and control of the supreme court law library, as in the judgment of said board may seem fit and proper for the safety, care and custody of the library, shelving, books, documents and archives therein, and for the convenience and accommodation of the patrons of such library.

History: Laws 1915, ch. 47, § 3; C.S. 1929, § 133-103; 1941 Comp., § 3-703; 1953 Comp., § 4-10-3; Laws 1963, ch. 27, § 2.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Right of exclusion from or discrimination against patrons of library, 64 A.L.R. 304.

18-1-4. [Duties; purchase of books and management of affairs.]

Said board of trustees shall order and purchase all books for said library for which an appropriation shall have been made, and have full and complete management of all the financial affairs of said library.

History: Laws 1915, ch. 47, § 4; C.S. 1929, § 133-104; 1941 Comp., § 3-704; 1953 Comp., § 4-10-4.

Charging fees for use. - Fees may not be charged to patrons using the New Mexico Supreme Court Law Library in order to generate income for the Library. 1988 Op. Att'y Gen. No. 88-78.

18-1-5. Law library board; publishing opinions of supreme court.

In addition to other duties of the board of trustees of the supreme court law library provided by law, the board shall meet from time to time, select from opinions of the supreme court and designate to the clerk of the supreme court those which should be officially reported and published. The board shall also supervise, amend and correct all syllabi or headnotes for published opinions.

History: 1953 Comp., § 4-10-5, enacted by Laws 1966, ch. 28, § 16.

Cross-references. - As to distribution of supreme court reports, see 8-4-6 NMSA 1978.

Repeals and reenactments. - Laws 1966, ch. 28, § 16, repeals 4-10-5, 1953 Comp., relating to duties of the board of trustees of the state library, and enacts the above section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts §§ 76, 77.

77 C.J.S. Reports §§ 9 to 13.

18-1-6. Payment of accounts.

The secretary of finance and administration shall draw warrants on the state treasurer in payment of all accounts which shall have been audited by said board of trustees, to the extent of the appropriations made for such purposes but for no more.

History: Laws 1915, ch. 47, § 5; C.S. 1929, § 133-105; 1941 Comp., § 3-706; 1953 Comp., § 4-10-6; Laws 1977, ch. 247, § 16.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 81A C.J.S. States § 226.

18-1-7. Librarian; appointment by board; custody of property.

The supreme court law library shall be under the care and custody of a librarian, who shall be appointed by said board of trustees, and who shall hold office at the pleasure of said board of trustees. The librarian shall have the custody and charge of all books, archives, maps, charts, engravings and all other things properly belonging to the library, or directed to be deposited therein.

History: Laws 1915, ch. 47, § 6; C.S. 1929, § 133-106; 1941 Comp., § 3-707; 1953 Comp., § 4-10-7; Laws 1963, ch. 27, § 4.

Woman as librarian. - Under 2187 to 2215, 1897 Comp., a woman had the right to hold the office of state librarian because, under the common law, she could hold a ministerial office. State v. De Armijo, 18 N.M. 646, 140 P. 1123 (1914).

18-1-8. [Bond of librarian; approval.]

The librarian, before taking office, shall give bond to the state of New Mexico in the sum of two thousand dollars [(\$2,000)], with sufficient surety or sureties, for the faithful performance of his or her duties, for the preservation and safe delivery of all property committed to his or her care, to his or her successor and for the faithful paying over of all moneys coming into his or her hands as librarian. Said bond shall be approved by the chief justice of the supreme court and be filed with the clerk of the supreme court of the state of New Mexico.

History: Laws 1915, ch. 47, § 7; C.S. 1929, § 133-107; 1941 Comp., § 3-708; 1953 Comp., § 4-10-8.

18-1-9. [Unauthorized removal of books or property; criminal liability of librarian.]

If the librarian shall permit or allow any person, not authorized by such rules and regulations as shall be prescribed by the board of trustees, to remove a book or other property from the library, he or she shall be deemed guilty of a misdemeanor, and subject to a fine of ten dollars [(\$10.00)] for every book or other article so removed.

History: Laws 1915, ch. 47, § 9; C.S. 1929, § 133-109; 1941 Comp., § 3-710; 1953 Comp., § 4-10-10.

18-1-10. [Unlawful removal of books or property; penalty.]

Any person not authorized by the rules and regulations of the board of trustees so to do, who shall take from the library any book or other property belonging thereto, either with or without the consent of the librarian, shall be deemed guilty of a misdemeanor and subject to a fine of ten dollars [(\$10.00)] for every book or other property so taken. Provided, that in case of a felonious taking of such book or property, the person guilty

thereof shall be punished in the manner and to the extent now provided by law for the punishment of such felonies.

History: Laws 1915, ch. 47, § 10; C.S. 1929, § 133-110; 1941 Comp., § 3-711; 1953 Comp., § 4-10-11.

18-1-11. [Liability for injury to books or property.]

Any person injuring, defacing or destroying a book or other property belonging to the library shall forfeit twice the value thereof to be sued for and recovered by the state, and it shall be the duty of the librarian to promptly notify said board of trustees of any such offense.

History: Laws 1915, ch. 47, § 11; C.S. 1929, § 133-111; 1941 Comp., § 3-712; 1953 Comp., § 4-10-12.

18-1-12. Trade, barter and exchange of books and periodicals; powers of board of trustees.

The board of trustees of the supreme court law library, composed of the justices of the supreme court, is hereby authorized to trade, barter and exchange such books and periodicals as the said board of trustees may from time to time acquire, for books and periodicals of equal or similar value, whenever the books and periodicals which may be thus acquired by trade, barter and exchange will be useful to the supreme court law library in building or completing its files, and when in the judgment of the board of trustees such exchange is in the best interests of the said library.

History: Laws 1939, ch. 4, § 1; 1941 Comp., § 3-717; 1953 Comp., § 4-10-20; Laws 1963, ch. 27, § 11.

ARTICLE 2 STATE LIBRARY COMMISSION

18-2-1. State library commission created.

There is created a "New Mexico state library commission," composed of five members, which shall have its headquarters at the state capitol. Four members of the commission shall be appointed by the governor from among resident citizens of the state interested in and informed with regard to library conditions, the appointees insofar as practicable to represent different sections of the state. Two of the members shall be originally appointed for a term of two years; one member shall be originally appointed for a term of four years; and one member shall be originally appointed for a term of six years. After the expiration of the original appointments, all appointments shall be for terms of six years. The fifth member of the commission shall be a member of the state board of

education chosen by vote of the board's membership. The term of the fifth member shall be for so long as he serves on the state board of education, but not to exceed six years. At least one member of the commission shall be a professionally trained librarian. Members of the commission shall be entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] while engaged in the performance of their official duties for the commission.

History: Laws 1941, ch. 129, § 1; 1941 Comp., § 3-801; 1953 Comp., § 4-11-1; Laws 1961, ch. 126, § 1; 1975, ch. 34, § 1.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 81A C.J.S. States §§ 144, 147.

18-2-2. State library commission; duties.

The New Mexico state library commission shall provide advice, upon request, to the state librarian on:

A. matters germane to the powers and duties of the library division or the state library; and

B. any other matters related to libraries.

History: 1953 Comp., § 4-11-2, enacted by Laws 1977, ch. 246, § 9.

Repeals and reenactments. - Laws 1977, ch. 246, § 9, repeals 4-11-2, 1953 Comp., relating to the creation of the state library, and enacts the above section.

18-2-3. Library division; creation; director.

A. The "library division" is created within the office of cultural affairs.

B. Subject to the authority of the state cultural affairs officer, the administrative and executive head of the library division is the "state librarian." The state librarian shall be appointed by the state cultural affairs officer with the consent of the secretary of finance and administration.

History: 1953 Comp., § 4-11-3, enacted by Laws 1977, ch. 246, § 10; 1980, ch. 151, § 22.

Repeals and reenactments. - Laws 1961, ch. 126, § 3, repealed a former 4-11-3, 1953 Comp., relating to the duties and function of the state library commission, and enacted a new 4-11-3, 1953 Comp.

Laws 1977, ch. 246, § 10, repeals a former 4-11-3, 1953 Comp., relating to duties and functions of the state library commission, and enacted a new 4-11-3, 1953 Comp.

18-2-4. Duties of the state librarian.

The state librarian shall:

- A. administer the state library;
- B. administer grants-in-aid and encourage local library service and generally promote an effective statewide library system;
- C. make studies and surveys of public library needs;
- D. supply advice and information to existing libraries and aid in the establishment of new libraries;
- E. obtain each year, from all libraries in the state, reports showing the conditions, growth and development, together with such other facts and statistics regarding them as is of public interest;
- F. cooperate with other educational services and governmental agencies of the state, and with library agencies of other states and with national library agencies;
- G. cooperate with the administrative services division in preparing the budget for the state library;
- H. administer the library extension service;
- I. make rules and regulations necessary to administer the division and as provided by law; and to perform other duties as provided by law; and
- J. establish and administer a library depository and distribution system for state documents and publications.

History: 1953 Comp., § 4-11-3.1, enacted by Laws 1961, ch. 126, § 4; 1977, ch. 246, § 11; 1978, ch. 140, § 1.

Conflict with federal law. - Section 18-2-7 NMSA 1978, which has a limiting effect on this section, is in conflict with the requirements of the federal Library Services and Construction Act, § 203(a), (Pub. L. No. 269, 88th Cong., 2nd Sess., Feb. 11, 1964), if the boards or agencies which control the local public libraries of New Mexico have a different policy of supervision than that required by the Library Services and Construction Act. 1964 Op. Att'y Gen. No. 64-51.

18-2-4.1. State publications; copies required.

A. Unless otherwise directed by the state librarian, every state agency shall deposit at least twenty-five copies of all its publications intended for public distribution, when

issued, with the state library depository for depository and distribution purposes, excluding those publications issued strictly for internal use.

B. The state librarian shall determine the number of copies of regularly issued publications required to meet the needs of the various libraries in the state and shall inform the affected agencies of the exact number of copies required.

History: 1953 Comp., § 4-11-3.2, enacted by Laws 1978, ch. 140, § 2; 1987, ch. 40, § 2.

18-2-5. State library administrative agency.

The library division of the office of cultural affairs is designated a state library administrative agency and is empowered to accept gifts or grants of any nature from federal, state, county, local or private agencies for the purpose of carrying on its work. Any grant of money so received shall be deposited in the state treasury to the credit of the library division and shall be used only for the purpose for which it is given or granted.

History: Laws 1941, ch. 129, § 3; 1941 Comp., § 3-804; 1953 Comp., § 4-11-4; Laws 1961, ch. 126, § 5; 1977, ch. 246, § 12; 1980, ch. 151, § 23.

18-2-6. Organization; officers.

The commission shall organize by electing a chairman and a vice chairman from its membership.

History: Laws 1941, ch. 129, § 4; 1941 Comp., § 3-805; 1953 Comp., § 4-11-5; Laws 1961, ch. 126, § 6; 1977, ch. 246, § 13.

18-2-7. Construction of provisions of act.

The provisions of this act shall not divest any state, county, municipal or other governing board or agency of its control and supervision of any library under its jurisdiction, except as the provisions of this act apply to the control and management of the state library. Specifically, nothing herein is intended to alter or amend the provisions of Sections 18-1-1 through 18-1-12 NMSA 1978.

History: Laws 1941, ch. 129, § 5; 1941 Comp., § 3-806; 1953 Comp., § 4-11-6; Laws 1961, ch. 126, § 7.

Meaning of "this act". - The term "this act," referred to near the beginning of this section, first appears in Laws 1941, Chapter 129, which is presently compiled as 18-2-1, 18-2-5 and 18-2-6 NMSA 1978 and this section.

The term also appears in Laws 1961, Chapter 126, which is presently compiled as 18-2-1, 18-2-4, 18-2-5, 18-2-6, 22-9-7 to 22-9-10 and 22-9-12 NMSA 1978 and this section.

Conflict with federal law. - This section, which has a limiting effect on 18-2-4 NMSA 1978, is in conflict with the requirements of the federal Library Services and Construction Act, § 203(a), (Pub. L. No. 269, 88th Cong., 2nd Sess., Feb. 11, 1964), if the boards or agencies which control the local public libraries of New Mexico have a different policy of supervision than that required by the Library Services and Construction Act. 1964 Op. Att'y Gen. No. 64-51.

The limitation expressly defined by this section conflicts with Section 130.3(b) of the proposed regulations to the federal Library Services and Construction Act, which provides that to the extent that locally controlled public libraries participate in a plan for services or construction, their administration of activities under such a plan must be under the supervision of the state agency. 1964 Op. Att'y Gen. No. 64-51.

And resolution thereof. - The conflicts between this section and the Library Services and Construction Act, § 203, (Pub. L. No. 269, 88th Cong., 2nd Sess., Feb. 11, 1964) and § 130.3(b) of the proposed regulations under the federal act can be resolved by a contractual arrangement whereby the local public libraries agree to divest themselves of control and supervision to the extent that the New Mexico plan may be approved under the Library Services and Construction Act, § 203. 1964 Op. Att'y Gen. No. 64-51.

18-2-7.1. Distribution system; limitation.

The state library depository shall not engage in the direct distribution of state publications to the general public except in those cases where the state library does so in the course of operating as a library or a state extension service.

History: 1953 Comp., § 4-11-6.1, enacted by Laws 1978, ch. 140, § 3.

18-2-8. Certification of librarians.

The state librarian is hereby authorized to issue certificates to librarians. He shall have authority to prescribe and hold examinations, or require submission of credentials to establish the qualifications of those seeking certificates as librarians, and to issue certificates of librarianship to qualified persons, in accordance with such reasonable rules and regulations as he may provide.

History: 1941 Comp., § 3-807, enacted by Laws 1947, ch. 91, § 1; 1953 Comp., § 4-11-7; Laws 1977, ch. 246, § 14.

18-2-9. Types of certificates.

The types of certificates issued by the state librarian shall be:

A. permanent professional librarian;

B. grade I librarian;

C. grade II librarian; and

D. temporary librarian.

History: 1953 Comp., § 4-11-8, enacted by Laws 1963, ch. 283, § 1; 1977, ch. 246, § 15.

Repeals and reenactments. - Laws 1963, ch. 283, § 1, repealed former 4-11-8, 1953 Comp., relating to applications for librarian certificates, and the granting of same, and enacted a new 4-11-8, 1953 Comp.

18-2-10. Permanent professional certificate.

A permanent professional librarian's certificate shall be issued without examination to an applicant, otherwise qualified under the rules and regulations of the state librarian who is a graduate of a library school accredited by the American library association.

History: 1953 Comp., § 4-11-8.1, enacted by Laws 1963, ch. 283, § 2; 1977, ch. 246, § 16.

18-2-11. Grade I certificate.

A. A grade I librarian's certificate shall be issued to an applicant without examination when:

(1) the applicant meets the minimum educational requirements established by the rules and regulations of the state librarian, which shall require completion of a minimum number of years of undergraduate work plus a minimum number of semester hours of library science courses in an institution accredited by its state department of education or a regional accrediting agency; and

(2) the applicant demonstrates ability to perform the duties of a grade I librarian ably and efficiently.

B. A grade I librarian's certificate shall be issued by examination to an applicant who lacks the minimum educational requirements for a grade I certificate, and who:

(1) demonstrates ability to perform the duties of a grade I librarian ably and efficiently; and

(2) successfully passes the examination given by the state librarian for a grade I certificate.

History: 1953 Comp., § 4-11-8.2, enacted by Laws 1963, ch. 283, § 3; 1977, ch. 246, § 17.

18-2-12. Grade II certificate.

A. A grade II librarian's certificate shall be granted to an applicant without examination when the applicant is a graduate of a college or university accredited by its state department of education or a regional accrediting agency, and has a major in library science or has completed a minimum of twenty-one semester hours of library science courses beyond the requirements of a grade I certificate.

B. A grade II librarian's certificate shall be granted by examination to an applicant who lacks the educational requirements for a grade II certificate, and who:

(1) demonstrates ability to perform the duties of a grade II librarian ably and efficiently; and

(2) successfully passes the examination given by the state librarian for a grade II certificate.

History: 1953 Comp., § 4-11-8.3, enacted by Laws 1963, ch. 283, § 4; 1977, ch. 246, § 18.

18-2-13. Temporary certificates.

A. The state librarian shall issue a temporary certificate without examination to an applicant who is unqualified for any other type of librarian certificate when the state librarian receives written recommendation for the issuance of a temporary certificate for the applicant from the library board or governing body concerned which states that no qualified applicant is available for the position.

B. Temporary librarian's certificates shall be issued for all grades and are valid only for one year, but may be renewed or extended for one-year periods upon written recommendation from the library board or governing body concerned stating that no qualified applicant is available for the position.

History: 1953 Comp., § 4-11-8.4, enacted by Laws 1963, ch. 283, § 5; 1977, ch. 246, § 19.

18-2-14. [Applications; who may apply.]

Any person who is actively engaged in, or who expects to engage actively in library service may apply for a certificate, either with or without examination, and if found competent and qualified shall be granted the certificate so applied for, in the manner and upon the payment of the fees provided for in this act [18-2-8, 18-2-14, 18-2-17, 18-2-18 NMSA 1978].

History: 1941 Comp., § 3-809, enacted by Laws 1947, ch. 91, § 4; 1953 Comp., § 4-11-9.

18-2-15. Certificates required.

A. A permanent professional librarian's certificate is required for the chief librarian of any library:

(1) supported in whole or in part by public funds, and serving a municipality or other political subdivision having a population in excess of fifteen thousand persons as shown by the last federal decennial census; or

(2) of any state agency or state-supported institution.

B. A grade I librarian's certificate is required for the chief librarian of any library, supported in whole or in part by public funds, serving a municipality or other political subdivision having a population of at least three thousand, but not more than ten thousand persons, as shown by the last federal decennial census.

C. A grade II librarian's certificate is required for the chief librarian of any library, supported in whole or in part by public funds, serving a municipality or other political subdivision having a population of at least ten thousand and one, but not more than fifteen thousand persons, as shown by the last federal decennial census.

D. The provisions of this section do not apply to libraries of public schools or county law libraries.

History: 1953 Comp., § 4-11-10, enacted by Laws 1963, ch. 283, § 6.

Repeals and reenactments. - Laws 1963, ch. 283, § 6, repeals 4-11-10, 1953 Comp., relating to temporary librarian certificates, and enacts the above section.

18-2-16. Fees.

A. The fee for any certificate provided for in Section 18-2-9 NMSA 1978 may be prescribed by the state librarian, but the minimum fee for a certificate issued without examination shall be five dollars (\$5.00) and the minimum fee for a certificate issued by examination shall be ten dollars (\$10.00).

B. All fee money shall be deposited in the general fund.

History: 1953 Comp., § 4-11-11, enacted by Laws 1963, ch. 283, § 7; 1977, ch. 246, § 20.

Repeals and reenactments. - Laws 1963, ch. 283, § 7, repealed former 4-11-11, 1953 Comp., relating to application fees for librarian certificates, and enacted a new 4-11-11, 1953 Comp.

18-2-17. [Libraries receiving public funds; compliance required.]

No public funds shall be paid to any library failing to comply with the provisions of this act [18-2-8, 18-2-14, 18-2-17, 18-2-18 NMSA 1978].

History: 1941 Comp., § 3-813, enacted by Laws 1947, ch. 91, § 8; 1953 Comp., § 4-11-13.

18-2-18. List of certificated librarians.

The library division of the office of cultural affairs shall issue annually a list of all persons holding librarians' certificates.

History: 1941 Comp., § 3-814, enacted by Laws 1947, ch. 91, § 9; 1953 Comp., § 4-11-14; Laws 1977, ch. 246, § 21; 1980, ch. 151, § 24.

18-2-19. Short title.

This act [18-2-19 to 18-2-22 NMSA 1978] may be cited as the "Interstate Library Compact Act".

History: 1953 Comp., § 4-11-15, enacted by Laws 1969, ch. 20, § 1.

Compiler's note. - Of the states bordering New Mexico, Colorado and Oklahoma have enacted an Interstate Library Compact Act.

18-2-20. Execution of compact.

The interstate library compact is hereby enacted into law and is entered into on behalf of this state with any state bordering on New Mexico which legally joins therein in substantially the following form:

INTERSTATE LIBRARY COMPACT

The contracting states agree that:

ARTICLE I-PURPOSE

Because the desire for the services provided by public libraries transcends governmental boundaries and can be provided most effectively by giving such services to communities of people regardless of jurisdictional lines, it is the policy of the states

who are parties to this compact to cooperate and share their responsibilities in providing joint and cooperative library services in areas where the distribution of population makes the provision of library service on an interstate basis the most effective way to provide adequate and efficient services.

ARTICLE II-PROCEDURE

The appropriate officials and agencies of the party states or any of their political subdivisions may, on behalf of said states or political subdivisions, enter into agreements for the cooperative or joint conduct of library services when they shall find that the executions of agreements to that end as provided herein will facilitate library services.

ARTICLE III-CONTENT

Any such agreement for the cooperative or joint establishment, operation or use of library services, facilities, personnel, equipment, materials or other items not excluded because of failure to enumerate shall, as among the parties of the agreement: 1) detail the specific nature of the services, facilities, properties or personnel to which it is applicable; 2) provide for the allocation of costs and other financial responsibilities; 3) specify the respective rights, duties, obligations and liabilities; 4) stipulate the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of said agreement.

ARTICLE IV-CONFLICT OF LAWS

Nothing in this compact or in any agreement entered into hereunder shall be construed to supersede, alter or otherwise impair any obligation imposed on any public library by otherwise applicable laws.

ARTICLE V-ADMINISTRATOR

Each state shall designate a compact administrator with whom copies of all agreements to which his state or any subdivision thereof is party shall be filed. The administrator shall have such powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact.

ARTICLE VI-EFFECTIVE DATE

This compact shall become operative immediately upon its enactment by any state or between it and any other contiguous state or states so enacting.

ARTICLE VII-RENUNCIATION

This compact shall continue in force and remain binding upon each party state until six months after any such state has given notice of repeal by the legislature. Such withdrawal shall not be construed to relieve any party to an agreement authorized by Articles II and III of the compact from the obligation of that agreement prior to the end of its stipulated period of duration.

ARTICLE VIII-SEVERABILITY

The provisions of this compact shall be severable. It is intended that the provisions of this compact be reasonably and liberally construed.

History: 1953 Comp., § 4-11-16, enacted by Laws 1969, ch. 20, § 2.

18-2-21. Compact administrator.

A. The state librarian, ex officio, is the compact administrator.

B. The compact administrator shall:

(1) receive copies of all agreements entered into by the state or its political subdivisions and other states or political subdivisions;

(2) consult with, advise and aid the state and its political subdivisions in the formulation of such agreements;

(3) make recommendations to the governor, legislature, state agencies and departments and to the political subdivisions of the state, as he deems desirable to carry out the purposes of the interstate library compact; and

(4) consult and cooperate with the compact administrators of other party states.

History: 1953 Comp., § 4-11-17, enacted by Laws 1969, ch. 20, § 3.

18-2-22. Agreements.

The compact administrator and the governing authority of any municipality or county may enter into agreements with other states or their political subdivisions pursuant to the interstate library compact. Such agreements made pursuant to the interstate library compact on behalf of the state shall be made by the compact administrator. Such agreements made on behalf of a political subdivision shall be made after due notice to the compact administrator and after consultation with him.

History: 1953 Comp., § 4-11-18, enacted by Laws 1969, ch. 20, § 4.

ARTICLE 3

STATE MUSEUMS AND SOCIETIES

18-3-1. Museum of New Mexico established; location; property.

The "museum of New Mexico" is established. It shall have headquarters in Santa Fe, New Mexico. All properties, real or personal, now held for museum purposes and all properties, real or personal, which may be acquired for museum purposes at any time in the future shall be under the control of the museum division of the office of cultural affairs.

History: 1953 Comp., § 4-12-32, enacted by Laws 1975, ch. 264, § 1; 1977, ch. 246, § 25; 1980, ch. 151, § 25.

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

Compiler's note. - Laws 1953, ch. 109, authorizes the board of regents of the museum of New Mexico to exchange certain lands owned by said museum within the Gran Quivira national monument for other lands of the United States within New Mexico of equal value, and to execute all instruments necessary to effect such exchange and to manage, lease or convey the lands received in said exchange.

Laws 1969, ch. 109, § 1, authorizes the construction of additions and improvements to the international folk art museum at the expense of the international folk art foundation, and accepts title to such additions and improvements on behalf of the state of New Mexico.

Investment of fund. - Under former law the board of regents of the museum of New Mexico was not given authority to determine the type of investment that its permanent fund would be invested in. 1964 Op. Att'y Gen. No. 64-29.

18-3-2. Museum board of regents; appointment; terms; vacancies.

The "museum board of regents," comprised of seven members appointed by the governor, with the advice and consent of the senate, is created. In making the appointments the governor shall appoint residents of New Mexico and give due consideration to geographical distribution of the members. The members shall be persons conversant with or showing a continuing interest in history, fine arts, Indian art, folk art or anthropology. The members shall be appointed for terms of six years or less in such manner that the terms of at least two but no more than three members shall expire on July 8 of each odd-numbered year. Vacancies shall be filled by the governor for the remainder of the original term. Members of the museum board of regents shall receive per diem and mileage as provided for nonsalaried public officers in the Per

Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 4-12-33, enacted by Laws 1978, ch. 164, § 1.

Repeals and reenactments. - Laws 1978, Chapter 164 repeals 4-12-33, relating to establishment of the museum of New Mexico, effective March 31, 1978, and enacts the above section.

18-3-3. Board of regents; powers and duties.

The museum board of regents shall:

- A. elect from among its members a president and other officers deemed necessary by it;
- B. solicit and receive private funds for the purpose of developing, restoring and equipping the museum of New Mexico and its property and for the purchase of objects and works of art for its collections and for the development of exhibits and other public programs;
- C. exercise trusteeship over the collections of the museum;
- D. hold title to all property for museum use;
- E. acquire, preserve and exhibit objects of historical, archaeological and ethnological interest and works of fine art, folk art and craft of interest to the public and real property for museum use or benefit by purchase, donation and bequest;
- F. loan objects and exhibits to qualified institutions and agencies for the purpose of exhibition;
- G. enter into contracts with public or private agencies or organizations for the rental of museum premises or facilities for the conduct of programs and activities in the public interest;
- H. enter into contracts with public or private agencies or organizations for the performance of services related to the location, preservation, restoration, salvage or development of historic, archaeological or other culturally related sites, structures or objects in the state;
- I. publish and sell museum journals and other books, pamphlets, brochures and publications related to the interests of the museum;

J. enter into agreements or contracts with private or public organizations, agencies or individuals for the purpose of obtaining gifts, donations or loans of exhibit or collection materials for the museum;

K. cooperate with other agencies and political subdivisions of municipal, state and federal governments and private organizations and individuals to the extent necessary to establish and maintain the museum and its programs;

L. subject to the provisions of Section 18-3-3.1 NMSA 1978, impose admission fees to the museum facilities and programs; and

M. adopt such rules and regulations and set such policy directives as may be necessary to carry out the provisions of this section.

History: 1953 Comp., § 4-12-34, enacted by Laws 1978, ch. 164, § 2; 1991, ch. 242, § 1.

Repeals and reenactments. - Laws 1978, Chapter 164 repeals 4-12-34, 1953 Comp., relating to compensation of members of the board of regents, effective March 31, 1978, and enacts the above section.

The 1991 amendment, effective June 14, 1991, inserted "museum" in the introductory phrase; added "subject to the provisions of Section 18-3-3.1 NMSA 1978" at the beginning of Subsection L; and made minor stylistic changes in Subsections B and H.

Charging fees to finance program. - The Museum of New Mexico can charge participants in the Palace of the Governors Portal Vendor Program an annual admission fee to help finance the costs of the program. 1988 Op. Att'y Gen. No. 88-25.

Before the board of regents can adopt an amendment to the Palace of Governors Portal Vendor Program rules and regulations to impose a fee, the officer of cultural affairs or a hearing officer appointed by him, must conduct a public hearing in accordance with the provisions of 9-6-11 NMSA 1978. 1988 Op. Att'y Gen. No. 88-25.

If the Museum of New Mexico imposes a fee on Palace of the Governors Portal Vendor Program participants, the museum must deposit the funds so generated with the state treasurer because the money is public money within the meaning of 6-10-3 NMSA 1978. 1988 Op. Att'y Gen. No. 88-25.

18-3-3.1. Admission policy.

The museum board of regents shall establish a policy to permit New Mexico residents age sixty years and above to enter all publicly accessible exhibit and program areas, except special exhibits and programs where commissions or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

History: 1978 Comp., § 18-3-3.1, enacted by Laws 1991, ch. 242, § 2.

Effective dates. - Laws 1991, ch. 242 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-3-4. Museum division; creation; director.

A. The "museum division" is created within the office of cultural affairs.

B. Subject to the authority of the state cultural affairs officer, the administrative and executive head of the museum division is the "director of the museum division." The director shall be appointed by the board of regents, subject to approval by the state cultural affairs officer and with the secretary's consent.

C. In making the appointment, the board shall not be bound by the provisions of Sections 10-1-5 through 10-1-9 NMSA 1978 relating to the employment of residents. The director at the time of appointment shall have five or more years of museum experience in an administrative or curatorial capacity and at least four years formal training in history, anthropology, fine arts, folk art, museum administration or a combination of these in an institution of higher learning.

History: 1953 Comp., § 4-12-35, enacted by Laws 1978, ch. 164, § 3; 1980, ch. 151, § 26.

Repeals and reenactments. - Laws 1978, Chapter 164 repealed former 4-12-35, 1953 Comp., relating to powers and duties of the board of regents, effective March 31, 1978, and enacted a new 4-12-35, 1953 Comp.

Compiler's note. - Section 10-1-5 NMSA 1978, referred to in Subsection C, was repealed by Laws 1979, ch. 54, § 1.

18-3-5. Director; powers and duties.

A. Under the direction, control and supervision of the state cultural affairs officer, the director of the museum division shall be empowered to:

(1) employ associate directors, professional museum personnel and other employees, pursuant to requirements of the state personnel board, as are necessary for normal operations of the museum;

(2) purchase necessary supplies, tools and equipment and conduct maintenance and repair as necessary for the operation of the museum within budgetary limitations and pursuant to the Public Purchases Act;

(3) make rules and regulations necessary to administer the division in keeping with the provisions of Section 18-3-3 NMSA 1978; and

(4) engage in retail sales and provide public services normal to museum operations.

B. In consultation with the board of regents and under the direction, control and supervision of the state cultural affairs officer, the director shall be empowered to:

(1) solicit and receive funds for the purpose of developing, restoring and equipping the museum and its property, and for the purchase of objects and works of art for its collections, and for the development of exhibits and other public programs. Funds or property received by the museum division by gift, endowment or legacy shall remain in the control of the museum division and shall, upon acceptance by the museum division, be employed for the purpose specified, and shall not be substituted in any manner in determining adequate funding for the museum division; and

(2) prepare the annual budget request and be responsible for the disbursement of all funds appropriated, donated or in any way given to the museum of New Mexico.

C. The director shall perform such other duties as may be delegated by the state cultural affairs officer, the board of regents or as provided by law.

History: 1953 Comp., § 4-12-36, enacted by Laws 1978, ch. 164, § 4; 1980, ch. 151, § 27.

Repeals and reenactments. - Laws 1978, Chapter 164 repealed former 4-12-36, 1953 Comp., relating to powers and duties of the director, effective March 31, 1978, and enacted a new 4-12-36, 1953 Comp.

Public Purchases Act. - The Public Purchases Act, referred to in Subsection A(2), was repealed by Laws 1984, ch. 65, § 175, effective November 1, 1984. Laws 1984, ch. 65, § 2B provided that references to the Public Purchases Act shall be construed to be to the Procurement Code, 13-1-28 to 13-1-199 NMSA 1978.

18-3-6, 18-3-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1978, ch. 164, § 5 repealed former 4-12-36 and 4-12-37, 1953 Comp., effective March 31, 1978.

18-3-8. Laboratory of anthropology; acceptance of deed and title.

The state of New Mexico accepts the deed and bill of sale and the title of the laboratory of anthropology building and land described in the deed dated September 30, 1947, and directs that the property become part of the museum of New Mexico and be controlled and administered by the museum division of the office of cultural affairs.

History: 1941 Comp., § 3-931, enacted by Laws 1949, ch. 74, § 1; 1953 Comp., § 4-12-31; Laws 1977, ch. 246, § 24; 1980, ch. 151, § 28.

ARTICLE 3A

NATURAL HISTORY MUSEUM

18-3A-1. Short title.

Chapter 18, Article 3A NMSA 1978 may be cited as the "Natural History and Science Museum Act".

History: Laws 1980, ch. 128, § 1; 1990, ch. 106, § 1.

Cross-references. - As to museum of New Mexico, see 18-3-1 to 18-3-3 NMSA 1978.

As to Cultural Properties Act, see 18-6-1 NMSA 1978 et seq.

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

The 1990 amendment, effective May 16, 1990, rewrote this section which formerly read "Sections 1 through 9 of this act may be cited as the 'Natural History Museum Act.'"

18-3A-2. Declaration and purpose of act.

The legislature declares that the natural history and physical science resources of the state constitute a common heritage concerning which all persons should receive knowledge and benefit. The purpose of the Natural History and Science Museum Act [this article], therefore, is to create a state museum of natural history and physical sciences which shall hereafter collect, preserve, study and interpret materials representative of the natural history of the state and region and develop and maintain educational exhibits and programs on natural history and physical science for the benefit of the citizens of New Mexico and visitors to the state.

History: Laws 1980, ch. 128, § 2; 1990, ch. 106, § 2.

The 1990 amendment, effective May 16, 1990, inserted "and physical science" and "and physical sciences" following "natural history" in the first and second sentences, substituted "Natural History and Science Museum Act" for "Natural History Museum Act" and "educational exhibits and programs on natural history and physical science" for "exhibits and programs of an educational nature" in the second sentence and made a stylistic change.

18-3A-3. Definitions.

As used in the Natural History and Science Museum Act [this article]:

A. "board" means the board of trustees of the New Mexico museum of natural history and science;

B. "director" means the director of the natural history and science museum division of the office of cultural affairs or its successor agency;

C. "division" means the natural history and science museum division of the office of cultural affairs or its successor agency;

D. "museum" means the New Mexico museum of natural history and science;

E. "natural history" means that which pertains to the earth and its life, including but not limited to the fields of biology, geology and related life sciences; and

F. "physical science" means that which pertains to mathematics, physics, chemistry, astronomy and related sciences and technologies."

History: Laws 1980, ch. 128, § 3; 1987, ch. 38, § 1; 1990, ch. 106, § 3.

Cross-references. - As to merger of educational finance and cultural affairs department with the department of finance and administration, see 9-1-11 NMSA 1978.

The 1990 amendment, effective May 16, 1990, added "and science" following "natural history" throughout the section, substituted "Natural History and Science Museum Act" for "Natural History Museum Act" in the introductory phrase, added Subsection F and made a minor stylistic change.

18-3A-4. Natural history and science museum division; creation; location; property.

A. The "natural history and science museum division" is created within the office of cultural affairs or its successor agency. The principal facility of this division shall be known as the "New Mexico museum of natural history and science" and shall be located in Albuquerque, Bernalillo county, New Mexico. The site shall be held in the name of the state.

B. All property, real or personal, now held or subsequently acquired for the operation of the museum shall be under the control and authority of the board.

C. Funds or other property received by gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be employed for the purpose specified.

History: Laws 1980, ch. 128, § 4; 1987, ch. 38, § 2; 1990, ch. 106, § 4.

The 1990 amendment, effective May 16, 1990, substituted "Natural History and Science Museum Division" for "Natural History Museum Division" in the catchline, and, in Subsection A, added "and science" following "natural history" in two places, and substituted "site shall be" for "site will be" in the third sentence.

18-3A-5. Board of trustees created; appointment; terms; officers.

A. The "board of trustees of the New Mexico museum of natural history and science" is created. The board shall consist of thirteen residents of New Mexico appointed as follows:

(1) nine public members shall be appointed by the governor with the advice and consent of the senate. In making these appointments, the governor shall give due consideration to the geographic distribution of places of residence and to individual interest and background in natural history and physical science; provided that:

(a) not less than two of these public members shall be employees of state institutions of higher learning or appropriate state agencies;

(b) not less than two members shall be from the science community; and

(c) not less than two members shall be from the natural history community.

The public members shall be appointed for terms of four years or less so that all terms are coterminous with the current term of the governor appointing them and shall serve at the pleasure of the governor;

(2) two private members shall be appointed by the board of the New Mexico museum of natural history foundation, inc. for terms of one year or less expiring on June 30 each year. Vacancies in the position of private member shall be filled by the board of the New Mexico museum of natural history foundation, inc.; and

(3) two private members shall be appointed by the board of explora, inc. for terms of one year or less, expiring on June 30 each year. Vacancies in the private member positions shall be filled by the board of explora, inc.

B. The director shall be an ex officio nonvoting member of the board.

C. The president of the board shall be designated by the governor and shall serve in that capacity at the pleasure of the governor. Other officers as deemed necessary by the board shall be elected by the board annually at its first scheduled meeting after July 1.

History: Laws 1980, ch. 128, § 5; 1987, ch. 38, § 3; 1990, ch. 106, § 5.

The 1990 amendment, effective May 16, 1990, in Subsection A, added "and science" following "natural history" in the first sentence, substituted "thirteen residents" for "eleven residents" in the second sentence, rewrote the second sentence of Paragraph (1) to add the reference to "physical science" and the provisions of subparagraphs (b) and (c), added Paragraph (3), and made minor stylistic changes.

18-3A-6. Board; compensation.

The public members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance. Private members shall serve without per diem or other compensation.

History: Laws 1980, ch. 128, § 6; 1987, ch. 38, § 4.

18-3A-7. Board; powers and duties.

The board shall:

- A. exercise trusteeship over the collections of the museum;
- B. accept and hold title to all property for museum use;
- C. review annually the performance of the director and report its findings to the state cultural affairs officer;
- D. enter into agreements or contracts with private or public organizations, agencies or individuals for the purpose of obtaining real or personal property for museum use;
- E. authorize the director to solicit and receive funds or property of any nature for the development of the museum, its collections and its programs;
- F. adopt such regulations as may be necessary to carry out the provisions of this section; and
- G. establish museum policy and determine the mission and direct the development of the institution subject to the decision of the state cultural affairs officer or his successor in event of conflict between the board and the office of cultural affairs or its successor agency.

History: 1978 Comp., § 18-3A-7, enacted by Laws 1987, ch. 38, § 5.

Repeals and reenactments. - Laws 1987, ch. 38, § 5, effective June 19, 1987, repeals former 18-3A-7 NMSA 1978, as enacted by Laws 1980, ch. 128, § 7, relating to the powers of the policy-advisory committee, and enacts the above section. For provisions of the former section, see the 1980 replacement pamphlet.

18-3A-8. Director; appointment; qualifications.

A. Subject to the authority of the state cultural affairs officer or his successor, the administrative and executive officer of the division and the museum is the "director" of the division.

B. The director shall be appointed by the state cultural affairs officer or his successor with the approval of the governor from a list of qualified candidates provided by the board.

C. The position of director shall require previous experience in an administrative capacity in a museum of related character and a degree or the equivalent thereof in one or more of the fields of natural history and science from an institution of higher learning.

History: Laws 1980, ch. 128, § 8; 1987, ch. 38, § 6; 1990, ch. 106, § 6.

The 1990 amendment, effective May 16, 1990, substituted "cultural affairs officer or his successor" for "cultural affairs or his successor officer" in Subsection A, and inserted "and science" following "natural history" in Subsection C.

Compiler's note. - The bracketed word "officer" in Subsection A was inserted by the compiler.

18-3A-9. Director; powers and duties.

Consistent with the policies agreed to by the board and the state cultural affairs officer, the director:

A. shall be responsible for the administration of the division and for the operation of the museum in accordance with all appropriate statutes and regulations;

B. shall develop exhibits and programs of an educational nature for the benefit of the public and with particular concern for the interests of the schools of the state;

C. shall, as authorized by the board, acquire by donation or other means of acquisition collections and related materials appropriate to a museum of natural history and science and shall direct such field and laboratory research as is appropriate to render the collections of benefit to the scientific community and to the public;

D. shall employ such professional staff and other employees as are necessary to the operation of the museum in accordance with the provisions of the State Personnel Act;

E. may solicit and receive funds or property of any nature for the development of the museum, its collections and its programs;

F. may enter into contracts with public or private organizations, individuals or agencies for the performance of services related to the location, preservation, development, study or salvage of natural historical sites or materials;

G. shall cooperate with institutions of higher learning and other agencies and political subdivisions of municipal, state and federal governments to establish, maintain and extend the programs of the museum;

H. may, as authorized by the board, lend collections materials to qualified institutions and agencies for purposes of exhibition, and study and borrow collections materials from other institutions and agencies for like purpose;

I. subject to the provisions of Section 18-3A-9.1 NMSA 1978 shall impose and collect admission fees and conduct such retail sales as are normal for the operation of a museum of natural history and science;

J. may publish such journals, books, reports and other materials as are appropriate to the operation of the museum; and

K. shall perform other appropriate duties as may be delegated by the governor or the state cultural affairs officer or his successor or the board or as may be provided by law.

History: Laws 1980, ch. 128, § 9; 1987, ch. 38, § 7; 1990, ch. 106, § 7; 1991, ch. 242, § 3.

The 1990 amendment, effective May 16, 1990, inserted "state" preceding "cultural affairs officer" in the introductory phrase and added "and science" following "natural history" in Subsections C and I.

The 1991 amendment, effective June 14, 1991, in Subsection I, added "subject to the provisions of Section 18-3A-9.1 NMSA 1978" at the beginning and substituted "a museum of natural history and science" for "natural history and science museums" at the end and made a minor stylistic change in Subsection K.

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

18-3A-9.1. Museum admission policy.

The board, the state cultural affairs officer and the director shall establish and implement a policy to permit New Mexico residents age sixty years and above to enter all publicly accessible exhibit and program areas, except special exhibits and programs where commissions or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

History: 1978 Comp., § 18-3A-9.1, enacted by Laws 1991, ch. 242, § 4.

Effective dates. - Laws 1991, ch. 242 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

ARTICLE 4

OLD LINCOLN COUNTY MEMORIAL

18-4-1. [Old Lincoln county memorial commission established.]

There is hereby created and established a commission to be known as the old Lincoln county memorial commission.

History: 1941 Comp., § 3-923, enacted by Laws 1949, ch. 138, § 1; 1953 Comp., § 4-12-23.

Immunity from suit. - The old Lincoln county memorial commission entrusted with the protection and preservation of the old Lincoln county court house as a memorial and museum is an agency and instrumentality of the state, and as such cannot be sued without its consent. *Maes v. Old Lincoln County Mem. Comm'n*, 64 N.M. 475, 330 P.2d 556 (1958). But see Tort Claims Act, 41-4-1 to 41-4-27 NMSA 1978.

18-4-2. [Members; appointment; term of office.]

The commission shall be composed of nine (9) members, no two of which [whom] shall be from the same county. The members shall be appointed by the governor of the state of New Mexico, by and with the consent of the New Mexico state senate, for a term of four years, the first appointments to be as follows: three (3) members for one (1) year, three (3) members for two (2) years and three (3) members for four (4) years.

History: 1941 Comp., § 3-924, enacted by Laws 1949, ch. 138, § 2; 1953 Comp., § 4-12-24.

18-4-3. [Method of nominating and appointing members.]

Nominations for each member of the commission shall be as follows: the board of commissioners from each of the counties comprising the old Lincoln county, to wit: Lincoln, Chavez, Otero, Lea, Eddy, Roosevelt, Curry and De Baca, shall send the names of three persons resident of their county to the governor of the state of New Mexico, from each of which lists of three names the governor shall choose one person, and shall name one additional from the state at large.

History: 1941 Comp., § 3-925, enacted by Laws 1949, ch. 138, § 3; 1953 Comp., § 4-12-25.

18-4-4. [Meetings, place and time; officers.]

The old Lincoln county memorial commission shall meet at least once every year, the meeting to be held at the old Lincoln county museum, Lincoln, New Mexico. The following will comprise the officers: chairman, vice chairman and secretary-treasurer, and shall serve for one year. All members shall serve without compensation.

History: 1941 Comp., § 3-926, enacted by Laws 1949, ch. 138, § 4; 1953 Comp., § 4-12-26.

18-4-5. Old Lincoln county memorial commission; duties.

The old Lincoln county memorial commission shall provide advice, upon request, to the director of the museum division on matters germane to the old Lincoln county courthouse.

History: 1953 Comp., § 4-12-26.1, enacted by Laws 1977, ch. 246, § 22.

18-4-6. Powers and duties.

The museum division of the office of cultural affairs shall be entrusted with the protection and preservation of the old Lincoln county courthouse. The museum division shall maintain and operate the monument as a memorial and state museum of old Lincoln county; shall have power to acquire and hold real estate in the name of the state and to act in cooperation with the federal government or any of its agencies in preserving the monument; and shall have power to accept gifts, grants and donations from any person, firm, corporation, agency or any group of persons for the collections of the museum or the maintenance and operation of the monument.

History: 1941 Comp., § 3-927, enacted by Laws 1949, ch. 138, § 5; 1951, ch. 139, § 1; 1953 Comp., § 4-12-27; Laws 1963, ch. 62, § 1; 1977, ch. 246, § 23; 1980, ch. 151, § 29.

Advertising. - The duty formerly belonging to the old Lincoln county memorial commission (now belonging to the museum division) to maintain and operate the monument as a memorial and state museum, coupled with the power and authority to make necessary rules and regulations for the proper operation and maintenance thereof, permitted the commission to expend appropriated funds for advertising the memorial and state museum. 1970 Op. Att'y Gen. No. 70-83.

ARTICLE 5 ARTS COMMISSION AND DIVISION

18-5-1. Findings; declaration.

The legislature finds and declares:

A. that many people in this state lack the opportunity to view, enjoy or participate in living theatrical performances, musical concerts, operas, dance and ballet recitals, art exhibits, examples of fine architecture and the performing and visual arts, generally;

B. that many people in this state possess talents of an artistic and creative nature which cannot be utilized to their fullest extent under existing conditions;

C. that the general welfare of the people of this state will be promoted by giving further recognition to the arts as a vital part of our culture and heritage and as an important means of expanding the scope of our educational program; and

D. that increased activity in the arts will increase employment by encouraging the production of artistic events in various communities of this state, thus utilizing the talents and services of many local citizens.

History: 1953 Comp., § 4-23-1, enacted by Laws 1965, ch. 138, § 1.

18-5-2. Definitions.

As used in Sections 18-5-2 through 18-5-7 NMSA 1978:

A. "commission" means the New Mexico arts commission;

B. "creative arts" means the act of writing, composing or designating and executing literature, including poetry, drama, music, including opera and choral works, ballet and the dance, painting, sculpturing, the graphic arts, photography, crafts, architecture, films and television;

C. "director" means the executive head of the division;

D. "division" means the arts division of the office of cultural affairs; and

E. "interpretative arts" means the act of interpreting the creative arts, including designing, publishing, printing and collecting of books; producing, directing and performing of dramas; performing of music and the producing, directing and performing of operas and choral works; producing, directing and performing of ballet and dance; conservation of architecture; and the producing, directing and performing of films and television.

History: 1953 Comp., § 4-23-2, enacted by Laws 1978, ch. 70, § 1; 1980, ch. 151, § 30.

Repeals and reenactments. - Laws 1978, Chapter 70 repealed former 4-23-2, 1953 Comp. (former 18-5-2 to 18-5-9 NMSA 1978), relating to the arts commission, effective March 31, 1978, and enacted a new 4-23-2, 1953 Comp.

18-5-3. Commission; creation; members; terms; compensation.

A. There is created the "New Mexico arts commission."

B. The commission is composed of fifteen members, appointed by the governor. Members shall be broadly representative of all fields of the creative and interpretative arts.

C. Members of the commission shall be residents of this state and shall be persons who are widely known for their professional competence and experience in connection with the creative or interpretative arts.

D. Members of the commission shall initially be appointed for terms as follows: five members shall be appointed for terms of one year, five members shall be appointed for terms of two years and five members shall be appointed for terms of three years. The first members of the commission shall be appointed on or before September 1, 1965, with the date of office of all these members to commence on the same day. After the expiration of the initial terms, all members shall be appointed for terms of three years. Vacancies resulting from the death or resignation of a member shall be filled by appointment for the unexpired portion of the term of the member creating the vacancy.

E. Members of the commission shall receive per diem and mileage as provided for nonsalaried public employees in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

History: 1953 Comp., § 4-23-3, enacted by Laws 1978, ch. 70, § 2.

Repeals and reenactments. - Laws 1978, Chapter 70 repealed former 4-23-3, 1953 Comp., relating to the arts commission, effective March 31, 1978, and enacts the above section.

18-5-4. Commission; officers; meetings.

A. Annually, at the November meeting, the commission as a whole shall organize by the nomination, election and installation of a vice chairman and a secretary of the commission. The chairman of the commission, to be appointed by the governor, will take office at this time.

B. The commission shall hold at least four meetings in each calendar year.

C. All meetings of the commission shall be open to the public.

History: 1953 Comp., § 4-23-4, enacted by Laws 1978, ch. 70, § 3.

Repeals and reenactments. - Laws 1978, Chapter 70 repeals former 4-23-4, 1953 Comp., relating to the arts commission, effective March 31, 1978, and enacts the above section.

18-5-5. Commission; duties.

A. The commission will be advisory to the director of the arts division, to the state cultural affairs officer and to state government in general where not in conflict with other statutory agencies. The governor will receive general counsel on the arts from the commission and from the division.

B. The commission will advise the director on all division policies, and the director shall provide the commission with all information requisite to such advice.

C. The commission shall be consulted by the director before he approves, disapproves or modifies the distribution of federal and state program funds. The director shall provide the commission with all information requisite to such consultation.

D. The director shall keep the commission informed of the fiscal affairs of the division, including budget requests, appropriations and disbursements.

History: 1953 Comp., § 4-23-5, enacted by Laws 1978, ch. 70, § 4; 1980, ch. 151, § 31.

Repeals and reenactments. - Laws 1978, Chapter 70 repealed former 4-23-5, 1953 Comp., relating to the arts commission, effective March 31, 1978, and enacted a new 4-23-5, 1953 Comp.

18-5-6. Division; creation; director; appointment.

A. The "arts division" is created within the office of cultural affairs.

B. Subject to the authority of the state cultural affairs officer, the administrative and executive head of the arts division is the "director" of the arts division. With the secretary's consent, the director shall be hired by the state cultural affairs officer from a list of three to five names supplied by the commission.

History: 1953 Comp., § 4-23-6, enacted by Laws 1978, ch. 70, § 5; 1980, ch. 151, § 32.

Repeals and reenactments. - Laws 1978, Chapter 70 repealed former 4-23-6, 1953 Comp., relating to the arts commission, effective March 31, 1978, and enacted a new 4-23-6, 1953 Comp.

18-5-7. Division; powers; duties.

The powers and duties of the arts division of the office of cultural affairs shall be:

A. to advise and assist public agencies in planning civic beautification;

B. to foster appreciation for the fine arts;

C. to make this state more appealing to the world;

D. to encourage the creative activity in the arts of residents of this state, and to attract to this state's residency additional outstanding creators in the field of fine arts through appropriate programs of publicity, education, coordination and direct activities such as sponsorship of performing and visual arts;

E. to accept on behalf of the state such donations of money, property or memorials as, in its discretion, are suitable and shall best further the aims of Sections 18-5-1 through 18-5-7 NMSA 1978. The division shall be empowered to accept any additional gifts, contributions or bequests from private persons, corporations, foundations or agencies or the federal government. Such money so gained may be reemployed as part of a revolving fund to be used to further the purpose of Sections 18-5-1 through 18-5-7 NMSA 1978;

F. to make, through its director, rules and regulations necessary to administer the division and as provided by law; and

G. to perform other duties as provided by law.

History: 1953 Comp., § 4-23-7, enacted by Laws 1978, ch. 70, § 6; 1980, ch. 151, § 33.

Repeals and reenactments. - Laws 1978, Chapter 70 repeals 4-23-2 to 4-23-6.1, 1953 Comp. (former 18-5-2 to 18-5-9 NMSA 1978), relating to the arts commission, effective March 31, 1978, and enacted new §§ 4-23-2 to 4-23-7, 1953 Comp.

Artists-in-the-schools not employees of division. - Artists participating in the artists-in-the-schools program are not employees of the New Mexico arts division and, therefore, are ineligible for unemployment compensation benefits through the division. 1980 Op. Att'y Gen. No. 80-08.

18-5-8, 18-5-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1978, ch. 70, § 7 repeals 4-23-2 to 4-23-6.1, 1953 Comp. (former 18-5-2 to 18-5-9 NMSA 1978), relating to the arts commission, effective March 31, 1978.

ARTICLE 6 CULTURAL PROPERTIES

18-6-1. Short title.

Sections 18-6-1 through 18-6-17 NMSA 1978 may be cited as the "Cultural Properties Act".

History: 1953 Comp., § 4-27-4, enacted by Laws 1969, ch. 223, § 1; 1977, ch. 246, § 34.

Property held not to be a cemetery. - Private property discovered to contain human remains presumed to be soldiers killed in the battle of Glorieta on March 28, 1862, is not a cemetery within the meaning of 30-12-12 NMSA 1978 so as to require the museum division of the office of cultural affairs to petition the district court prior to excavating the site and disinterring the remains pursuant to the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978]. 1987 Op. Att'y Gen. No. 87-31.

Law reviews. - For note, "Cultural Properties Act - Turley v. State and the New Mexico Cultural Properties Act: A Matter of Interpretation," see 13 N.M.L. Rev. 737 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 81A C.J.S. States §§ 82, 83, 147.

18-6-2. Purpose of act.

The legislature hereby declares that the historical and cultural heritage of the state is one of the state's most valued and important assets; that the public has an interest in the preservation of all antiquities, historic and prehistoric ruins, sites, structures, objects and similar places and things for their scientific and historical information and value; that the neglect, desecration and destruction of historical and cultural sites, structures, places and objects results in an irreplaceable loss to the public; and that therefore it is the purpose of the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978] to provide for the preservation, protection and enhancement of structures, sites and objects of historical significance within the state, in a manner conforming with, but not limited by, the provisions of the National Historic Preservation Act of 1966 (P.L. 89-665).

History: 1953 Comp., § 4-27-5, enacted by Laws 1969, ch. 223, § 2.

National Historic Preservation Act. - The National Historic Preservation Act of 1966 (P.L. 89-665), as amended, is compiled as 16 U.S.C. § 470 et seq.

Law reviews. - For note, "Cultural Properties Act - Turley v. State and the New Mexico Cultural Properties Act: A Matter of Interpretation," see 13 N.M.L. Rev. 737 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity and construction of statute or ordinance protecting historical landmarks, 18 A.L.R.4th 990.

Application and construction of § 106 of the National Historic Preservation Act of 1966 (16 USCS § 470f), dealing with federally sponsored projects which affect historic properties, 68 A.L.R. Fed. 578.

18-6-3. Definitions.

As used in the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978]:

- A. "committee" means the cultural properties review committee;
- B. "cultural property" means a structure, place, site or object having historic, archeological, scientific, architectural or other cultural significance;
- C. "registered cultural property" means a cultural property which has been placed on the official register on either a permanent or temporary basis by the committee; and
- D. "official register" means the New Mexico register of cultural properties maintained by the committee for the purpose of recording cultural properties deemed worthy of preservation.

History: 1953 Comp., § 4-27-6, enacted by Laws 1969, ch. 223, § 3.

18-6-4. Committee created; membership; compensation; voting; term; chairman; meetings.

A. There is created a "cultural properties review committee" which consists of seven members as follows:

- (1) the state historian at the state archives and record center;
- (2) one person professionally recognized in the discipline of architectural history;
- (3) one person professionally recognized in the discipline of history;
- (4) one person professionally recognized in the discipline of architecture;
- (5) one person professionally recognized in the discipline of prehistoric archaeology;
- (6) one person professionally recognized in the discipline of historic archaeology; and
- (7) one additional person who is professionally recognized in:
 - (a) history;
 - (b) architectural history or architecture; or
 - (c) archaeology.

Other than the state historian, all members shall be appointed by the governor. Each appointed member shall have achieved recognition for accomplishment in his field in the American southwest, and each shall have specialized knowledge of New Mexico.

B. Any member of the committee shall be reimbursed for necessary expenses in the discharge of his official duties in accordance with the rates set by the Per Diem and

Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. Any committee member who receives a salary from state funds shall not be entitled to per diem and mileage for service on the committee unless the service is away from the town in which his duty station is located, and, in that case, he shall receive per diem and mileage allowance at the rate set for salaried state employees. Committee members shall receive no other compensation, perquisite or allowance for committee service, but this does not mean that committee members who receive a salary from state funds shall not continue to draw such salary while discharging committee duties.

C. A simple majority shall constitute a quorum. A member of the committee shall abstain from voting or his vote shall be disqualified on any matter in which he has a pecuniary interest.

D. Appointed members shall serve terms of four years. Members shall be appointed without regard to partisan political affiliation, and any member may be reappointed to the committee.

E. A chairman, vice chairman and secretary shall be elected from the membership to serve for one year, subject to reelection.

F. The committee shall meet at least once each quarter.

History: 1953 Comp., § 4-27-7, enacted by Laws 1969, ch. 223, § 4; 1986, ch. 10, § 1.

18-6-5. Committee; powers and duties.

The primary function of the committee is to review proposals for the preservation of cultural properties. The committee is authorized to take such actions as are reasonable and consistent with law to identify cultural properties and to advise on the protection and preservation of those properties. Among such actions as may be necessary and proper to the fulfillment of these responsibilities, and without being limited hereby, the committee:

A. shall determine what constitutes historical, archaeological, scientific, architectural and other cultural significance for the purpose of identifying cultural properties as used in the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978];

B. shall prepare and keep up to date the official register. This official register shall be composed of properties identified by the committee as having historical or other cultural significance and integrity, being suitable for preservation and having educational significance;

C. shall prepare and maintain proper documentation of the historic or other significance of cultural properties. The committee is granted access to all state and local public documents that may be necessary for the documentation, and such state and local

agencies as have custody of such documents are authorized to allow the committee to examine and reproduce those documents useful for the documentation;

D. shall inspect all registered cultural properties periodically to assure proper cultural or historical integrity and proper maintenance. The inspection may be made by an authorized representative of the committee or historic preservation division of the office of cultural affairs. Such inspection shall be made only with the written consent of the owner or his authorized representative.

E. shall, based upon the inspection of a registered cultural property, recommend such repairs, maintenance and other measures as should be taken to maintain registered status;

F. shall issue regulations pertaining to the identification, preservation and maintenance of registered cultural properties in order to maintain the integrity of those properties;

G. may delete from the official register any registered cultural property whose owner does not comply with the committee's regulations or follow its recommendations for repair and maintenance, or which upon presentation of further evidence does not merit continued official registry;

H. may recommend to the museum division of the office of cultural affairs and other public administrators of registered cultural properties measures for the investigation, restoration and protection of such properties;

I. may encourage and render technical advice to private owners of registered cultural properties in order that such properties may be preserved;

J. may encourage and provide technical assistance to municipalities and counties in acquiring, preserving and developing cultural properties within their jurisdictions;

K. shall cooperate with federal, state, local and private agencies and persons engaged in the administration, development or other work relating to cultural properties within the state;

L. shall pursue all activities in a manner consistent with state and federal laws and regulations;

M. may encourage and promote public appreciation of New Mexico's historical and cultural heritage by:

(1) reviewing for accuracy the proposed publication of information on cultural properties; and

(2) reviewing the accuracy and adequacy of proposed marking of cultural properties;

N. may utilize the assistance of individuals, local organizations, state agencies and others interested in the identification and preservation of cultural properties;

O. may issue, with the concurrence of the state archaeologist and the state historic preservation officer, permits for the examination or excavation of sites and the collection or removal of objects of antiquity or general scientific interest, where such sites or objects are located on state lands, to institutions which the committee may deem to be properly qualified to conduct such examination, excavation or collection, subject to such rules and regulations as the committee may prescribe; provided that the examinations, excavations and collections are undertaken by reputable museums, universities, colleges or other historical, scientific or educational institutions or societies approved by the committee, with a view toward disseminating knowledge about cultural properties; and provided that a summary report of such investigations, containing relevant maps, documents, drawings and photographs be submitted to the committee which shall in turn submit the report to the appropriate agency or make other appropriate disposition of the report; and provided further, that all specimens so collected shall be the property of New Mexico, and that prior arrangements be made for the disposition of specimens derived from such investigations in an appropriate institution of the state for loan of such specimens to qualified institutions in or out of the state;

P. shall provide advice to the state historic preservation officer in the historic preservation division and to the director of the museum division of the office of cultural affairs on cultural properties; and

Q. shall make, in conjunction with the historic preservation division, an annual report on its activities to the governor and the legislature. The report may contain recommendations for the more effective preservation of New Mexico's historic and cultural heritage.

History: 1953 Comp., § 4-27-8, enacted by Laws 1969, ch. 223, § 5; 1977, ch. 246, § 35; 1978, ch. 92, § 1; 1980, ch. 151, § 34; 1983, ch. 296, § 17; 1986, ch. 10, § 2.

Cross-references. - As to credit for preservation of cultural property on individual state income tax return, see 7-2-18.2.

As to credit for preservation of cultural property on corporate state income tax return, see 7-2A-8.6 NMSA 1978.

Fort Selden state park. - Where federal money (or other appropriations dependent on such money) is not involved, the legislature intended that the park and recreation commission (now the state park and recreation division of the natural resources department) exercise primary control over the development and operation of Fort Selden state park, with the cultural properties review committee and state planning office (now, with the administrative division of the educational finance and cultural affairs department) offering advisory and consulting assistance. However, where the

funds to be utilized are part of a national park service grant or state funds tied to such a grant, the plan is subject to approval by the committee. 1971 Op. Att'y Gen. No. 71-105.

Law reviews. - For note, "Cultural Properties Act - Turley v. State and the New Mexico Cultural Properties Act: A Matter of Interpretation," see 13 N.M.L. Rev. 737 (1983).

18-6-6. Museum division; powers and duties relating to the Cultural Properties Act; director.

A. The museum division of the office of cultural affairs is responsible for administering, developing and maintaining all registered cultural properties in its ownership or custody.

B. Unless other locations are deemed more appropriate by the committee, in consultation with the museum of New Mexico, because of the nature of the property involved, the museum division shall be the depository for all collections made under the provisions of the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978] and shall make available material from such collections to museums in and out of the state on the request of the governing bodies of those museums when, in the opinion of the director of the museum division, such use is appropriate and when arrangements are made for the safe custodianship and public exhibition of the material in accordance with museum division regulations. The museum of New Mexico shall maintain a record of the location of all such collections.

C. The museum division may seek and accept gifts, donations and grants, subject to the provisions of Subsection B of Section 18-6-7 NMSA 1978, to be used to acquire, preserve or restore registered cultural properties.

D. The museum division may acquire by gift, purchase or, if no other means of acquisition are available, condemnation any cultural property or interest therein sufficient to preserve such property. Cultural properties so acquired shall be administered by the museum division or other appropriate state agencies in accordance with Subsections A and B of this section.

E. The museum division may enter into agreements with the committee to provide assistance in carrying out the duties of the committee.

History: 1953 Comp., § 4-27-9, enacted by Laws 1969, ch. 223, § 6; 1977, ch. 246, § 36; 1980, ch. 151, § 35; 1986, ch. 10, § 3.

18-6-7. Historic preservation division; planning; fiscal administration and cooperation for purposes of the Cultural Properties Act.

A. The state historic preservation officer of the historic preservation division of the office of cultural affairs shall, with the concurrence of the committee, prepare a long-range

plan for the preservation of cultural properties, including but not limited to identification, acquisition, restoration and protection of historic and cultural properties and, in cooperation with the museum division, maintenance and expansion of statewide historic and prehistoric site data bases.

B. The historic preservation division shall administer funds which are received, controlled and disbursed for the purposes of the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978], unless such funds are specifically granted or appropriated to another agency.

C. Consistent with the Cultural Properties Act, the historic preservation division shall cooperate in all matters with the committee and the museum division of the office of cultural affairs.

History: 1953 Comp., § 4-27-10, enacted by Laws 1969, ch. 223, § 7; 1977, ch. 246, § 37; 1978, ch. 92, § 2; 1980, ch. 151, § 36; 1983, ch. 296, § 18; 1986, ch. 10, § 4.

18-6-8. State historic preservation officer; appointment; qualifications; duties.

A. The "historic preservation division" is created within the office of cultural affairs.

B. The state historic preservation officer shall be the director of the division and shall be hired by the state cultural affairs officer with the consent of the governor. The position's qualifications shall be consistent with but not limited to the following:

(1) a graduate degree in American history, anthropology, architecture or historic preservation; or

(2) at least five years of professional experience in American history, anthropology, architecture or historic preservation or any combination of these; or

(3) a substantial contribution through research and publication to the body of scholarly knowledge in the field of American history, anthropology, architecture or historic preservation or any combination of these.

C. The state historic preservation officer shall administer the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978], including but not limited to being administrative head of all Cultural Properties Act functions assigned to the historic preservation division by law or executive order. In addition, the officer shall coordinate all duties performed by, and cooperate with, the committee, the museum division, the secretary [of finance and administration] and any other entities, public or private, involved with cultural properties.

D. The state historic preservation officer, in conjunction with the state cultural affairs officer:

- (1) shall provide staff to the cultural properties review committee;
- (2) shall maintain the state register of cultural properties;
- (3) may fund historic site surveys and may fund restorations;
- (4) shall administer historic preservation tax benefit programs; and
- (5) shall review state undertakings to determine their effect upon significant historic properties.

History: 1953 Comp., § 4-27-10.1, enacted by Laws 1977, ch. 246, § 38; 1980, ch. 151, § 37; 1983, ch. 296, § 19.

Cross-references. - As to credit for preservation of cultural property on individual state income tax return, see 7-2-18.2.

As to credit for preservation of cultural property on corporate state income tax return, see 7-2A-8.6 NMSA 1978.

Meaning of "secretary". - The reference to "secretary" in the second sentence in Subsection C apparently means the secretary of finance and administration. See 9-6-4 NMSA 1978.

18-6-9. Exclusive right of the state in properties on state lands; authorized [unauthorized] appropriation, excavation, injury or destruction of ruins, monuments or articles of historical, archeological or scientific value; penalty.

A. The state reserves to itself the exclusive right and privilege of field archeology on sites owned or controlled by the state, its agencies, departments and institutions in order to protect and preserve archeological and scientific information, matters and objects.

B. It is a misdemeanor for any person or his agent to:

(1) appropriate, excavate, injure or destroy or cause to be appropriated, excavated, injured or destroyed any historic or prehistoric ruin or monument, or any object of historical, archeological, architectural or scientific value situated on lands or in places owned or controlled by the state or its institutions without a valid permit issued by the committee pursuant to Subsection O of Section 18-6-5 NMSA 1978 and approved by the commissioner of public lands where trust lands are involved; or

(2) violate any condition or provision of a valid permit issued by the committee to that person pursuant to Subsection O of Section 18-6-5 NMSA 1978.

C. Any person convicted of a misdemeanor under Subsection B of this section shall be fined not more than five hundred dollars (\$500) or be imprisoned for not more than ninety days, or both, and shall forfeit all articles discovered.

D. It is the duty of the state historic preservation officer and any peace officer, including sheriffs, to proceed against any violation of this section, and it is the duty of the district attorneys of the state to prosecute anyone who violates the provisions of this section.

E. All funds collected as fines under this section shall be deposited with the state treasurer and earmarked for disbursement to the museum division for the preservation of registered cultural properties.

History: 1953 Comp., § 4-27-11, enacted by Laws 1969, ch. 223, § 8; 1973, ch. 273, § 1; 1977, ch. 246, § 39.

Law reviews. - For note, "Cultural Properties Act - Turley v. State and the New Mexico Cultural Properties Act: A Matter of Interpretation," see 13 N.M.L. Rev. 737 (1983).

18-6-9.1. Review of proposed state undertakings.

The historic preservation division of the office of cultural affairs shall periodically furnish copies of the official register, or relevant sections of the official register, to state agencies and departments and shall periodically advise state agencies and departments of the status of the division's program of cultural property identification and registration. The head of any state agency or department having direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property shall afford the state historic preservation officer a reasonable and timely opportunity to participate in planning such undertaking so as to preserve and protect, and to avoid or minimize adverse effects on, registered cultural properties.

History: 1978 Comp., § 18-6-9.1, enacted by Laws 1986, ch. 10, § 5.

Registered cultural property on private land. - This section enables the state historic preservation officer to participate in the environmental improvement division's deliberation whether to license a private discharge plan when the license would affect a registered cultural property on private land. Although the catchline of this section refers to "state undertakings," its text does not qualify undertakings as "state undertakings." 1987 Op. Att'y Gen. No. 87-64.

18-6-10. Cultural properties on private land.

A. It is the declared intent of the legislature that field archeology on privately owned lands should be discouraged except in accordance with the provisions and spirit of the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978]; and persons having knowledge of the location of archeological sites are encouraged to communicate such information to the committee.

B. It shall be deemed an act of trespass and a misdemeanor for any person to remove, injure or destroy registered cultural properties situated on private lands or controlled by a private owner without the owner's prior permission. Where the owner of a registered cultural property has submitted his acceptance in writing to the committee's registration of that cultural property, the provisions of Section 8 [18-6-9 NMSA 1978] of the Cultural Properties Act shall apply to that registered cultural property.

C. Where a cultural property is on private land or is otherwise privately owned and the committee determines that such cultural property is worthy of preservation and inclusion on the official register, the committee may recommend the procedure best calculated to ensure preservation. Such procedures may include:

(1) providing technical assistance to the owner who is willing to restore, preserve and maintain the cultural property;

(2) acquiring the property or an easement or other right therein by gift or purchase;

(3) advising the county or municipality within which the cultural property is located on zoning the property as an historic area or district in accordance with the Historic District Act [3-22-1 to 3-22-5 NMSA 1978];

(4) advising the county or municipality within which the cultural property is located on the use of agreements, purchases or the right of eminent domain to obtain control of the cultural property in accordance with the Historic District Act; and

(5) acquiring the property for the state by use of the right of eminent domain.

History: 1953 Comp., § 4-27-12, enacted by Laws 1969, ch. 223, § 9.

Cross-references. - For provisions on exercise of right of eminent domain, see 42A-1-1 NMSA 1978 et seq.

18-6-11. Permit required for excavation of archaeological sites; penalty.

A. It is unlawful for any person or his agent or employee to excavate with the use of mechanical earth moving equipment an archaeological site for the purpose of collecting or removing objects of antiquity when the archaeological site is located on private land in this state, unless the person has first obtained a permit issued pursuant to the provisions of this section for the excavation. As used in this section, an "archaeological site" means a location where there exists material evidence of the past life and culture of human beings in this state but excludes the sites of burial of human beings.

B. Permits for excavation pursuant to Subsection A of this section may be issued by the committee upon approval by the state archaeologist and the state historic preservation officer when the applicant:

- (1) submits written authorization for the excavation from the owner of the land;
- (2) furnishes satisfactory evidence of being qualified to perform the archaeological excavation by experience, training and knowledge;
- (3) submits a satisfactory plan of excavation for the archaeological site and states in the plan the method by which excavation will be undertaken; and
- (4) agrees in writing, upon the completion of the excavation, to submit a summary report to the committee of the excavation, which report shall contain relevant maps, documents, drawings and photographs, together with a description of the archaeological specimens removed as a result of the excavation. Failure to file the summary report shall be grounds for refusing issuance of a future permit to the person.

C. All archaeological specimens collected or removed from the archaeological site as a result of excavation pursuant to Subsections A and B of this section shall be the property of the person owning the land on which the site is located.

D. Nothing in this section shall be deemed to limit or prohibit the use of the land on which the archaeological site is located by the owner of the land or to require the owner to obtain a permit for personal excavation on his own land, provided that no transfer of ownership is made with the intent of excavating archaeological sites as prohibited in this section, and provided further that this exemption does not apply to marked or unmarked burial grounds.

E. Any person convicted of violating the provisions of this section is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000) and in addition thereto shall forfeit to the state all equipment used in committing the violation for which the person is convicted.

History: 1953 Comp., § 4-27-12.1, enacted by Laws 1977, ch. 75, § 1; 1989, ch. 267, § 2.

"Archaeological site". - The definition of "archaeological site," in Subsection A, is not void for vagueness. *State v. Turley*, 96 N.M. 592, 633 P.2d 700 (Ct. App. 1980), rev'd on other grounds, 96 N.M. 579, 633 P.2d 687 (1981), overruled on other grounds, *United States Brewers Ass'n v. Director of N.M. Dep't of ABC*, 100 N.M. 216, 668 P.2d 1093 (1983), appeal dismissed, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

Landowner exemption from permit requirement covers landowner's employee or agent. - In exempting the landowner from the permit requirement of Subsection A, Subsection D also allows the landowner to use an employee or agent to accomplish the task of excavation without a permit. *Turley v. State*, 96 N.M. 579, 633 P.2d 687 (1981), overruled on other grounds, *United States Brewers Ass'n v. Director of N.M. Dep't of*

ABC, 100 N.M. 216, 668 P.2d 1093 (1983), appeal dismissed, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

Law reviews. - For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

For note, "Cultural Properties Act - Turley v. State and the New Mexico Cultural Properties Act: A Matter of Interpretation," see 13 N.M.L. Rev. 737 (1983).

18-6-11.1. Confidentiality of site location.

A. Any information in the custody of a public official concerning the location of archaeological resources, the preservation of which is in the interest of the state of New Mexico, shall remain confidential unless the custodian of such information determines that the dissemination of such information will further the purposes of the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978], as set forth in Section 18-6-2 NMSA 1978 and will not create a risk of loss of archaeological resources.

B. As used in Subsection A of this section, "archaeological resources" means a location where there exists material evidence of the past life and culture of human beings in this state and includes the sites of burial and habitats of human beings.

History: 1978 Comp., § 18-6-11.1, enacted by Laws 1979, ch. 66, § 1.

18-6-11.2. Permit required for excavation of unmarked burials; penalty.

A. Each human burial in the state interred in any unmarked burial ground is accorded the protection of law and shall receive appropriate and respectful treatment and disposition.

B. A person who knowingly, willfully and intentionally excavates, removes, disturbs or destroys any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, or any person who knowingly, willfully and intentionally procures or employs any other person to excavate, remove, disturb or destroy any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, except by authority of a permit issued by the state medical investigator or by the committee with the concurrence of the state archaeologist and state historic preservation officer, is guilty of a fourth degree felony and shall be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months, or both. The offender shall upon conviction forfeit to the state all objects, artifacts and human burials excavated or removed from an unmarked burial ground in violation of this section, and any proceeds from the sale by the offender of any of the foregoing shall also be forfeited. As used in this section:

(1) "unmarked burial ground" means a location where there exists a burial or burials of any human being which is not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials and includes any funerary object, material object or artifact associated with the burial or burials; and

(2) "human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

C. Any person who discovers a human burial in any unmarked burial ground shall cease any activity that may disturb that burial or any object or artifact associated with that burial and shall notify the local law enforcement agency having jurisdiction in the area. The local law enforcement agency shall notify the state medical investigator and the state historic preservation officer.

D. The state medical investigator may, consistent with the statutes governing medical investigations, have authority over or take possession of any human burial discovered in the state, in which case the provisions of Subsections E and F of this section shall not apply.

E. Permits for excavation of a human burial discovered in an unmarked burial ground shall be issued by the committee within sixty days of receipt of application when the applicant:

(1) submits written authorization for that excavation from the owner of the land on which the human burial is located or the applicant is the owner of the land;

(2) demonstrates appropriate efforts to determine the age of the human burial and to identify and consult with any living person who may be related to the human burial interred in the unmarked burial ground;

(3) complies with permit procedures and requirements established by regulations authorized in this section to ensure the complete removal of the human burial and the collection of all pertinent scientific information in accordance with proper archaeological methods; and

(4) provides for the lawful disposition or reinterment of the human burial either in the original or another appropriate location and of any objects or artifacts associated with that human burial consistent with regulations issued by the state historic preservation officer, except that the committee shall not require, as a condition of issuance of a permit, reinterment or disposition, any action that unduly interferes with the owner's use of the land.

F. Permits for the excavation of any human burial discovered in the course of construction or other land modification may be issued by the committee with the

concurrence of the state archaeologist and the state historic preservation officer on an annual basis to professional archaeological consultants or organizations.

G. Except when the committee requires as a condition of the permit that any object or artifact associated with a human burial be reinterred or disposed of with that burial, that object or artifact shall be the property of the person owning the land on which that burial is located.

H. Any object or artifact and any human burial excavated or removed from an unmarked burial ground in violation of this section shall be forfeited to the state and shall be lawfully disposed of or reinterred in accordance with regulations issued by the state historic preservation officer; provided that no object or artifact so forfeited shall ever be sold by the state; and provided further that any object or artifact removed from the land without the owner's consent and in violation of this section shall be returned to the lawful owner consistent with Subsection G of this section.

I. The state historic preservation officer shall issue regulations with the concurrence of the state medical investigator for the implementation of this section.

History: Laws 1989, ch. 267, § 1.

18-6-12. Emergency classification pending investigation.

A cultural property which the committee thinks may be worthy of preservation may be included on the official register on a temporary basis for not more than one year, during which time the committee shall investigate the property and make a determination as to whether it may be permanently placed on the official register. If the cultural property is on private land, the temporary classification shall not be considered a taking of private property, but the owner may receive a fair rental value for the part of the land affected if the temporary classification unduly interferes with the owner's normal use of the land. The owner shall be immediately notified of the committee's determination. If at the expiration of one year from the time the temporary classification was imposed the owner has not been notified of any committee action, the temporary classification shall lapse, and it shall not be renewed for five years.

History: 1953 Comp., § 4-27-13, enacted by Laws 1969, ch. 223, § 10.

18-6-13. Repealed.

ANNOTATIONS

Repeals. - Laws 1984, ch. 34, § 4 repeals 18-6-13 NMSA 1978, as enacted by Laws 1969, ch. 223, § 11, relating to tax exemption of cultural properties from certain property taxes. For provisions of former section, see 1980 replacement pamphlet. For present provisions relating to tax credits for preservation of cultural properties on state income tax returns, see 7-2-18.2 and 7-2A-8.6 NMSA 1978.

Laws 1984, ch. 34, contains no effective date provision, but was enacted at the session which adjourned on February 16, 1984. See N.M. Const., art. IV, § 23.

18-6-14. State historian.

The state historian at the state records center is designated as "state historian" for purposes of the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978].

History: 1953 Comp., § 4-27-15, enacted by Laws 1969, ch. 223, § 12; 1981, ch. 48, § 1.

Legislature implicitly recognized existence of position of deputy for archives when it enacted this section, as it read prior to the 1981 amendment, designating the deputy for archives for the state records center as the state historian. 1980 Op. Att'y Gen. No. 80-25.

18-6-15. State archaeologist.

The state archaeologist in the office of cultural affairs is designated as "state archaeologist" for the purposes of the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978]. The state archaeologist shall be professionally recognized in the discipline of archaeology, shall have achieved recognition for accomplishments in his field in the American southwest and shall have a specialized knowledge of New Mexico.

History: 1953 Comp., § 4-27-16, enacted by Laws 1969, ch. 223, § 13; 1986, ch. 10, § 6.

18-6-16. Preparation and sale of cultural properties publications; revolving fund; report.

The historic preservation division of the office of cultural affairs shall encourage and promote publications relating to cultural properties which have been prepared pursuant to the duties of the committee under the Cultural Properties Act [18-6-1 to 18-6-17 NMSA 1978]. The committee may prepare or contract for the preparation of such publications on the condition that it receive from the sale of such publications the amount expended plus ten percent. All receipts from such sales shall go into a special revolving fund which is hereby established. The historic preservation division shall adopt regulations establishing guidelines and fiscal controls over the use of the revolving fund and shall annually report to the legislative finance committee on or before June 30 the fund's receipts, disbursements and unencumbered balance, together with a detailed statement of the expenditures.

History: 1953 Comp., § 4-27-17, enacted by Laws 1978, ch. 53, § 1; 1980, ch. 151, § 38; 1983, ch. 296, § 20.

Repeals and reenactments. - Laws 1978, ch. 53, § 1, repealed former 4-27-17, 1953 Comp., relating to preparation and sale of cultural properties publications, revolving fund and report, and enacted a new 4-27-17, 1953 Comp.

18-6-17. Designation of state monuments; reservation of lands for monument care and management.

The governor is authorized, upon the recommendation of the committee and the board of regents of the museum of New Mexico, to declare by public proclamation that any cultural property situated on lands owned or controlled by the state shall be a state monument and may reserve as a part thereof such parcels of land as may be necessary for the proper care and management of the cultural property to be protected. In the case of proposed state monuments situated on state trust lands, the federal laws granting same shall be complied with. Any such monument shall be administered by the museum division of the office of cultural affairs in accordance with the provisions of Section 18-6-6 NMSA 1978.

History: 1953 Comp., § 4-27-18, enacted by Laws 1973, ch. 16, § 1; 1977, ch. 246, § 41; 1980, ch. 151, § 39; 1986, ch. 10, § 7.

18-6-18. Short title.

This act [18-6-18 to 18-6-23 NMSA 1978] may be cited as the "Historic Preservation Loan Act".

History: Laws 1987, ch. 7, § 1.

18-6-19. Purpose.

The purpose of the Historic Preservation Loan Act [18-6-18 to 18-6-23 NMSA 1978] is to provide owners of registered cultural properties in New Mexico with low-cost financial assistance in the restoration, rehabilitation and repair of properties listed in the state register of cultural properties or national register of historic places, which are a part of the state's heritage and which contribute substantially to the state's economic well being and to a sound and proper balance between preservation and development, through the creation of a self-sustaining revolving loan program to rehabilitate, repair and restore historic properties.

History: Laws 1987, ch. 7, § 2.

18-6-20. Definitions.

As used in the Historic Preservation Loan Act [18-6-18 to 18-6-23 NMSA 1978]:

A. "committee" means the cultural properties review committee;

B. "division" means the historic preservation division of the office of cultural affairs;

C. "fund" means the historic preservation loan fund;

D. "property owner" means the sole owner, joint owner, owner in partnership or corporate owner of a registered cultural property. As used in this subsection, the term "property owner" includes the owner of a leasehold interest in a registered cultural property, if the term of the lease is not less than nineteen years; and

E. "registered cultural property" means any site, structure, building or object entered in the state register of cultural properties or national register of historic places or both.

History: Laws 1987, ch. 7, § 3.

18-6-21. Fund created; administration.

A. There is created in the state treasury a revolving loan fund which shall be known as the "historic preservation loan fund". The division shall administer the fund and may make loans from the fund in accordance with the Historic Preservation Loan Act [18-6-18 to 18-6-23 NMSA 1978].

B. The division shall deposit in the fund all receipts from the repayment of loans made pursuant to the Historic Preservation Loan Act.

C. The division may deposit in the fund any private funds made available for the purposes of the Historic Preservation Loan Act and any federal funds made available for the purpose of making grants or loans to owners of registered historic properties. Such funds may be used by the division to make or to subsidize loans made pursuant to the Historic Preservation Loan Act.

History: Laws 1987, ch. 7, § 4.

18-6-22. Loan program; duties of division and committee.

A. The division shall establish a program to make direct loans or loan subsidies and a program to contract with one or more lending institutions for deposits to be used for the purpose of making or subsidizing loans to owners of registered cultural properties for the restoration, rehabilitation or repair of those properties in accordance with the Historic Preservation Loan Act [18-6-18 to 18-6-23 NMSA 1978].

B. The division shall adopt rules and regulations to govern the application procedure and requirements for making or subsidizing loans under the Historic Preservation Loan Act.

C. The division shall adopt rules and regulations to govern the deposits with lending institutions for making or subsidizing loans under the Historic Preservation Loan Act.

D. The division and committee in cooperation shall adopt a system for the priority ranking of historic preservation projects, both eligible and ineligible for federal funding assistance, for which loan or loan subsidy applications have been received by the division. The system shall be based on factors including geographic distribution of recipient projects, severity of deterioration of the registered property, the degree of architectural and construction detail in the loan application demonstrating the feasibility of the proposed restoration, rehabilitation or repair of the registered cultural property and availability of other funding for the project. All loans or loan subsidies from the fund shall be granted pursuant to this system and the system shall be reviewed annually by the division and committee.

E. The committee and division shall monitor the fund and shall prepare an annual report to the governor and the legislature detailing the operations of the fund.

F. The division has the authority necessary and appropriate for the exercise of the powers and duties conferred by the Historic Preservation Loan Act.

History: Laws 1987, ch. 7, § 5.

18-6-23. Loans; criteria.

A. Loans or loan subsidies from the fund shall be made only to property owners who:

(1) agree to repay the loan and to maintain the registered cultural property as restored, rehabilitated or repaired for a specified period but in no case less than seven years;

(2) agree to maintain complete and proper financial records regarding the registered cultural property and to make these available to the division on request;

(3) agree to complete the proposed rehabilitation, repair or restoration work on the registered cultural property within two years from the date of project loan approval by the division; and

(4) provide sufficient collateral security interest in the registered cultural property to the state of New Mexico in accordance with rules and regulations established by the committee and division.

B. A loan shall be made for a period not to exceed five years with interest on the unpaid balance at a rate not greater than the yield at the time of loan approval on United States treasury bills with a maturity of 365 days plus three and one-half percent. A loan shall be repaid by the property owner in equal installments not less often than annually with the first installment due within one year of the date the loan is issued.

C. Loans shall be made only for eligible costs. Eligible costs include architectural, engineering and planning costs, inspection of work in progress, contracted restoration,

rehabilitation and repair costs and costs necessary to meet code requirements. Eligible costs shall not include costs of land acquisition, legal costs or fiscal agents' fees.

History: Laws 1987, ch. 7, § 6.

Severability clauses. - Laws 1987, ch. 7, § 7 provides for the severability of the act if any part or application thereof is held invalid.

ARTICLE 7 SPACE CENTER

18-7-1. Space center division; creation.

There is created within the office of cultural affairs the "space center division".

History: 1953 Comp., § 73-46-1, enacted by Laws 1978, ch. 72, § 1; 1980, ch. 151, § 40; 1987, ch. 313, § 1.

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

Repeals and reenactments. - Laws 1978, Chapter 72 repeals 73-46-1 to 73-46-3, 1953 Comp. (former 18-7-1 to 18-7-4 NMSA 1978), relating to the international space hall of fame, effective March 31, 1978, and enacted new §§ 73-46-1 to 73-46-3, 1953 Comp.

18-7-2. Space center commission.

There is created the "space center commission" consisting of eleven members appointed by the governor. Four members of the commission shall be appointed at large, and one member shall be appointed from each of the planning and development districts. Three members shall be appointed to the commission for a term ending December 31, 1974, four members shall be appointed to the commission for a term ending December 31, 1975 and four members shall be appointed to the commission for a term ending December 31, 1976. Thereafter, members of the commission shall be appointed for terms of three years or less in such manner that the staggered expiration date is maintained. Necessary officers shall be elected by the commission. The commission members shall be reimbursed for their necessary and actual mileage and per diem expenses as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

History: 1953 Comp., § 73-46-2, enacted by Laws 1978, ch. 72, § 2; 1987, ch. 313, § 2.

Repeals and reenactments. - Laws 1978, Chapter 72 repeals 73-46-1 to 73-46-3, 1953 Comp. (former 18-7-1 to 18-7-4 NMSA 1978), relating to the international space

hall of fame, effective March 31, 1978, and enacted new §§ 73-46-1 to 73-46-3, 1953 Comp.

18-7-3. Commission; director; powers; duties.

The space center commission of the office of cultural affairs shall construct, maintain and operate the space center for the benefit of the people of New Mexico, the nation and the world as an educational project interpreting man's conquest of space. The commission shall establish policy for the general operation of the space center division. The director of that division, under the supervision of the commission, shall:

- A. collect and preserve objects relating to the history of rocketry, space flight, astronomy and related fields;
- B. conduct research programs necessary to document the historical, scientific and technological advances of rocketry, space flight, astronomy and related fields;
- C. disseminate the results of division research efforts through exhibits, public programs, publications and other methods deemed appropriate by the commission;
- D. establish educational programs relating to space;
- E. purchase supplies and necessary equipment and tools;
- F. accept for the space center any federal matching funds or grants available for this project and related programs;
- G. accept donations and bequests from individuals and entities for the space center and related programs;
- H. acquire real and personal property in the name of the state for the space center;
- I. employ and discharge personnel necessary for the operation of the space center;
- J. prepare budgets for operation and capital improvements;
- K. assume other duties and responsibilities as deemed necessary by the space center commission;
- L. assume responsibility for new and related facilities as required; and
- M. subject to the provisions of Section 18-7-3.1 NMSA 1978, impose admission fees to the museum facilities and programs.

History: 1953 Comp., § 73-46-3, enacted by Laws 1978, ch. 72, § 3; 1980, ch. 151, § 41; 1987, ch. 313, § 3; 1989, ch. 75, § 1; 1991, ch. 242, § 5.

Repeals and reenactments. - Laws 1978, Chapter 72 repeals 73-46-1 to 73-46-3, 1953 Comp. (former 18-7-1 to 18-7-4 NMSA 1978), relating to the international space hall of fame, effective March 31, 1978, and enacted new 73-46-3, 1953 Comp.

The 1991 amendment, effective June 14, 1991, added Subsection M and made a related stylistic change.

18-7-3.1. Museum admission policy.

The commission shall establish a policy to permit New Mexico residents age sixty years and above to enter all publicly accessible exhibit and program areas, except special exhibits and programs where commissions or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

History: 1978 Comp., § 18-7-3.1, enacted by Laws 1991, ch. 242, § 6.

Effective dates. - Laws 1991, ch. 242 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-7-4. Director; employment.

The director of the space center division shall be hired by the space center commission, subject to approval by the state cultural affairs officer and with the consent of the secretary of finance and administration. The director of the division may be discharged from employment by the commission for failure to perform his duties or follow the policies set forth by the commission.

History: 1953 Comp., § 73-46-4, enacted by Laws 1978, ch. 72, § 4; 1980, ch. 151, § 42; 1987, ch. 313, § 4.

ARTICLE 8

PREHISTORIC AND HISTORIC SITES PRESERVATION

18-8-1. Short title.

This act [18-8-1 to 18-8-8 NMSA 1978] may be cited as the "New Mexico Prehistoric and Historic Sites Preservation Act".

History: Laws 1989, ch. 13, § 1.

18-8-2. Purpose.

The purpose of the New Mexico Prehistoric and Historic Sites Preservation Act [18-8-1 to 18-8-8 NMSA 1978] is the acquisition, stabilization, restoration or protection of significant prehistoric and historic sites by the state of New Mexico and corporations.

History: Laws 1989, ch. 13, § 2.

18-8-3. Definitions.

As used in the New Mexico Prehistoric and Historic Sites Preservation Act [18-8-1 to 18-8-8 NMSA 1978]:

A. "corporation" means a nonprofit corporation, formally recognized as tax exempt under Section 501(c)3 of the Internal Revenue Code of 1986, whose declared purposes include the investigation, preservation or conservation of significant prehistoric or historic sites;

B. "division" means the historic preservation division of the office of cultural affairs; and

C. "significant prehistoric or historic sites" mean properties listed in the state register of cultural properties or national register of historic places.

History: Laws 1989, ch. 13, § 3.

Internal Revenue Code. - Section 501(c)3 of the federal Internal Revenue Code of 1986, referred to in Subsection A, appears as 26 U.S.C. § 501(c)(3).

18-8-4. Administration; cost sharing formula; limitations.

A. The New Mexico Prehistoric and Historic Sites Preservation Act [18-8-1 to 18-8-8 NMSA 1978] shall be administered by the state historic preservation officer in consultation with the cultural properties review committee.

B. The division and the cultural properties review committee shall cooperatively develop criteria for the acquisition, stabilization, restoration or protection of significant historic or prehistoric sites. Such criteria shall be reviewed by them at a public meeting held annually in accordance with the Open Meetings Act [10-15-1 to 10-15-4 NMSA 1978].

C. The division shall annually solicit proposals from state agencies, subdivisions of state government and corporations for the acquisition, stabilization, restoration or protection of significant prehistoric and historic sites.

D. Subject to the availability of funds, the state may pay up to ninety percent of the cost of acquisition, stabilization, restoration or protection of a significant prehistoric or historic site. Title to that site shall vest in the state or a political subdivision of the state and a corporation that participates in acquiring a minimum of at least a ten percent undivided

interest in the site or defrays not less than ten percent of the cost of acquisition, stabilization, restoration or protection of the site.

E. In the event of joint acquisition by the state or a political subdivision of the state and a corporation, the state or the subdivision and the corporation shall hold undivided interests in the property, in proportion to the state's and the corporation's share, and the property shall be held in the name of the state and the corporation.

F. Criteria for the acquisition and protection of significant prehistoric and historic sites include:

(1) the degree to which the property is threatened by deterioration or destruction;

(2) the rarity or uniqueness of the property or property type; and

(3) the value of the property for public interpretation and visitation.

History: Laws 1989, ch. 13, § 4.

18-8-5. Management.

A. The corporation shall be required to prepare a long-term management plan for any site acquired, stabilized, restored or protected as provided for in Subsection D of Section 4 [18-8-4 NMSA 1978] of the New Mexico Prehistoric and Historic Sites Preservation Act. The management plan shall be subject to the approval of the division. That plan shall provide for disposition of the corporation's interest in the property, in the event that the corporation ceases to exist, either to another corporation or to the state. The division and the corporation shall enter into a contract providing for management, interpretation and preservation of any property acquired, stabilized, restored or protected under the provisions of the New Mexico Prehistoric and Historic Sites Preservation Act.

B. A contract for the management, interpretation or preservation of a site may be enforced by injunction or other appropriate proceeding in any court of competent jurisdiction.

History: Laws 1989, ch. 13, § 5.

18-8-6. No power of eminent domain.

No property or right of access may be acquired under the New Mexico Prehistoric and Historic Sites Preservation Act [18-8-1 to 18-8-8 NMSA 1978] through exercise of the state's power of eminent domain or other condemnation process.

History: Laws 1989, ch. 13, § 6.

18-8-7. Preservation of significant prehistoric or historic sites.

No public funds of the state or any of its agencies or political subdivisions shall be spent on any program or project that requires the use of any portion of or any land from a significant prehistoric or historic site unless there is no feasible and prudent alternative to such use, and unless the program or project includes all possible planning to preserve and protect and to minimize harm to the significant prehistoric or historic site resulting from such use. The provisions of this section may be enforced by an action for injunction or other appropriate relief in a court of competent jurisdiction [jurisdiction].

History: Laws 1989, ch. 13, § 7.

Inapplicability of retroactive effect. - The provisions of this section have no retroactive effect as to those portions of the project for which planning was complete and the city had previously received authorization and approval to construct prior to June 16, 1989. *City of Albuquerque v. State ex rel. Village of Los Ranchos de Albuquerque*, 111 N.M. 608, 808 P.2d 58 (Ct. App. 1991).

18-8-8. Regulation.

The state historic preservation officer shall issue regulations for the implementation of the New Mexico Prehistoric and Historic Sites Preservation Act [18-8-1 to 18-8-8 NMSA 1978].

History: Laws 1989, ch. 13, § 8.

ARTICLE 9 LIBRARY PRIVACY

18-9-1. Short title.

This act [18-9-1 to 18-9-6 NMSA 1978] may be cited as the "Library Privacy Act".

History: Laws 1989, ch. 151, § 1.

18-9-2. Purpose.

The purpose of the Library Privacy Act [18-9-1 to 18-9-6 NMSA 1978] is to preserve the intellectual freedom guaranteed by Sections 4 and 17 of Article 2 of the constitution of New Mexico by providing privacy for users of the public libraries of the state with respect to the library materials that they wish to use.

History: Laws 1989, ch. 151, § 2.

18-9-3. Definitions.

As used in the Library Privacy Act [18-9-1 to 18-9-6 NMSA 1978]:

A. "library" includes any library receiving public funds, any library that is a state agency and any library established by the state, an instrumentality of the state, a local government, district or authority, whether or not that library is regularly open to the public; and

B. "patron record" means any document, record or other method of storing information retained by a library that identifies, or when combined with other available information identifies, a person as a patron of the library or that indicates use or request of materials from the library. "Patron record" includes patron registration information and circulation information that identifies specific patrons.

History: Laws 1989, ch. 151, § 3.

18-9-4. Release of patron records prohibited.

Patron records shall not be disclosed or released to any person not a member of the library staff in the performance of his duties, except upon written consent of the person identified in the record, or except upon court order issued to the library. The library shall have the right to be represented by counsel at any hearing on disclosure or release of its patron records.

History: Laws 1989, ch. 151, § 4.

18-9-5. Exceptions.

The prohibition on the release or disclosure of patron records in Section 4 [18-9-4 NMSA 1978] of the Library Privacy Act shall not apply to overdue notices or to the release or disclosure by school libraries to the legal guardian of the patron records of unemancipated minors or legally incapacitated persons.

History: Laws 1989, ch. 151, § 5.

18-9-6. Violations; civil liability.

Any person who violates Section 4 [18-9-4 NMSA 1978] of the Library Privacy Act shall be subject to civil liability to the person identified in the released records for damages and costs of the action as determined by the court.

History: Laws 1989, ch. 151, § 6.

ARTICLE 10

ABANDONED CULTURAL PROPERTIES

18-10-1. Short title.

Sections 1 through 5 [18-10-1 through 18-10-5 NMSA 1978] of this act may be cited as the "Abandoned Cultural Properties Act".

History: Laws 1989, ch. 211, § 1.

18-10-2. Definitions.

As used in the Abandoned Cultural Properties Act [18-10-1 through 18-10-5 NMSA 1978]:

- A. "lender" means a person whose name appears on the records of the museum or, in the event of the death of the person, the successor in interest to the property as the person entitled to property held in the museum;
- B. "loan" means all deposits of property with a museum which are not accompanied by a transfer of title to the property;
- C. "museum" means an institution located in New Mexico and operated by a nonprofit corporation or public agency, primarily educational, scientific or aesthetic in purpose, which owns, borrows, cares for, studies, archives or exhibits property; and
- D. "property" means all tangible objects, animate or inanimate, under a museum's care which have scientific, historic, artistic or cultural value.

History: Laws 1989, ch. 211, § 2.

18-10-3. Abandonment of property.

A. Property on loan to a museum shall be deemed abandoned:

(1) if, since the expiration date of the loan, seven years have passed with no written notice of termination of the loan from the lender to the museum; or

(2) if the loan has no expiration date, at least seven years have passed since the loan was made and the lender has failed to respond to written notice from the museum.

B. A museum shall acquire title to property deemed to be abandoned by providing the lender with a notice of abandonment. If no valid claim has been made for the property within sixty-five days from the date of notice of abandonment, title to the property shall

vest in the museum free of all claims of the lender and all persons claiming on behalf of the lender.

C. Notwithstanding the provisions of Sections 13-6-1 and 13-6-2 NMSA 1978, property acquired by a museum through abandonment procedures established in the Abandoned Cultural Properties Act [18-10-1 to 8-10-5 NMSA 1978] may be kept by the museum, may be sold, with the proceeds going to the museum, or may be destroyed. The museum shall notify the state auditor or, in the case of private museums, the governing authority of the museum regarding the disposition of all abandoned property.

History: Laws 1989, ch. 211, § 3.

18-10-4. Notice of abandonment.

A. A notice of abandonment shall contain, if known, the lender's name, the lender's address, the date of the loan, a brief description of the loaned property and the name, address and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan.

B. A notice of abandonment shall be mailed by certified mail, return receipt requested, by the museum to the lender at the lender's last known address as shown in museum records. If the museum does not have an address for the lender, or if proof of receipt of notice is not received within thirty days from the mailing of a notice of abandonment, a notice of abandonment shall be published at least once a week for two successive weeks in a newspaper of general circulation in both the county in which the museum is located and the county of the lender's last known address. The museum shall exercise diligence in attempting to contact the lender.

History: Laws 1989, ch. 211, § 4.

18-10-5. Disclosure of act; notification of address change.

A. Effective July 1, 1989, any museum accepting a loan of property shall notify the lender, if known, in writing at the time of the loan of the provisions of the Abandoned Cultural Properties Act [18-10-1 to 18-10-5 NMSA 1978].

B. Within one year of the passage of this act, any museum holding property on loan shall notify the lender, if known, in writing, of the provisions of this act.

C. It is the responsibility of the lender to notify the museum in writing of any changes of address or of a change in the ownership of the property. It is the responsibility of the museum to notify the lender, in writing, of any change of address of the museum.

History: Laws 1989, ch. 211, § 5.

ARTICLE 11

FARM AND RANCH HERITAGE MUSEUM

18-11-1. Short title.

Sections 1 through 9 [18-11-1 to 18-11-9 NMSA 1978] of this act may be cited as the "Farm and Ranch Heritage Museum Act".

History: Laws 1991, ch. 48, § 1.

Effective dates. - Laws 1991, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-11-2. Declaration and purpose of act.

The legislature of New Mexico declares that the farming and ranching industry of the state has produced a unique common heritage of which all persons should receive knowledge and benefit. The purpose of the Farm and Ranch Heritage Museum Act [18-11-1 to 18-11-9 NMSA 1978] is to create a New Mexico farm and ranch heritage museum division of the office of cultural affairs, which shall collect, preserve, study and display materials representative of the farming and ranching of the state and region and develop and maintain exhibits and programs of an educational nature for the benefit of the citizens of New Mexico and visitors to the state.

History: Laws 1991, ch. 48, § 2.

Effective dates. - Laws 1991, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-11-3. Definitions.

As used in the Farm and Ranch Heritage Museum Act [18-11-1 to 18-11-9 NMSA 1978]:

- A. "board" means the governing board of the division;
- B. "director" means the director of the division;
- C. "division" means the New Mexico farm and ranch heritage museum division of the office of cultural affairs or its successor agency;
- D. "farm and ranch" means that which pertains to the field of agriculture and the various industries that affect agriculture, including but not limited to agronomy, livestock management, veterinary medicine, agricultural nutrition and other related agricultural businesses and sciences; and

E. "museum" means the principal facility of the division, including all real and personal property of the division.

History: Laws 1991, ch. 48, § 3.

Effective dates. - Laws 1991, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-11-4. Division created; operation; location; property.

A. The "New Mexico farm and ranch heritage museum division" is created within the office of cultural affairs or its successor agency.

B. The principal facility of the division shall be known as the "New Mexico farm and ranch heritage museum" and shall be located on the campus of New Mexico state university in Dona Ana county.

C. All property, real or personal, now held or subsequently acquired for the operation of the museum shall be under the control and authority of the office of cultural affairs.

D. Funds or other property received by gift, endowment or legacy shall remain under the control of the office of cultural affairs and shall, upon acceptance, be employed for the purpose specified.

History: Laws 1991, ch. 48, § 4.

Effective dates. - Laws 1991, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-11-5. Board created; appointment; terms; officers.

A. The "board of the New Mexico farm and ranch heritage museum division" is created.

B. The board shall consist of one nonvoting member and eleven voting members who are residents of New Mexico, as follows:

(1) eight members shall be appointed by the governor with the advice and consent of the senate. Five of those eight members shall be farmers or ranchers and three members shall be from the general public. The five farmer and rancher members of the original board shall be appointed from a list of eight names submitted by the board of directors of the New Mexico farm and ranch heritage institute foundation, incorporated, from a list of individuals recommended by farm and ranch organizations. When a vacancy occurs in any of the five farmer and rancher positions two names shall be submitted to the governor by the board for each vacancy from a list of individuals recommended by farm and ranch organizations. No more than four of the eight appointed members shall be from the same political party. In making these

appointments, due consideration shall be given to the distribution of places of residence and to individual interests and backgrounds in farming and ranching. Initially, two members shall be appointed for terms of two years, three members shall be appointed for terms of three years and three members shall be appointed for terms of four years. Thereafter, members of the board shall be appointed for terms of four years or less so that the staggered expiration dates are maintained;

(2) one member from each of the following organizations shall have a permanent seat on the board:

(a) the director of the New Mexico department of agriculture or his designee;

(b) the dean of the college of agriculture and home economics of New Mexico state university or his designee; and

(c) the state cultural affairs officer or his designee; and

(3) the director shall be a nonvoting member of the board.

C. A member of the board shall not be removed during his term except for misconduct, incompetence, neglect of duty or malfeasance in office. No removal shall be made without prior approval of the senate.

D. The chairman of the board and other officers, as deemed necessary by the board, shall be elected by the board annually at its first scheduled meeting after July 1.

History: Laws 1991, ch. 48, § 5.

Effective dates. - Laws 1991, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-11-6. Board; compensation.

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

History: Laws 1991, ch. 48, § 6.

Effective dates. - Laws 1991, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-11-7. Board; powers and duties.

The board shall:

- A. establish museum policy, determine the mission and direct the development of the museum subject to the approval of the state cultural affairs officer;
- B. adopt regulations that may be necessary to carry out the provisions of this section;
- C. exercise trusteeship over the collections of the museum;
- D. accept and hold title to all property for museum use;
- E. approve contracts or agreements that the division may enter into with private or public organizations, institutions, agencies or individuals to carry out the purposes of the Farm and Ranch Heritage Museum Act [18-11-1 to 18-11-9 NMSA 1978];
- F. authorize the director to solicit and receive funds or property of any nature for the development of the museum, its collections and its programs; and
- G. review annually the performance of the director and report its findings to the state cultural affairs officer.

History: Laws 1991, ch. 48, § 7.

Effective dates. - Laws 1991, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-11-8. Director; appointment; qualifications.

- A. Subject to the authority of the state cultural affairs officer, the executive officer of the division and museum shall be the "director" of the division and museum.
- B. The director shall be appointed by the state cultural affairs officer with the approval of the governor from a list of candidates provided by the board.
- C. The director shall be a person with previous administrative experience in a museum or institution of related character and shall have a degree, or the equivalent thereof, in one or more fields of agriculture from an institution of higher learning.

History: Laws 1991, ch. 48, § 8.

Effective dates. - Laws 1991, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

18-11-9. Director; powers and duties.

Consistent with the policies agreed to by the board and the state cultural affairs officer, the director:

- A. shall be responsible for the administration and operation of the museum in accordance with the applicable statutes and regulations;
- B. shall develop exhibits and programs of an educational nature for the benefit of the public and in particular the students of schools of the state;
- C. shall acquire, as authorized by the board, in the name of the division, through donation or other means, both real and personal property, including artifacts, collections and related materials appropriate to a farm and ranch museum and shall direct field and laboratory research as is appropriate to render the collections beneficial to the scientific community and to the public;
- D. may solicit and receive funds or property of any nature, including federal funds and public and private grants, for the development of the museum, its collections or its programs;
- E. may enter into contracts with public or private organizations, individuals or agencies for the performance of services related to the location, preservation, development, study or salvage of historical agricultural sites or materials;
- F. shall cooperate with institutions of higher learning and other agencies and political subdivisions of municipal, state and federal governments to establish, maintain and extend the programs of the museum;
- G. shall employ and discharge personnel necessary for the operation of the museum in accordance with the provisions set forth in the Personnel Act;
- H. shall assume responsibility for new and related facilities as required by the division;
- I. may, as authorized by the board, lend collections or materials to qualified institutions and agencies for purposes of exhibition and study and borrow collections materials from other institutions and agencies for like purpose;
- J. shall impose and collect admission fees and conduct such retail sales as are normal for the operation of the museum;
- K. may publish such journals, books, reports and other materials as are appropriate to the operation of the museum; and
- L. shall perform such other appropriate duties as may be delegated by the board, or as may be provided by law.

History: Laws 1991, ch. 48, § 9.

Effective dates. - Laws 1991, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

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