

CHAPTER 15

Administration of Government

ARTICLE 1

Information and Communications Management

(Repealed by Laws 1986, ch. 81, § 15 and Laws 1993, ch. 197, § 9.)

15-1-1 to 15-1-13. Repealed.

ANNOTATIONS

Repeals. — Pursuant to former 15-1-13 NMSA 1978, the Information and Communication Management Act, consisting of 15-1-1 to 15-1-8 and 15-1-10 to 15-1-13 NMSA 1978, as enacted by Laws 1986, ch. 81, § 2, and Laws 1993, ch. 197, §§ 3 to 9, and as amended by Laws 1989, ch. 191, § 1 and Laws 1993, ch. 197, §§ 1, 2, 12, 13, is repealed effective July 1, 1996. For provisions of the former sections, see 1994 Replacement Pamphlet. For present comparable provisions, see Chapter 15, Article 1C NMSA 1978.

Laws 1994, ch. 66, § 1, compiled as 15-1-7.2 NMSA 1978, relating to DWI process and data standards research and planning, was deleted in 1999 as the section was temporary and had become obsolete.

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

Recompilations. — Laws 1995, ch. 110, § 8 recompiled former 15-1-9 NMSA 1978, relating to public records, as 14-3-15.1 NMSA 1978, effective July 1, 1995.

ARTICLE 1A

Automated Data Processing

(Repealed by Laws 1984, ch. 64, § 26A.)

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 Repealed.

ANNOTATIONS

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

ARTICLE 1B

Information and Communication Management

(Repealed by Laws 1996, ch. 44, § 1.)

15-1B-1 to 15-1B-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1996, ch. 44, § 9, repeals 15-1B-1 to 15-1B-9 NMSA 1978, as enacted by Laws 1996, ch. 44, §§ 1 to 8, 11 NMSA 1978, relating to the Information and Communication Management Act, effective July 1, 1998. For present provisions, see 15-1C-1 NMSA 1978.

ARTICLE 1C

Information Technology Management

15-1C-1. Short title.

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

History: Laws 1999, ch. 16, § 1; 2003, ch. 49, § 1; 2003, ch. 308, § 1.

ANNOTATIONS

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 49, § 1, approved and effective March 19, 2003 and by Laws 2003, ch. 308, § 1, approved and effective April 8, 2003, both substituting "Chapter 15, Article 1C NMSA 1978" for "Sections 1 through 9 of this act". The section is set out as amended by Laws 2003, ch. 308, § 1. See 12-1-8 NMSA 1978.

15-1C-2. Purpose.

The purpose of the Information Technology Management Act [15-1C-1 NMSA 1978] is to:

- A. coordinate policies and procedures for e-government;
- B. assess and inventory current information technology services and resources;
- C. coordinate central and individual executive agency information technology in a manner that ensures compliance with state information architecture and that

ensures cost-effective and efficient information and communication systems and resources are being used by executive agencies;

D. develop a three-year state information technology strategic plan for information and communication management that is updated annually by the information technology commission; and

E. promote data sharing between governmental entities and provide a mechanism for information technology expertise to be shared between the branches of state government and local governments.

History: Laws 1999, ch. 16, § 2; 2003, ch. 49, § 2; 2003, ch. 308, § 2.

ANNOTATIONS

Delayed repeals. — See 15-1C-9 NMSA 1978.

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 49, § 2, approved and effective March 19, 2003, and by Laws 2003, ch. 308, § 2, approved and effective April 8, 2003, both inserting present Subsection A and redesignating the remaining subsections accordingly, substituting "technology" for "systems" in present Subsection B; substituting "technology in a manner that ensures compliance with state information architecture and that ensures" for "systems in a manner that ensures that the most" preceding "cost-effective and" in present Subsection C; and substituting "three-year state information technology" for "five-year state" in present Subsection D. This section is set out as amended by Laws 2003, ch. 308, § 2. See 12-1-8 NMSA 1978.

15-1C-3. Definitions.

As used in the Information Technology Management Act [15-1C-1 NMSA 1978]:

A. "agency plan" means an executive agency's annual information technology plan;

B. "commission" means the information technology commission;

C. "executive agency" means a state agency of the executive branch of government;

D. "e-government" means the provision of access to government information and services via the internet that complies with state information architecture;

E. "information technology" means computer and voice and data communication software and hardware, including imaging systems, terminals and

communications networks and facilities, staff information systems services and professional services contracts for information systems services;

F. "information technology project" means the purchase, replacement, development or modification of a hardware or software system;

G. "office" means the office of the chief information officer;

H. "state information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs; and

I. "state information technology strategic plan" means the information technology planning document for the state that spans a three-year period.

History: Laws 1999, ch. 16, § 3; 2003, ch. 49, § 3; 2003, ch. 308, § 3.

ANNOTATIONS

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 49, § 3, approved and effective March 19, 2003, and by Laws 2003, ch. 308, § 3, approved and effective April 8, 2003, both deleting former Subsection C, defining "development project" and redesignating former Subsection D as present Subsection C, adding present Subsection D and redesignating the subsequent subsections accordingly, and rewriting present Subsections G, H and I. This section is set out as amended by Laws 2003, ch. 308, § 3. See 12-1-8 NMSA 1978.

15-1C-4. Commission created; membership.

A. The "information technology commission" is created. The commission consists of thirteen members as follows:

(1) five members appointed by the governor, three of whom are from agencies whose primary funding is not from internal service funds;

(2) one staff member with telecommunications regulatory experience appointed by the chairman of the public regulation commission;

(3) two members representing education, one appointed by the commission on higher education and one appointed by the president of the state board of education;

(4) two members from the national laboratories;

(5) three members appointed by the governor to represent the public with information technology and management experience, but who are not employees of the

state or a political subdivision of the state and who do not have any financial interest in the state information systems or state contracts. The public members shall serve for staggered three-year terms.

B. Additionally, the following advisory members may serve on the commission:

(1) two members from the judicial information systems council appointed by the chairman of that council;

(2) one staff member from the legislative council service and one staff member from the legislative finance committee, appointed by their respective directors; and

(3) the chief information officer.

C. Members of the commission, except the three public members appointed by the governor, may select designees to represent them and vote on their behalf.

D. The members of the commission who are not supported by public money, or their designees, may receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

E. The commission shall elect a chairman and vice chairman from the active membership of the commission for two-year terms.

F. The commission shall meet at least semiannually and may meet at the call of the chairman or a majority of the members.

History: Laws 1999, ch. 16, § 4; 2003, ch. 49, § 4; 2003, ch. 308, § 4.

ANNOTATIONS

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 49, § 4, approved and effective March 19, 2003, and by Laws 2003, ch. 308, § 4, approved and effective April 8, 2003, both substituting "serve on" for "be appointed at the request of" in the introductory paragraph in Subsection B; substituting present Paragraphs B(2) and B(3) for former Paragraphs B(2) and B(3), adding present Subsection C and redesignating former Subsection C as present Subsection D; deleting former Subsection D, concerning initial year of operation, adding present Subsection E and redesignating former Subsection E as present Subsection F. Additionally, Laws 2003, ch. 49, § 4 would have substituted "fifteen members" for "thirteen members" in the introductory paragraph of Subsection A and added a Paragraph A(6) which would have read, "(6) two members representing local government, one appointed by the New Mexico association of counties and one appointed by the New Mexico municipal

league". This section is set out as amended by Laws 2003, ch. 308, § 4. See 12-1-8 NMSA 1978.

15-1C-5. Commission; powers and duties. (Sunset effective July 1, 2009.)

The commission shall:

- A. adopt and promulgate rules that delineate the state information architecture as a framework for the state information technology strategic plan;
- B. adopt and promulgate other rules necessary for the administration of the Information Technology Management Act [15-1C-1 NMSA 1978] and the conduct of the affairs of the office;
- C. develop and annually review strategies for identifying information technology projects that impact multiple agencies and ensure that those information technology projects are appropriately designed and developed;
- D. provide information technology planning guidelines for agency annual plans;
- E. update state information architecture and the state information technology strategic plan annually, including identifying areas of noncompliance with the state information technology strategic plan;
- F. submit proposed rules to the information technology oversight committee for its review prior to adoption;
- G. review and comment on information technology appropriation requests presented to it by the chief information officer and report to the legislative finance committee and the information technology oversight committee regarding those requests;
- H. establish policies, procedures and rules to ensure that information technology projects satisfy criteria established by the commission and are phased in, that funding is released in phases and that an executive agency's authority to proceed to the next phase of an information technology project is contingent upon successful completion of the prior phase. The policies, procedures and rules shall require the identification of one or more specific deliverables for each phase; and
- I. adopt and promulgate rules to provide for mediation of disputes between an executive agency and the chief information officer pursuant to Paragraph (2) or (4) of Subsection B of Section 15-1C-7 NMSA 1978.

History: Laws 1999, ch. 16, § 5; 2003, ch. 49, § 5; 2003, ch. 308, § 5.

ANNOTATIONS

Sunset provision. — See 15-1C-9 NMSA 1978 for termination of the information technology commission effective July 1, 2009.

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 49, § 5, approved and effective March 19, 2003, and by Laws 2003, ch. 308, § 5, approved and effective April 8, 2003, both rewriting Subsections A and C, inserting "state information architecture and" following "update" near the beginning and inserting "information technology" preceding "strategic plan" twice in Subsection E and adding Subsections G, H and I. This section is amended by Laws 2003, ch. 308, § 5. See 12-1-8 NMSA 1978.

15-1C-6. Office of the chief information officer created; administrative attachment; chief information officer; qualifications; staff.

A. The "office of the chief information officer" is created. The office is administratively attached to the office of the governor.

B. The head of the office is the "chief information officer", who is appointed by the governor with the advice and consent of the senate. The chief information officer shall have a minimum of seven years' experience in the management of a large information technology enterprise. The chief information officer serves at the pleasure of the governor.

C. The chief information officer may hire staff as necessary to carry out the provisions of the Information Technology Management Act [15-1C-1 NMSA 1978]. Staff of the office are subject to the provisions of the Personnel Act [10-9-1 NMSA 1978].

History: Laws 1999, ch. 16, § 6; 2003, ch. 49, § 6; 2003, ch. 308, § 6.

ANNOTATIONS

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 49, § 6, approved and effective March 19, 2003, and by Laws 2003, ch. 308, § 6, approved and effective April 8, 2003, both substituting "office of the chief information officer" for "information technology management office" in the section heading and Subsection A. This section is set out as amended by Laws 2003, ch. 308, § 6. See 12-1-8 NMSA 1978.

15-1C-7. Office; powers and duties.

A. The office may:

(1) obtain information, documents and records that are not confidential by law from an executive agency as needed to carry out the provisions of the Information Technology Management Act [15-1C-1 NMSA 1978];

(2) enter into contracts;

(3) perform reviews of executive agency information technology projects or information technology management processes; and

(4) when requested, offer assistance or expertise to the judiciary, legislature, institutions of higher education, counties, municipalities, public school districts and other political subdivisions of the state.

B. The office shall:

(1) review agency plans and make recommendations to the commission regarding prudent allocation of information technology resources; reduction of data, hardware and software redundancy; and improving system interoperability and data accessibility between agencies;

(2) approve executive agency information technology requests for proposals and contract vendor requests that are subject to the Procurement Code [13-1-28 NMSA 1978], prior to final approval;

(3) recommend procedures and rules to the commission for improved oversight of information technology procurement;

(4) approve executive agency information technology contracts and amendments to those contracts, including emergency procurements, sole source contracts and price agreements, prior to final execution;

(5) verify compliance with state information architecture and the state information technology strategic plan before approving documents referred to in Paragraphs (2) and (4) of this subsection;

(6) monitor executive agency compliance with its agency plan, the state information technology strategic plan and state information architecture and report to the governor, the commission and executive agency management on noncompliance;

(7) review information technology cost recovery mechanisms and information systems rate structures of executive agencies and make recommendations to the commission;

(8) provide technical support to executive agencies in the development of their agency plans;

(9) review appropriation requests related to executive agency information technology requests to ensure compliance with agency plans and the state information technology strategic plan and make written recommendations to the department of finance and administration, the legislative finance committee, the information technology oversight committee and the commission by November 30 of each year;

(10) provide oversight of information technology projects, including ensuring adequate risk management and disaster recovery practices and monitoring compliance with strategies developed by the commission for information technology projects that impact multiple agencies; and

(11) perform any other function assigned by the commission.

History: Laws 1999, ch. 16, § 7; 2003, ch. 49, § 7; 2003, ch. 308, § 7.

ANNOTATIONS

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 49, § 7, approved and effective March 19, 2003, and by Laws 2003, ch. 308, § 7, approved and effective April 8, 2003, both in Paragraph A(3), deleting "performance or other audits or" following "perform" near the beginning, substituting "information technology" for "development" following "reviews of executive agency" near the middle, and inserting "information technology" following "projects or" near the end, rewriting former Paragraph B(2) to create present Paragraphs B(2) through B(4), adding present Paragraph B(5) and redesignating the subsequent paragraphs accordingly, in present Paragraph B(6) inserting "information technology" preceding "strategic plan" near the middle and inserting "governor, the" following "report to" near the end, in present Paragraph B(9), inserting "information technology" preceding "strategic plan" near the middle and inserting "and the commission" following "oversight committee" near the end, and in present Paragraph B(10) substituting "information technology" for "development" following "oversight of" near the beginning, and substituting "information technology projects that impact multiple agencies" for "timely resolution of development technology project problems" following "developed by the commission for" near the end. This section is set out as amended by Laws 2003, ch. 308, § 7. See 12-1-8 NMSA 1978.

15-1C-8. Agency plans; certification; noncompliance; penalties.

A. Agency plans shall:

(1) be consistent with the state information technology strategic plan;

(2) demonstrate that the executive agency has developed information technology objectives consistent with the agency plan, the state information technology strategic plan and the state information architecture;

- (3) show appropriate coordination with other executive agencies to improve customer service and reduce redundant data, hardware and software;
- (4) include information about information technology objectives, inventories, data and expenditures for each fiscal year;
- (5) demonstrate consistency with appropriations and budgets approved by the department of finance and administration; and
- (6) include any other components required by the office or the commission.

B. Prior to making information technology purchases, regardless of the funding source, an executive agency shall certify to the commission, pursuant to rules adopted by the commission, that its proposed information technology purchases are consistent with its agency plan, the state information architecture adopted by the commission and the state information technology strategic plan. The commission or the office may delay or stop a purchase if it believes that the proposed purchase may not meet the requirements of the agency plan, state information architecture or the state information technology strategic plan.

C. A person who makes an information technology purchase or sale and intentionally fails to comply with the certification requirements set forth in Subsection B of this section is in violation of the provisions of the Procurement Code (13-1-28 NMSA 1978, 1984) and is guilty of a misdemeanor. The person shall also be individually liable to the state for the amount of the purchase and civil penalties as provided under the Procurement Code and:

- (1) is guilty of a misdemeanor, as provided in Section 31-19-1 NMSA 1978;
- (2) is subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation; and
- (3) shall be individually liable to the state for the amount of the purchase or sale.

History: Laws 1999, ch. 16, § 8; 2003, ch. 49, § 8; 2003, ch. 308, § 8.

ANNOTATIONS

2003 amendments. — Identical amendments of the section were enacted by Laws 2003, ch. 49, § 8, approved and effective March 19, 2003, and by Laws 2003, ch. 308, § 8, approved and effective April 8, 2003, both adding "noncompliance; penalties" to the section heading, inserting "information technology" preceding "strategic plan" throughout the section, deleting "technology" following "state information" near the end of Paragraph A(2), in Subsection B inserting "regardless of the funding source" following "technology purchases" near the beginning of the first sentence, substituting

"commission, pursuant to rules adopted by the commissions" for "office" following "certify to the" near the middle of the first sentence, and substituting "commission or the office" for "office" following "The" near the beginning of the second sentence, and adding Subsection C. However, as amended by Laws 2003, ch. 49, § 8, the introductory paragraph in Subsection C would have read, "A person who makes an information technology purchase or sale and intentionally fails to comply with the certification requirements set forth in Subsection B of this section is in violation of the provisions of that subsection and". This section is set out as amended by Laws 2003, ch. 308, § 8. See 12-1-8 NMSA 1978.

15-1C-9. Termination of agency life; delayed repeal. (Repealed effective July 1, 2010.)

The information technology commission is terminated July 1, 2009 pursuant to the Sunset Act [12-9-11 NMSA 1978]. The commission shall continue to operate according to the provisions of the Information Technology Management Act [15-1C-1 NMSA 1978] until July 1, 2010.

History: Laws 1999, ch. 16, § 9; 2003, ch. 49, § 10; 2003, ch. 308, § 10.

ANNOTATIONS

2003 amendments. — Identical amendments of the section were enacted by Laws 2003, ch. 49, § 10, approved and effective March 19, 2003, and by Laws 2003, ch. 308, § 10, approved and effective April 8, 2003, both substituting "is terminated July 1, 2009" for "and information technology management office are terminated July 1, 2005" in the first sentence and deleting "and office" following "The commission" and substituting "July 1, 2010" for "July 1, 2006. Effective July 1, 2006, that act is repealed" in the second sentence. This section is set out as amended by Laws 2003, ch. 308, § 10. See 12-1-8 NMSA 1978.

15-1C-10. Information technology oversight committee created; appointment.

A. The "information technology oversight committee" is created as a joint interim legislative committee. The committee shall function from the date of its appointment until December 1 prior to the first session of the forty-seventh legislature unless terminated earlier by the New Mexico legislative council.

B. The committee shall be composed of eight members. The New Mexico legislative council shall appoint four members from the house of representatives and four members from the senate. At the time of making the appointments, the legislative council shall designate the chairman and the vice chairman.

C. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the committee as prevails in each house; however, in no event shall either party have less than one member from each house on the committee. At the request of the committee chairman, members may be removed from the committee by the legislative council for nonattendance according to council policy. Vacancies on the committee, however caused, may be filled by the legislative council or the council may reduce the size of the committee by not making replacement appointments and, in such case, need not readjust party representation.

D. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action.

E. Staff for the committee shall be furnished by the legislative council service. The legislative council service may request the assistance of the legislative finance committee in staffing the committee.

History: Laws 1999, ch. 16, § 10.

ANNOTATIONS

Compiler's notes. — "December 1 prior to the first session of the forty-seventh legislature," referred to in Subsection A, is December 1, 2004.

15-1C-11. Oversight committee duties.

A. The information technology oversight committee shall hold one organizational meeting each year to develop a work plan and budget for the ensuing interim. The work plan and budget shall be submitted to the New Mexico legislative council for approval.

B. The committee shall:

(1) monitor the work of the information technology commission and the office of the chief information officer, including reviewing the commission's rules setting out the policies, standards, procedures and guidelines for information architecture and development projects and the annual update of the state information technology strategic plan;

(2) oversee the implementation of the Information Technology Management Act [Chapter 15, Article 1C NMSA 1978], review the work of the judicial information systems council and the judicial information division and oversee any other state-funded systems;

(3) meet on a regular basis to receive and evaluate periodic reports from the information technology commission and office of the chief information officer; and

- (4) perform such other related duties as assigned by the legislative council.

C. The committee shall make a report of its findings and recommendations for the consideration of each session of the legislature. The report and any suggested legislation shall be made available to the legislative council by December 31 preceding that session.

History: Laws 1999, ch. 16, § 11; 2003, ch. 49, § 11; 2003, ch. 308, § 11.

ANNOTATIONS

Cross references. — For termination of information technology oversight committee, see 15-1C-10 NMSA 1978.

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 49, § 11, approved and effective March 19, 2003, and by Laws 2003, ch. 308, § 11, approved and effective April 8, 2003, both substituting "office of the chief information officer" for "information technology management office" in Subsections B(1) and (3), inserting "information technology" near the end of Subsection B(1), and inserting "the judicial information" preceding "division and oversee" in Subsection B(2). This section is set out as amended by Laws 2003, ch. 308, § 11. See 12-1-8 NMSA 1978.

15-1C-12. Information technology plans and projects; commission on higher education [higher education department]; state department of public education; judicial branch; legislative branch.

A. The commission on higher education [higher education department], the state department of public education, the judicial branch of government and the legislative branch of government are encouraged to submit their annual information technology plans to the office, the legislative finance committee and the information technology oversight committee for review and comment by those entities.

B. The commission on higher education [higher education department], the state department of public education, the judicial branch of government and the legislative branch of government are encouraged to submit periodic status reports regarding information technology projects to the office and the legislative finance committee for review and comment.

C. The commission on higher education [higher education department], the state department of public education, the judicial branch of government and the legislative branch of government are encouraged, but not required, to certify to the commission that their information technology projects are consistent with their information technology plans.

History: Laws 2003, ch. 49, § 9 and by Laws 2003, ch. 308, § 9.

ANNOTATIONS

Cross references. — For information technology oversight committee, see 15-1C-11 NMSA 1978.

Bracketed material. — The bracketed reference to the higher education department was inserted by the compiler. The commission on higher education was abolished by Laws 2005, ch. 289, § 29. Laws 2005, ch. 289, § 29 has been compiled as Section 21-1-12.13 NMSA 1978. That section provides that all references in law to the commission on higher education shall be construed to be references to the higher education department. The bracketed material was not enacted by the legislature and is not part of the law.

Emergency clauses. — Laws 2003, ch. 308, § 12 makes the act effective immediately. Approved April 8, 2003.

Duplicate laws. — Laws 2003, ch. 49, § 9, approved and effective March 19, 2003 and Laws 2003, ch. 308, § 9, approved and effective April 8, 2003, enact identical versions of this section. This section is set out as enacted by Laws 2003, ch. 308, § 9. See 12-1-8 NMSA 1978.

ARTICLE 2

Communications Division

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

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

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

- A. the lease conforms with competitive procurement requirements of the Procurement Code [13-1-28 NMSA 1978];
- B. the lease is for an equal value exchange of money or property;
- C. the secretary of general services certifies that the excess capacity will be available for at least the duration of the lease;
- D. if the lease exceeds ten years, the lease is first approved by the state board of finance;
- E. the radio communications bureau has submitted to the legislative finance committee a detailed plan for the use of excess capacity being leased and an assessment of how the lease will affect public sector uses; and
- F. income from the leases shall be deposited to the credit of the radio communications bureau and used to carry out the duties of the bureau.

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

15-2-3. Service charge.

A. The radio communications bureau of the communications division of the general services department shall charge a fee to the state or any officer, agency, department,

division, board or commission of the state for any services rendered in the exercise of the radio communications bureau's supervisory control.

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

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

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

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

15-2-4. Exclusion from jurisdiction.

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

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

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

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

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

15-2-5. Property transfer.

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

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

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

ANNOTATIONS

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

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

The radio equipment purchased in accordance with Laws 1972, Chapter 74 by the property control division of the department of finance and administration is transferred to the radio communications bureau of the general services department. The radio communications bureau has the custody and control of the transferred radio equipment.

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

ANNOTATIONS

Compiler's notes. — The reference to Laws 1972, Chapter 74 in this section appears to refer to Laws 1972, ch. 74, § 5 which, inter alia, appropriated \$1,562,000 for the completion of the state microwave communication system by the radio communications department.

ARTICLE 3

Miscellaneous State Buildings Provisions

15-3-1. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch. 319, § 3 recompiled 15-3-1 NMSA 1978, relating to the creation of the property control division, as 15-3B-3 NMSA 1978, effective July 1, 2001.

15-3-2. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch. 319, § 4 recompiled 15-3-2 NMSA 1978, relating to the duties of the division and federal funds, as 15-3B-4 NMSA 1978, effective July 1, 2001.

Compiler's notes. — Laws 2001, ch. 293, § 1 would have amended 15-3-2 NMSA 1978; however, a later act, Laws 2001, ch. 319, § 4 amended and recompiled the

section as 15-3B-4 NMSA 1978. See 12-1-8 NMSA 1978. Also see notes following 15-3B-4 NMSA 1978 for text of Laws 2001, ch. 293, § 1.

15-3-3. Repealed.

ANNOTATIONS

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

15-3-4. Purpose of act.

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

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

15-3-5. Penitentiary property transferred.

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

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

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

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

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

15-3-6.1. State penitentiary; lease for motion pictures.

The corrections department, the property control division of the general services department and the New Mexico film division of the economic development department

shall enter into a joint powers agreement to make the old state penitentiary at Santa Fe available for use by the motion picture industry. The property and structures that fall within the existing security perimeter fence at the old state penitentiary at Santa Fe and any building not used by the corrections department that is within three hundred yards of the outside of the security perimeter fence of the old state penitentiary at Santa Fe shall be made available for lease at reasonable market rates to the motion picture industry for economic development.

History: Laws 2001, ch. 195, § 1.

ANNOTATIONS

Cross references. — For the Joint Powers Agreements Act, see 11-1-1 NMSA 1978.

Effective dates. — Laws 2001, ch. 195 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

15-3-7 to 15-3-10. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 319, § 23 repeals 15-3-7, 15-3-8, 15-3-9 and 15-3-10 (being Laws 1975, ch. 10, §§ 1 and 2 and Laws 1968, ch. 43, §§ 3 and 4, as amended) regarding prohibition of buildings not meeting standards for the handicapped and purchase and acquisition of land, effective July 1, 2001. For provisions of former sections, see 1999 Replacement Pamphlet.

15-3-11 to 15-3-12. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch. 319, § 6 recompiled 15-3-11 NMSA 1978, relating to building, remodeling and leasing, as 15-3B-6 NMSA 1978, effective July 1, 2001.

Laws 2001, ch. 319, § 18 recompiled 15-3-11.1 NMSA 1978, relating to the public buildings repair fund, as 15-3B-18 NMSA 1978, effective July 1, 2001.

Laws 2001, ch. 319, § 19 recompiled 15-3-11.2 NMSA 1978, relating to building use fees, as 15-3B-19 NMSA 1978, effective July 1, 2001.

Laws 2001, ch. 319, § 12 recompiled 15-3-12 NMSA 1978, relating to feasibility studies of energy sources, as 15-3B-12 NMSA 1978, effective July 1, 2001.

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

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

History: Laws 1995, ch. 73, § 1.

15-3-13. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch. 319, § 5 recompiled 15-3-13 NMSA 1978, relating to duties of the staff architect, as 15-3B-5 NMSA 1978, effective July 1, 2001.

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

ANNOTATIONS

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

15-3-13.8. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 319, § 23 repeals 15-3-13.8 NMSA 1978, as enacted by Laws 1984, ch. 64 § 19, regarding the architect rate schedule, effective July 1, 2001. For provisions of the former section, see 1999 Replacement Pamphlet.

15-3-14, 15-3-15. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch. 319, §§ 7 and 14 recompiled 15-3-14 and 15-3-15 NMSA 1978, as 15-3B-7 and 15-3B-14 NMSA 1978, respectively, effective July 1, 2001.

15-3-16. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 319, § 23 repeals 15-3-16 NMSA 1978, as enacted by Laws 1968, ch. 43 § 10, regarding negotiating grants and loans, effective July 1, 2001. For provisions of the former section, see 1999 Replacement Pamphlet.

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

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

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

15-3-18. Repealed.

ANNOTATIONS

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

15-3-19. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch. 319, § 13 recompiled 15-3-19 NMSA 1978, relating to parking facilities, as 15-3B-13 NMSA 1978, effective July 1, 2001.

15-3-20, 15-3-21. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 319, § 23 repeals 15-3-20 and 15-3-21 NMSA 1978 (being Laws 1977, ch. 360, § 2 and Laws 1972, ch. 74, § 2) regarding approval by staff architect and containing a short title, effective July 1, 2001. For provisions of former sections, see 1999 Replacement Pamphlet.

15-3-22, 15-3-23. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch 319, §§ 2 and 16 recompiled 15-3-22 and 15-3-23 NMSA 1978, as 15-3B-2 and 15-3B-16 NMSA 1978, effective July 1, 2001.

15-3-23.1. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 319, § 23 repeals 15-3-23.1 NMSA 1978, as enacted by Laws 1980, ch. 11 § 1, regarding the capital outlay project reserve fund, effective July 1, 2001. For provisions of the former section, see 1999 Replacement Pamphlet.

15-3-23.2. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch. 319, § 11 recompiled 15-3-23.2 NMSA 1978, relating to a contingency limitation, as 15-3B-11 NMSA 1978, effective July 1, 2001.

15-3-23.3. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 319, § 23 repeals 15-3-23.3 NMSA 1978, as enacted by Laws 1980, ch. 10, § 1, regarding a fee schedule for state police facilities, effective July 1, 2001. For provisions of the former section, see 1999 Replacement Pamphlet.

15-3-24. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch. 319, § 17 recompiled 15-3-24 NMSA 1978, relating to the capitol buildings repair fund, as 15-3B-17 NMSA 1978, effective July 1, 2001.

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

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

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

History: Laws 1989, ch. 315, § 1.

ANNOTATIONS

Appropriations. — Laws 2002, ch. 110, § 39, effective March 6, 2002, appropriates \$72,441,684 from the general fund to the capital projects fund for expenditure in fiscal years 2002 through 2007, with the reversion of any unexpended or unencumbered balance at the end of fiscal year 2007 to the capital projects fund.

Laws 2004, ch. 126, § 19, effective March 10, 2004, authorizes the issuance of \$127,530,943 severance bonds for capital projects fund projects. See Laws 2004, ch. 126, §§ 20 to 37, 38 to 41, 43, 44, 123 to 139 and 190 for appropriations from the capital projects fund for various projects.

Laws 2005, ch. 347, § 22, effective April 8, 2005, appropriates various amounts to the capital program fund. Laws 2005, ch. 347, § 54 appropriates funds from the general fund to the capital program fund.

Laws 2005, ch. 347, § 64, effective April 8, 2005, appropriates \$17,000,000 in severance tax bond proceeds to the capital program fund for a state scientific laboratory in Bernalillo county.

Laws 2005, ch. 347, §§ 130, 191 and 283, effective April 8, 2005, change the purpose and reauthorize severance tax bond proceeds and general fund appropriations to the capital program fund.

15-3-24.2. Recompiled.

ANNOTATIONS

Recompilations. — Laws 2001, ch. 319, § 20 recompiled 15-3-24.2 NMSA 1978, relating to the property control reserve fund, as 15-3B-20 NMSA 1978, effective July 1, 2001.

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

ANNOTATIONS

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

15-3-31 to 15-3-33. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 319, § 23 repeals 15-3-31, 15-3-32 and 15-3-33 NMSA 1978 (being Laws 1968, ch. 43, § 12, Laws 1971, ch. 285, § 1 and Laws 1980, ch. 10, § 1) regarding the aircraft control center, a short title and a fee schedule, effective July 1, 2001. For provisions of former sections, see 1999 Replacement Pamphlet.

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

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

History: Laws 1991, ch. 39, § 1; 2001, ch. 319, § 21; 2004, ch. 19, § 23.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "New Mexico veterans' service commission" for "general service department" and made a stylistic change.

The 2004 amendment, effective May 19, 2004, amended this section to change "veterans' service commission" to "veterans' services department".

ARTICLE 3A

Governor'S Residence Advisory Commission

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

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

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

- (1) the governor or his designee;
- (2) the secretary of general services or his designee; and

(3) three members appointed by the governor from a list of names submitted by the governor's mansion foundation, a nonprofit, charitable corporation of this state. The chairman of the commission shall be elected annually from among the commission membership.

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

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

History: Laws 1989, ch. 363, § 1.

15-3A-2. Duties and powers.

A. The governor's residence advisory commission shall:

(1) plan, assemble, dispose and acquire furnishings, art, landscaping materials and plants and other decorations for the public areas of the official residence of the governor;

(2) monitor and report on the status of maintenance of the governor's residence and recommend to the general services department and to the legislature actions necessary to repair, maintain and renovate the residence;

(3) conduct a detailed inventory at the beginning of each governor's term and annually prepare and submit to the legislature, the governor and the general services department a written inventory of and a statement on the condition of these public furnishings, art decorations and other items of the residence, as well as a written statement on the condition of the residence as a whole; and

(4) develop statewide interest in the residence and effect such measures as will enhance the governor's ability to provide appropriate hospitality to the visitors of the residence.

B. The commission may:

(1) utilize the assistance of individuals, the general services department, other state agencies and nonprofit charitable corporations in carrying out its duties;

(2) accept on behalf of the state from any private or other public sources, money, gifts, donations and bequests for use by the commission in carrying out its duties; and

(3) enter into public promotions of its endeavors and publish such materials as it deems appropriate to promote the purposes of the commission.

History: Laws 1989, ch. 363, § 2.

15-3A-3. Trust fund created.

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

History: Laws 1989, ch. 363, § 3.

ARTICLE 3B Property Control

15-3B-1. Short title.

Chapter 15, Article 3B NMSA 1978 may be cited as the "Property Control Act".

History: 1978 Comp., § 15-3B-1, enacted by Laws 2001, ch. 319, § 1.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 319 § 24 makes the act effective July 1, 2001.

15-3B-2. Definitions.

As used in the Property Control Act 15-3B-1 NMSA 1978]:

- A. "capital outlay project" means the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including land, buildings, machinery, furniture and equipment. A "capital outlay project" includes all proposed expenditures related to the entire undertaking;
- B. "department" means the general services department;
- C. "director" means the director of the division;
- D. "division" means the property control division of the department;
- E. "jurisdiction" means all state buildings and land except those under the control and management of the state armory board, the office of cultural affairs, the state fair commission, the department of game and fish, the department of transportation, the commissioner of public lands, the state parks division of the energy,

minerals and natural resources department, the state institutions of higher learning, the New Mexico school for the deaf, the New Mexico school for the visually handicapped, the judicial branch, the legislative branch, property acquired by the economic development department pursuant to the Statewide Economic Development Finance Act [6-25-1 NMSA 1978] and property acquired by the public school facilities authority pursuant to the Public School Capital Outlay Act [22-24-1 NMSA 1978]; and

F. "secretary" means the secretary of general services.

History: 1953 Comp., § 6-2-43, enacted by Laws 1972, ch. 74, § 2; 1978 Comp., § 15-3-22, recompiled and amended as 1978 Comp., § 15-3B-2 by Laws 2001, ch. 319, § 2; 2003, ch. 349, § 24; 2004, ch. 125, § 4.

ANNOTATIONS

The 2001 amendment, effective July, 1 2001, recompiled former 15-3-22 NMSA 1978 as this section; substituted "Property Control" for "Capital Program" in the preliminary language; in Subsection A, deleted "but not limited to" following "building", deleted "but excluding projects or programs for the construction, improvement or maintenance of highways and bridges under the supervision of the state highway commission" following "and equipment"; and added Subsections B, C, D, E and F.

The 2003 amendment, effective June 20, 2003, in Subsection E, added "and property acquired by the economic development department pursuant to the Statewide Economic Development Finance Act" at the end.

The 2004 amendment, effective May 19, 2004, amended Subsection E to change the name of the state highway and transportation department to the department of transportation and added at the end of the subsection "property acquired by the public school facilities authority pursuant to the Public School Capital Outlay Act; and".

15-3B-3. Property control division; creation; director.

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

History: 1953 Comp., § 6-2-25, enacted by Laws 1968, ch. 43, § 1; 1977, ch. 247, § 68; 1983, ch. 301, § 45; 1978 Comp., § 15-3-1, recompiled and amended as 1978 Comp., § 15-3B-3 by Laws 2001, ch. 319, § 3.

ANNOTATIONS

The 2001 amendment, effective July, 1, 2001, recompiled former 15-3-1 NMSA 1978, as this section; deleted "general services" preceding "department", deleted "of the division" following "director" and deleted "of general services" following "secretary".

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

Binding on judiciary. — The provisions of Laws 1968, ch. 43 (compiled as 15-3-1 (now 15-3B-3 NMSA 1978), 15-3-9 (repealed) to 15-3-11 (now 15-3B-6 NMSA 1978), 15-3-14 (now 15-3B-7 NMSA 1978) to 15-3-16 (repealed), and 15-3-31 (repealed) NMSA 1978) and the rules promulgated thereunder, are binding on the judicial branch unless the supreme court determines that such compliance would unreasonably impede or impair the functions of the judiciary. 1967-68 Op. Att'y Gen. No. 68-64.

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

15-3B-4. Division; duties; federal funds.

A. The division shall:

(1) assign the use or occupancy of state buildings and lands under its jurisdiction to the state agency or political subdivision that may make the best and highest beneficial use of the property;

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

(3) establish space standards for buildings under its jurisdiction;

(4) have custody of all maps, deeds, plats, plans, specifications, contracts, books and other papers connected with state buildings under its jurisdiction;

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

(6) control the lease or rental of space in private buildings by state executive agencies other than the state land office, including inspection for code compliance and life and safety issues. The director may act as lessee on behalf of a state agency if the division determines it is in the best interest of the state;

(7) make rules for the conduct of all persons in and about buildings and grounds under its jurisdiction necessary and proper for the safety, care and preservation of the buildings and grounds and for the safety and convenience of the persons while they are in and about the buildings and grounds;

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

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

(10) have the power to enter into contracts for the improvement, alteration and reconstruction of the state buildings under its jurisdiction, including the governor's residence, and for the design and construction of additional buildings, to the extent funds are available;

(11) develop long-range programs for the continuing preservation and repair of buildings and improvements and for beautification of grounds and premises under its jurisdiction;

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

(13) ensure that on-site inspections of capital projects are conducted to verify that construction specifications are being met; and

(14) receive gifts, grants and donations from the federal government or other sources for the public buildings repair fund.

B. The provisions of this section are subject to federal law or rules if the buildings or property was purchased with federal funds.

C. The division and a state agency or institution that controls property exempt from the jurisdiction of the division may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] giving the division the power to exercise control of the property as specified in the agreement.

History: 1953 Comp., § 6-2-26, enacted by Laws 1968, ch. 43, § 2; 1971, ch. 285, § 2; 1973, ch. 209, § 1; 1977, ch. 247, § 69; 1977, ch. 385, § 14; 1978, ch. 166, § 14; 1980, ch. 151, § 16; 1978 Comp., § 15-3-2, recompiled and amended as 1978 Comp., § 15-3B-4 by Laws 2001, ch. 319, § 4.

ANNOTATIONS

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

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

2001 amendments. — Laws 2001, ch. 319, § 4, effective July 1, 2001, re compiling former 15-3-2 NMSA 1978 as this section; substituting "The division shall" for "The director of the property control division shall" in the introductory language of Subsection A; deleting the former first sentence regarding the exceptions to the control of the director in Paragraph A(1), substituting "its jurisdiction" for "his control" in Paragraphs A(1), (2), (5), (8), and (10); inserting Paragraph A(3) and redesignating the remaining paragraphs accordingly; substituting "under its jurisdiction" for "over which he exercises control" in Paragraph A(4); deleting former Paragraphs A(6) and (7), relating to control of buildings within the city of Santa Fe, and redesignating the remaining paragraphs accordingly; adding the language beginning "including inspection for code compliance" to the end of present Paragraph A(6); inserting "under its jurisdiction" in Paragraph A(7); substituting "governor's residence" for "executive mansion" in Paragraph A(10); adding Paragraphs A(11) to (14) and Subsection C, was approved April 5, 2001. However, this section was also amended by Laws 2001, ch. 293, § 1, effective June 15, 2001, which would have amended the section to read as follows:

"15-3-2. Director of division; duties; federal funds. A. The director of the property control division of the general services department shall:

"(1) have control over all state buildings and lands except those under the control and management of the state highway and transportation department [department of transportation]; the state fair commission; state institutions of higher learning; regional education cooperatives; the New Mexico school for the deaf; the New Mexico school for the visually handicapped; the supreme court; the commissioner of public lands; the state armory board, in accordance with Section 20-8-3 NMSA 1978; the building in which the legislature is housed, the adjacent utilities plant and the surrounding grounds; the museum of New Mexico; and the state library building and adjacent grounds. The director shall assign the use or occupancy of state buildings and lands under his control to the state agency or political subdivision that may make the best and highest beneficial use of the property;

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

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

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

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

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

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

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

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

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

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

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

"C. If the parties determine that it is in the best interest of the state, the director of the property control division of the general services department and the governing body in control of buildings or land otherwise exempted from the director's control pursuant to Paragraph (1) of Subsection A of this section may enter into an agreement pursuant to the Joint Powers Agreements Act to exercise such control and jurisdiction over the buildings or land as is specified in the agreement."

Because Laws 2001, ch. 293 was approved earlier on April 5, 2001, this section is set out as amended by Laws 2001, ch. 319, § 4. See 12-1-8 NMSA 1978.

15-3B-5. Position of staff architect created; duties and responsibilities.

A. The position of "staff architect" is created within the division. The staff architect shall be a legal resident of and an architect registered in the state for at least two years. The staff architect shall assist the director in carrying out the provisions and requirements of the Property Control Act [Chapter 15, Article 3B NMSA 1978].

B. The staff architect shall review plans and specifications developed by architects or engineers contracted for the construction of new buildings or for the remodeling or renovation of existing state buildings under the jurisdiction of the division.

C. The staff architect may develop plans and specifications for state projects whose expenditures do not exceed five hundred thousand dollars (\$500,000) and that consist of repair, replacement or remodeling of nonstructural elements.

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

History: 1953 Comp., § 6-2-30, enacted by Laws 1968, ch. 43, § 6; 1975, ch. 177, § 1; 1977, ch. 247, § 72; 1977, ch. 360, § 3; 1978, ch. 69, § 1; 1981, ch. 277, § 1; 1983, ch. 301, § 51; 1978 Comp., § 15-3-13, recompiled and amended as 1978 Comp., § 15-3B-5 by Laws 2001, ch. 319, § 5.

ANNOTATIONS

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

For professional licensing of architects, see 61-15-1 NSMA 1978.

The 2001 amendment, effective July 1, 2001, recompiled former 15-3-13 NMSA 1978 as this section; deleted former Paragraphs A(1) and (2), concerning long-range programs and need for additional buildings; redesignated former Paragraph A (3) as Subsection B; deleted last part of former Paragraph A(3), relating to building codes, parking, and safety; redesignated former Paragraph A(4) as Subsection C; inserted "The staff architect may" to the beginning of Subsection C; deleted "of an existing structure or project" from the end of Subsection C; deleted former Paragraphs A(5) and (6), relating to inspections of buildings under construction and inspection of leased facilities; and made stylistic changes throughout the section.

15-3B-6. Building and remodeling.

The division may do all acts necessary and proper for the redesigning, major renovation and remodeling of present state buildings and the erection of additional state buildings when needed. The division may let contracts for these purposes in accordance with the provisions of the Procurement Code [13-1-28 NMSA 1978]. All such remodeling, major renovation and construction must first be approved by the state board of finance. This section applies only to state buildings under the division's jurisdiction.

History: 1953 Comp., § 6-2-29, enacted by Laws 1968, ch. 43, § 5; 1971, ch. 285, § 6; 1977, ch. 247, § 71; 1978, ch. 209, § 1; 1983, ch. 301, § 49; 1989, ch. 324, § 9; 1996, ch. 46, § 3; 1978 Comp., § 15-3-11, recompiled and amended as 1978 Comp., § 15-3B-6 by Laws 2001, ch. 319, § 6.

ANNOTATIONS

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

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

The 2001 amendment, effective July 1, 2001, recompiled former 15-3-11 NMSA 1978 as this section; deleted the subsection designations; deleted "director of the property control" twice; with regard to contracts, substituted the "provisions of the Procurement Code" for "made in according to the established state purchasing procedures"; deleted the former last sentence of Subsection A concerning redesign, renovation or remodeling; deleted former Subsection B in its entirety; added the language beginning "section applies only to" at the end of the section; and made stylistic changes.

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

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

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

15-3B-7. Lease of land or buildings for private use.

A. The division may lease any land or building under its jurisdiction to private use until the land or building is needed for public use. All income from the leases shall be deposited in the public buildings repair fund. All leases shall be made in accordance with Sections 13-6-2.1 and 13-6-3 NMSA 1978. The division shall establish building use

fees by rule for property under its jurisdiction; provided that this provision does not apply to residences furnished to state officials or employees for the legitimate convenience of the employer and that are not taxable benefits for general income tax purposes. All state departments and institutions whose property is under the jurisdiction of the division shall remit building use fees collected from lessees to the division for deposit into the public buildings repair fund. Departments and institutions may charge separate utility costs for property where the property is not separately metered, and those costs may be deposited to the credit of the department's or institution's operating budget.

B. The division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code [13-1-28 NMSA 1978] for the purchase of tangible personal property, may enter into long-term leases of vacant lands where the lessor contracts with the state to construct and complete buildings, subject to the approval of the staff architect, as a condition precedent to the start of the lease term. The buildings shall comply with applicable state and federal laws and codes. A lease shall not be executed pursuant to this subsection until the staff architect has filed with the legislative finance committee a detailed statement of his evaluation and approval of the proposed building.

History: 1953 Comp., § 6-2-32, enacted by Laws 1968, ch. 43, § 8; 1971, ch. 285, § 7; 1977, ch. 247, § 73; 1978, ch. 209, § 2; 1996, ch. 46, § 4; 1978 Comp., § 15-3-14, recompiled and amended as 1978 Comp., § 15-3B-7 by Laws 2001, ch. 319, § 7.

ANNOTATIONS

Cross references. — For the public buildings repair fund, see 15-3B-18 NMSA 1978.

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

The 2001 amendment, effective July 1, 2001, recompiled former 15-3-14 NMSA 1978, as this section; inserted the Subsection A designation to the language of the former section; substituted "division" for "director of the property control division of the general services department"; substituted "by rule" for "at the current fair-market value" in the fourth sentence; added current Subsection B; and made stylistic changes.

15-3B-7.1. State buildings; use in motion pictures.

The property control division of the general services department shall provide for the free access to state buildings by the motion picture industry.

History: Laws 2001, ch. 196, § 1.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 196 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

15-3B-8. Acquisition of land.

The division may acquire land through purchase or through gift or donation; provided, however, that acquisitions shall first be approved by the state board of finance. The title of acquired land shall vest in the state.

History: 1978 Comp., § 15-3B-8, enacted by Laws 2001, ch. 319, § 8.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 319, § 24 makes the act effective July 1, 2001.

15-3B-9. Lease of New Mexico finance authority property; maintenance and repair.

The division may enter into long-term leases, not to exceed ninety-nine years, on property owned by the New Mexico finance authority for state use. Lease of the property owned by the New Mexico finance authority may require the department to operate, maintain and make renovations and repairs to the property.

History: 1978 Comp., § 15-3B-9, enacted by Laws 2001, ch. 319, § 9.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 319, § 24 makes the act effective July 1, 2001.

15-3B-10. Capital projects; administrative fees.

The cost of a capital project shall include an administrative fee to cover the cost of administering the capital project. The fee shall be one percent of the estimated construction cost of a capital project located in Santa Fe county and one and one-half percent for a capital project located outside Santa Fe county.

History: 1978 Comp., § 15-3B-10, enacted by Laws 2001, ch. 319, § 10.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 319, § 24 makes the act effective July 1, 2001.

15-3B-11. Capital projects; contingency limitation.

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

History: 1978 Comp., § 15-3-23.2, enacted by Laws 1984 (1st S.S.), ch. 10, § 10; recompiled and amended as 1978 Comp., § 15-3B-11 by Laws 2001, ch. 319, § 11.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, recompiled former 15-3-23.2 NMSA 1978 as this section; and deleted "and cost engineering fees" from the end of the section.

15-3B-12. Feasibility study of energy sources.

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

History: 1953 Comp., § 6-2-29.1, enacted by Laws 1975, ch. 200, § 1; 1983, ch. 301, § 50; 1978 Comp., § 15-3-12, recompiled and amended as 1978 Comp., § 15-3B-12 by Laws 2001, ch. 319, § 12.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, recompiled former 15-3-12 NMSA 1978 as this section; substituted "the division may" for "the property control division of the general services department shall" in the first sentence; and made stylistic changes.

15-3B-13. Parking facilities required for state buildings; standards.

A. A state building shall not be constructed or enlarged to a major degree without providing adequate parking facilities, as approved by the staff architect, for the use of the public officers and employees employed in the building and for the use of those members of the public reasonably expected to enter the building on public business.

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

History: 1953 Comp., § 6-6-18, enacted by Laws 1977, ch. 360, § 1; 1978 Comp., § 15-3-19, recompiled and amended as 1978 Comp., § 15-3B-13 by Laws 2001, ch. 319, § 13.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, recompiled the former 15-3-19 NMSA 1978 as this section; inserted "as approved by the staff architect" in Subsection A; deleted former Subsections B and C, relating to parking needs of employees and visitors and the relationship of floor space to parking; and redesignated former Subsection D as present Subsection B.

15-3B-14. Concessions.

A. The division may grant concession contracts in state buildings under its jurisdiction, except concession contracts authorized to be entered into by the state parks division of the energy, minerals and natural resources department pursuant to Section 16-2-9 NMSA 1978 or the commission for the blind pursuant to Section 22-14-24 NMSA 1978, at such fees as the division prescribes.

B. Concessions shall be granted only under written contract, the faithful performance of which shall be secured by a bond prescribed by the division. All income from such concessions shall be deposited in the public buildings repair fund.

History: 1953 Comp., § 6-2-33, enacted by Laws 1968, ch. 43, § 9; 1971, ch. 285, § 8; 1977, ch. 247, § 74; 1978 Comp., § 15-3-15, recompiled and amended as 1978 Comp., § 15-3B-14 by Laws 2001, ch. 319, § 14.

ANNOTATIONS

Cross references. — For the public buildings repair fund, see 15-3B-18 NMSA 1978.

The 2001 amendment, effective July 1, 2001, recompiled former 15-3-15 as this section; in Subsection A, substituted "division" for "director of the property control division", substituted "parks division of the energy, minerals and natural resources department" for "park and recreation commission"; substituted "16-2-9 NMSA 1978 or the commission for the blind pursuant to Section 22-14-24 NMSA 1978" for "4-9-9 NMSA 1953"; in Subsection B, substituted "public buildings repair fund" for "state capitol improvement fund"; and made stylistic changes.

15-3B-15. Maintenance charges; credited to agency operating budget.

A state agency that occupies a facility under the jurisdiction of the division and that acts as the representative of the division pursuant to a use agreement between the division and the state agency may charge maintenance and utility costs to other entities that use the facility. The charges shall be deposited to the credit of the state agency to cover maintenance and utility expenses.

History: 1978 Comp., § 15-3B-15, enacted by Laws 2001, ch. 319, § 15.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 319, § 24 makes the act effective July 1, 2001.

15-3B-16. Capital program; fund created; allocation and expenditure for capital outlay.

A. The "capital program fund" is created in the state treasury. To this fund shall be credited all appropriations for capital outlay projects under the jurisdiction of the division.

B. The capital program fund shall be allocated by the division for capital outlay projects specified by the legislature in accordance with the provisions of the Property Control Act [Chapter 15, Article 3B NMSA 1978].

History: 1953 Comp., § 6-2-44, enacted by Laws 1972, ch. 74, § 3; 1983, ch. 301, § 53; 1978 Comp., § 15-3-23, recompiled and amended as 1978 Comp., § 15-3B-16 by Laws 2001, ch. 319, § 16.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, recompiled the former 15-3-23 NMSA 1978 as this section; inserted "in the state treasury" to the end of the first sentence; substituted "the Property Control Act" for "Sections 15-3-1, 15-3-2, 15-3-7, to 15-3-16, 15-3-25 and 15-3-31 NMSA 1978" and made stylistic changes.

Appropriations. — Laws 2002, ch. 110, § 49, effective March 6, 2002, appropriates \$2,800,000 from the workers' compensation administration fund to the capital program fund for expenditure in fiscal years 2002 through 2007 to construct or remodel office buildings in Las Cruces and Farmington, with any unexpended or unencumbered balance reverting to the workers' compensation administration fund at the end of fiscal year 2007.

Laws 2006, ch. 111, § 64, effective March 8, 2006, appropriates from the general fund to the capital program fund for expenditure in fiscal years 2006 through 2010, specific amounts for state buildings throughout the state.

15-3B-17. Capitol buildings repair fund; creation; expenditures.

A. The "capitol buildings repair fund" is created in the state treasury. To this fund shall be transferred, after payments required by Laws 1997, Chapter 178, Section 1 to the New Mexico finance authority, all income, including distributions from the land grant permanent fund derived from lands granted to the state by the United States congress for legislative, executive and judicial public buildings. Two percent of this fund shall be transferred annually to a "state capitol maintenance fund", hereby created, as a special perpetual fund for the upkeep and maintenance of the capitol renovation and capitol grounds.

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

C. In the event a capital outlay project exceeds authorized project cost by five percent or less, the state board of finance may authorize the division to supplement the authorized cost by an allocation not to exceed five percent of the authorized cost from the capitol buildings repair fund to the extent of the unencumbered and unexpended balance of the fund.

History: 1953 Comp., § 6-2-45, enacted by Laws 1972, ch. 74, § 4; 1979, ch. 177, § 1; 1992, ch. 92, § 1; 1997, ch. 178, § 4; 1978 Comp., § 15-3-24, recompiled and amended as 1978 Comp., § 15-3B-17 by Laws 2001, ch. 319, § 17.

ANNOTATIONS

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

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

The 2001 amendment, effective July 1, 2001, recompiled former 15-3-24 NMSA 1978 as this section; in Subsection A, inserted "in the state treasury" in the first sentence; updated the internal references; in Subsection C, substituted "five percent or less" for "no more than five percent" and made stylistic changes.

Appropriations. — Laws 2004, ch. 126, § 46, effective March 10, 2004, appropriates \$525,000 from the state capitol maintenance fund to the legislative council service for expenditure in fiscal years 2004 through 2009.

Compiler's notes. — Laws 1997, ch. 178, § 1, referred to in Subsection A, is an uncompiled provision authorizing the issuance of revenue bonds. Details of Section 1 of Laws 1997, ch. 178 may be found in the Revenue Bonds table following Chapter 6, Article 12 NMSA 1978.

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

15-3B-18. Public buildings repair fund; created; expenditures.

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

B. Expenditures may be made from the public buildings repair fund only for operating expenses of the division and necessary repair, renovation and purchase of physical plant equipment for public buildings under the jurisdiction of the division.

C. The division shall establish priorities for the use of the public buildings repair fund and shall submit to the legislature in each regular session a list of recommended expenditures to be made from the fund in the following fiscal year. The public buildings repair fund shall be expended pursuant to appropriations by the legislature.

History: Laws 1996, ch. 46, § 1; 1978 Comp., § 15-3-11.1, recompiled and amended as 1978 Comp., § 15-3B-18 by Laws 2001, ch. 319, § 18.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, recompiled the former 15-3-11.1 NMSA 1978 as this section; in Subsection A, inserted "concession fees" preceding "gifts"; in Subsection B, inserted "operating expenses of the division and" preceding "necessary repair"; substituted "under the jurisdiction of the division" for "owned by the state and under the control of the property control"; in Subsection C, deleted a reference to Subsection D; and deleted Subsection D.

15-3B-19. Building use fees; transfers to fund.

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

History: Laws 1996, ch. 46, § 2; 1978 Comp., § 15-3-11.2, recompiled and amended as 1978 Comp., § 15-3B-19 by Laws 2001, ch. 319, § 19.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, recompiled former 15-3-11.2 NMSA 1978 as this section; inserted "operating expenses for the division and" preceding "planned and emergency repairs"; deleted "beginning with fiscal year 1998" from the end of the penultimate sentence and made stylistic changes.

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

15-3B-20. Property control reserve fund; created; purpose.

The "property control reserve fund" is created in the state treasury. The purpose of the fund is to provide a reserve account from which the division can purchase or construct state office buildings, in particular to alleviate the state's reliance on expensive leased office space in Santa Fe. The fund shall consist of appropriations, money from the sale of real property under the jurisdiction of the division, gifts, grants, donations, bequests and income from investment of the fund. Money in the fund shall not revert to the general fund at the end of any fiscal year. The division shall administer the fund subject to appropriation by the legislature. The legislature shall appropriate money in the fund to the division to purchase or acquire land and construct state office buildings in Santa Fe in accordance with the state's four-year major capital improvements plan. Disbursements from the fund shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his authorized representative.

History: Laws 1998, ch. 58, § 1; 1978 Comp., § 15-3-24.2, recompiled and amended as 1978 Comp., § 15-3B-20 by Laws 2001, ch. 319, § 20.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, recompiled former 15-3-24.2 NMSA 1978 as this section; and made stylistic changes.

Appropriations. — Laws 2004, ch. 63, § 1, effective March 4, 2004, appropriates the proceeds from the sale of the labor department building at 301 West De Vargas in Santa Fe to plan, design, construct or renovate a workforce development center.

Laws 2004, ch. 126, § 47, effective March 10, 2004, provides: "The provisions of Section 15-3B-20 NMSA 1978 notwithstanding, the proceeds from the sale of the labor department building in Santa Fe are appropriated to the property control division of the general services department for expenditure in fiscal years 2004 through 2008 to acquire land or a building and to plan, design, construct or renovate a building for a workforce development center for the labor department in Santa Fe".

ARTICLE 4

Federal Property and Commodities Division

15-4-1. Repealed.

ANNOTATIONS

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

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

15-4-2. Surplus property; authority.

A. For the purpose of managing a surplus property program, the general services department may enter into any contract with the United States government or with any agency or department thereof for the purchase, lease, receipt as a loan or gift or any other means of acquisition of any real or personal property without regard to provisions of state law that require:

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

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

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

15-4-3. Surplus property; revenues.

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

sale of surplus property but such expenditures shall be made by the state treasurer only upon vouchers approved and warrants drawn by the secretary of general services.

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

ARTICLE 5

Telecommunications Bureau

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

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

15-5-4. Deposit of money.

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

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

15-5-5. Appropriation.

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

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

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

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

may exclude them. In the event of exclusion of any agency, department or institution, the director of the communications division shall file a written statement, certifying the reasons therefor, with the state records center.

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

ARTICLE 6

Planning Division

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

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

ANNOTATIONS

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

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

ARTICLE 7

Risk Management Division

15-7-1. Definitions.

As used in Chapter 15, Article 7 NMSA 1978:

- A. "board" means the risk management advisory board;
- B. "director" means the director of the risk management division of the general services department;
- C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions;
- D. "public employee" means any officer, employee or servant of a governmental entity, including elected or appointed officials, law enforcement officers and persons acting on behalf or in service of a governmental entity in any official

capacity, whether with or without compensation, but the term does not include an independent contractor; and

E. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, including regional housing authorities.

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

ANNOTATIONS

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

15-7-2. Risk management division.

A. There is established a "risk management division" of the general services department. The director of the risk management division shall be appointed by the secretary of general services. The director shall be knowledgeable and experienced in general insurance practices. The director shall be responsible for the acquisition and administration of all insurance purchased by the state. Except as provided by this section, no state agency may procure any kind of insurance other than through the risk management division.

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

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

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

ANNOTATIONS

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

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

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

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

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

(1) enter into contracts;

(2) procure insurance, reinsurance or employee group benefits; provided that any proposal or contract for the procurement of any group health care benefits shall be subject to the provisions of the Health Care Purchasing Act [Chapter 13, Article 7 NMSA 1978]; and provided further that reinsurance or excess coverage insurance may be placed by private negotiation, notwithstanding the provisions of the Procurement Code [13-1-28 NMSA 1978], if the insurance or reinsurance has a restricted number of interested carriers, the board determines that the coverage is in the interest of the state and cannot otherwise be procured for a reasonable cost and the director seeks the advice and review of the board in the placement and in designing private negotiation procedures;

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

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

(5) pay expenses and costs;

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

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

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

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

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

(8) study the risks of all governmental entities;

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

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

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

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

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

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

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

C. The director shall report his findings and recommendations, if any, for the consideration of each legislature. The report shall include the amount and name of any person receiving payment from the public liability fund of any claim paid during the

previous fiscal year exceeding one thousand dollars (\$1,000). The report shall be made available to the legislature on or before December 15 preceding each regular legislative session.

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

ANNOTATIONS

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

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

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

Coverage limited by Tort Claims Act. — Provision of this section regarding coverage for the defense of governmental entities is limited to the coverage required by the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] and does not extend to mandamus actions. Board of County Comm'rs v. Risk Mgt. Div., 120 N.M. 178, 899 P.2d 1132 (1995).

The risk management division's endorsement of a certificate of coverage issued to a county denying coverage for mandamus actions was a ministerial act, fulfilling the requirements of the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978], and not a discretionary decision altering the scope of the county's coverage; accordingly, the refusal to cover mandamus claims in the endorsement was not subject to rulemaking requirements. Board of County Comm'rs v. Risk Mgt. Div., 120 N.M. 178, 899 P.2d 1132 (1995).

15-7-3.1. Repealed.

ANNOTATIONS

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

15-7-4. Risk management advisory board.

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

- (1) the attorney general or his designee;
- (2) the superintendent of insurance;
- (3) the secretary of finance and administration or his designee;
- (4) the chief financial officer of a public school district who shall be appointed by the governor;
- (5) an attorney, who shall be named by the president of the state bar of New Mexico;
- (6) the director of the legislative council service or his designee;
- (7) the chief financial officer of an institution of higher education who shall be appointed by the governor;
- (8) an insurance agent licensed to write property, casualty and life insurance in this state who shall be appointed by the governor; and
- (9) the chief financial officer of a local public body or the chief administrator of an entity of a local public body, other than a school district, with a risk covered by the public liability fund, who shall be appointed by the governor.

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

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

History: Laws 1978, ch. 166, § 9.

ANNOTATIONS

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

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

The advisory board shall review:

- A. specifications for all insurance policies to be purchased by the risk management division including specifications setting forth minimum capital and surplus requirements for any insurance company submitting a bid;
- B. all professional service and consulting contracts or agreements to be entered into by the risk management division;
- C. if insurance is to be purchased by negotiation, the companies and agents to be selected to submit proposals;
- D. all rules and regulations to be promulgated by the risk management division;
- E. the form, purpose and content of certificates of coverage to be issued by the risk management division; and
- F. investments to be made by the risk management division.

History: Laws 1978, ch. 166, § 10.

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

- A. There is created in the state treasury the "workers' compensation retention fund".
- B. Money deposited in, earned by or appropriated to the workers' compensation retention fund may be used by the director to:
 - (1) purchase workers' compensation insurance;
 - (2) establish appropriate reserves to provide workers' compensation coverage for employees of state agencies or employees of covered educational entities;
 - (3) pay workers' compensation claims in accordance with the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978];
 - (4) enter into consulting and other contracts as may be necessary or desirable in carrying out the provisions of this section; and
 - (5) pay costs or expenses incurred in carrying out the provisions of this section.
- C. For the purposes of this section, "covered educational entities" means school districts as defined in Section 22-1-2 NMSA 1978 and educational institutions established pursuant to Chapter 21, Articles 13, 16 and 17 [repealed] NMSA 1978 that request and are granted coverage from the risk management division of the general services department, if the coverage is commercially unavailable; except that coverage

shall be provided to a school district only through the public school insurance authority or its successor unless the district has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services.

History: 1953 Comp., § 5-14-25, enacted by Laws 1977, ch. 385, § 9; 1978, ch. 166, § 11; 1983, ch. 301, § 66; 1986, ch. 102, § 7; 1989, ch. 324, § 10; 1996 (1st S.S.), ch. 3, § 4; 2000, ch. 27, § 3.

ANNOTATIONS

Bracketed material. — The bracketed material in Subsection C was inserted by the compiler. It was not enacted by the legislature, and it is not a part of the law. Article 17 of Chapter 21 NMSA 1978 was repealed by Laws 1995, ch. 224, § 29 and Laws 1999, ch. 219, § 21. See notes following Chapter 21, Article 17 NMSA 1978.

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

The 2000 amendment, effective March 6, 2000, added Subsection B(2) and redesignated the remaining paragraphs in Subsection B accordingly, and deleted Subsection D, concerning excess cash balances in the workers' compensation retention fund.

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

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

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

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

B. No contract shall be entered into pursuant to this section unless proposals have been sought from two or more qualified firms. Contracts shall be awarded on the basis

of cost, financial resources of the firm, service facilities in New Mexico, service reputation and experience.

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

ANNOTATIONS

Department of finance and administration. — Laws 1983, ch. 301, § 7 states that references to the risk management division of the department of finance and administration are to be construed as references to the risk management division of the general services department. See 15-7-2 NMSA 1978. The bracketed material was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law.

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

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

- (1) a copy of every insurance policy currently in effect; and
- (2) a detailed statement of the cost of such policies.

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

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

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

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

- (1) records pertaining to insurance coverage; provided any record of a particular coverage shall be available to any public officer, public employee or governmental entity insured under such coverage; and
- (2) records pertaining to claims for damages or other relief against any governmental entity or public officer or employee; provided such records shall be subject to public inspection by New Mexico citizens one hundred eighty days after the latest of the following dates:

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

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

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

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

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

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

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

ANNOTATIONS

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

Section does not encompass all public bodies. — The clear, unambiguous language limiting confidentiality to “records created or maintained by the risk management division” means that this section does not encompass all public bodies, but rather only those insured by the risk management division. Board of Comm’rs v. Las Cruces Sun-News, 2003-NMCA-102, 134 N.M. 281, 76 P.3d 36.

Funds held by private insurers not protected. — Nothing in the Tort Claims Act suggests the legislature intended to extend the protection of this section to funds held by private insurers. Board of Comm’rs v. Las Cruces Sun-News, 2003-NMCA-102, 134 N.M. 281, 76 P.3d 36.

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

76 C.J.S. Records § 74 et seq.

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

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

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

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

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

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

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

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

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

- (1) the money is required to maintain the financial stability and liquidity of the fund to which the money is to be transferred;

(2) the money is not required to maintain the financial stability and liquidity of any fund from which the money is to be transferred;

(3) the fund to which the money is to be transferred can reasonably be expected to have sufficient balances within one year of the date of the transfer to repay the amount transferred in full plus interest; and

(4) all other requirements of this section will be fulfilled prior to transfer.

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

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

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

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

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

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

ANNOTATIONS

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

ARTICLE 8 Transportation Services

15-8-1. Short title.

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

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

ANNOTATIONS

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

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

15-8-2. Findings and purpose.

The legislature finds that centralized control of state vehicles is in the best interest of the state because it permits the state to use its transportation resources in the most efficient and effective manner. The primary purposes of the Transportation Services Act [Chapter 15, Article 8 NMSA 1978] are:

- A. to provide a centralized agency to purchase state vehicles and to control their use;
- B. to implement and administer the State Aircraft Act [Chapter 15, Article 9 NMSA 1978];
- C. to supervise and monitor the alternative fuel conversion program; and
- D. to supervise and administer a state travel coordination program, including coordinating and monitoring the in-state and out-of-state travel of official state business.

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

ANNOTATIONS

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

15-8-3. Definitions.

As used in the Transportation Services Act [Chapter 15, Article 8 NMSA 1978]:

- A. "department" means the general services department;
- B. "director" means the director of the division;
- C. "division" means the transportation services division of the department;
- D. "secretary" means the secretary of general services;
- E. "state agency" means a state department, agency, board or commission except the legislative and judicial branches, public schools and institutions of higher education; and
- F. "state vehicle" means an automobile, van, sport-utility truck, pickup truck or other vehicle used by a state agency to transport passengers or property.

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

ANNOTATIONS

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

15-8-4. Division created.

The "transportation services division" is created in the department. The director shall be appointed by the secretary with the consent of the governor. Staff of the division shall be covered by the provisions of the Personnel Act [10-9-1 NMSA 1978].

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

ANNOTATIONS

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

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

The division shall:

- A. have control over all state vehicles;
- B. regulate the use of the state vehicles;
- C. hold the titles of all state vehicles and provide for the security of the titles;

- D. register all state vehicles in the custody of the division and ensure that state vehicles assigned to other state agencies have current and correct registrations;
- E. control the issuance of state government plates assigned to a state agency and ensure that government plates are used only on state vehicles;
- F. maintain a complete and accurate inventory of all state vehicles, including those in the custody of another state agency, and the location of all state vehicles;
- G. establish and enforce maintenance standards for state vehicles in the custody of other state agencies;
- H. require periodic use and maintenance reports from other state agencies that have custody of state vehicles;
- I. purchase, through the state purchasing agent, all state vehicles and assign their use;
- J. perform periodic announced and unannounced inspections of state vehicles in the custody of other state agencies;
- K. establish a motor pool and provide an adequate fleet of state vehicles;
- L. provide for the maintenance of state vehicles in the motor pool;
- M. establish and enforce standards for drivers of state vehicles, including revoking driver privileges;
- N. maintain individual state driver records, including all tickets received by drivers of state vehicles for violations of the Motor Vehicle Code [66-1-1 NMSA 1978];
- O. maintain a record of all accident reports and insurance claims;
- P. maintain a history of state vehicles, including purchases, maintenance and sales;
- Q. carry out the provisions of the Alternative Fuel Conversion Act [13-1B-1 to 13-1B-7 NMSA 1978]; and
- R. have the power to sell or otherwise dispose of property pursuant to the provisions of Sections 13-6-1 and 13-6-2 NMSA 1978 after approval of the secretary.

History: Laws 1994, ch. 119, § 5.

ANNOTATIONS

Compiler's notes. — The Alternative Fuel Conversion Act, referred to in Subsection Q, was amended and renamed as the Alternative Fuel Acquisition Act by Laws 2002, chapter 32. See 13-1B-1 NMSA 1978 et seq.

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

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

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

- (1) the state vehicle is used for emergency or law enforcement purposes;
- (2) the state vehicle is of a special design or construction that effectively limits its use to a particular purpose;
- (3) the money used in the acquisition of the state vehicle is subject to constitutional or trust limitations that prevent its use as a part of the motor pool;
- (4) the state vehicle is not based in Santa Fe;
- (5) the state vehicle is a state highway and transportation department truck or tractor or heavy road equipment; or
- (6) the state agency requires the use of a vehicle on a regular basis, as defined by regulation of the division.

C.

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

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

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

History: Laws 1994, ch. 119, § 6.

ANNOTATIONS

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

15-8-7. Purchase of state vehicles; Procurement Code; equipment.

A. All state vehicle purchases shall be pursuant to the provisions of the Procurement Code [13-1-28 NMSA 1978]. All purchases of state vehicles, even those not assigned to the motor pool, shall be approved by the director.

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

History: Laws 1994, ch. 119, § 7.

ANNOTATIONS

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

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

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

81A C.J.S. States § 145.

15-8-8. Lease with state funds.

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

History: Laws 1994, ch. 119, § 8.

15-8-9. Vehicle title.

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

History: Laws 1994, ch. 119, § 9.

15-8-10. Rules and regulations.

The division shall adopt and file in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules and regulations to carry out the provisions of the Transportation Services Act [Chapter 15, Article 8 NMSA 1978].

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

ANNOTATIONS

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

15-8-11. Report to legislature.

The division shall provide an annual report to the legislature that includes information on the operations of the division, including reports on Motor Vehicle Code [66-1-1 NMSA 1978] violations, accidents and insurance claims involving state vehicles; major maintenance costs; purchases and sales of motor vehicles; and progress of the division in carrying out the provisions of the Alternative Fuel Conversion Act [13-1B-1 to 13-1B-7 NMSA 1978]. The report shall be deemed to have been provided to the legislature when filed with the legislative council service and the legislative finance committee. The division shall make copies available to individual legislators upon request.

History: Laws 1994, ch. 119, § 11.

ANNOTATIONS

Compiler's notes. — The Alternative Fuel Conversion Act, referred to at the end of the first sentence, was amended and renamed as the Alternative Fuel Acquisition Act by Laws 2002, chapter 32. See 13-1B-1 NMSA 1978 et seq.

ARTICLE 9

State Aircraft

15-9-1. Short title.

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

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

ANNOTATIONS

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

15-9-2. Definitions.

As used in the State Aircraft Act [Chapter 15, Article 9 NMSA 1978]:

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

History: Laws 1994, ch. 135, § 2.

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

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

B. The department shall:

(1) adopt and file in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules and regulations to carry out the provisions of the State Aircraft Act [Chapter 15, Article 9 NMSA 1978];

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

- (3) provide centralized statewide scheduling of aircraft;
- (4) designate destination airports;
- (5) determine travel charges for state aircraft services;
- (6) determine use requirements, including the number of required passengers per flight and under what conditions persons other than state officers and employees are allowed to travel in state aircraft; and
- (7) determine other requirements it deems appropriate or fiscally responsible.

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

History: Laws 1994, ch. 135, § 3.

ANNOTATIONS

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

15-9-4. Travel charges.

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

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

ANNOTATIONS

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

15-9-4.1. Aviation services fund.

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

History: Laws 1995, ch. 49, § 3.

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

On the effective date of the State Aircraft Act [Chapter 15, Article 9 NMSA 1978], the passenger aircraft owned by the state corporation commission [public regulation commission], the energy, minerals and natural resources department and the state highway and transportation department shall be transferred to the general services department, and title to the aircraft shall be transferred to the general services department. On the effective date of the State Aircraft Act, the personnel, money, appropriations, furniture, supplies and other property attributable to the ownership, operation or maintenance of passenger aircraft in the state corporation commission [public regulation commission], the energy, minerals and natural resources department and the state highway and transportation department shall be transferred to the general services department. On the effective date of the State Aircraft Act, contractual obligations related to the ownership, operation or maintenance of passenger aircraft of the state corporation commission [public regulation commission], the energy, minerals and natural resources department and the state highway and transportation department shall be binding on the general services department.

History: Laws 1994, ch. 135, § 5.

ANNOTATIONS

Cross references. — For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

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

ARTICLE 10

Capitol Buildings Planning Commission

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

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

B. The commission shall be composed of four members of the legislature, two from each house, appointed by the New Mexico legislative council, the secretary of general services, the New Mexico staff architect, the secretary of highway and transportation or his designee, the state cultural affairs officer or his designee, the secretary of finance

and administration or his designee, the commissioner of public lands or his designee and the chairman of the supreme court building commission or his designee.

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

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

History: Laws 1997, ch. 178, § 5; 2002, ch. 69, § 1; 2003, ch. 110, § 1.

ANNOTATIONS

The 2002 amendment, effective May 15, 2002, inserted the references to Albuquerque in Subsections A and D; and inserted "regularly" in Subsection D.

The 2003 amendment, effective June 20, 2003, inserted "the secretary of highway and transportation or his designee, the state cultural affairs officer or his designee" following "New Mexico staff architect" in Subsection B.

ARTICLE 11

Building Services Division

15-11-1. Building services division; powers and duties.

A. The building services division of the general services department shall:

(1) maintain, clean and operate buildings and improvements and maintain and landscape the grounds and premises under the control of the property control division of the general services department that are located within the exterior boundaries of the city of Santa Fe, either with building services division staff or by contract;

(2) recommend annually to the secretary of general services any major repairs, renovations and equipment replacement needed in buildings serviced by the building services division; and

(3) develop and implement energy and water conservation measures in buildings serviced by the building services division.

B. The building services division of the general services department may maintain, clean, operate and otherwise care for buildings owned by the New Mexico finance authority that are leased to the property control division of the general services department in accordance with the provisions of the lease.

C. The building services division of the general services department may enter into agreements with state agencies housed in buildings under the control of the property control division of the general services department located outside the exterior boundaries of the city of Santa Fe to provide or administer contracts with private firms to provide maintenance, custodial or security services. The building services division may charge reasonable fees to cover costs of providing the services, and money from the fees shall be appropriated by the legislature for division operations.

History: Laws 2001, ch. 108, § 1.

ANNOTATIONS

Effective dates. — Laws 2001, ch. 108 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.