

CHAPTER 75

MISCELLANEOUS NATURAL RESOURCE MATTERS

ARTICLE 1

RURAL INFRASTRUCTURE

75-1-1. Short title.

Chapter 75, Article 1 NMSA 1978 may be cited as the "Rural Infrastructure Act".

History: 1953 Comp., § 75-41-1, enacted by Laws 1973, ch. 333, § 1; 1983, ch. 173, § 1; 1988, ch. 28, § 1.

ANNOTATIONS

Cross references. - For provisions relating to water supply associations, see 3-28-1 NMSA 1978 et seq.

75-1-2. Definitions.

As used in the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978]:

- A. "department" means the department of environment;
- B. "fund" means the rural infrastructure revolving loan fund;
- C. "local authority" means any incorporated city, town or village, county, mutual domestic association, public water cooperative association or sanitation district whose water supply facility serves a population of less than ten thousand;
- D. "operate and maintain" means all necessary activities, including but not limited to replacement of equipment or appurtenances to assure the dependable and economical function of a water supply facility in accordance with its intended purpose;
- E. "secretary" means the secretary of environment;
- F. "wastewater facility" includes but is not limited to collection lines, pumping equipment, treatment works and disposal piping or process units; and
- G. "water supply facility" includes but is not limited to the source of supply of water, pumping equipment, storage facilities, transmission lines, treatment works and distribution systems.

History: 1953 Comp., § 75-41-2, enacted by Laws 1973, ch. 333, § 2; 1977, ch. 253, § 75; 1979, ch. 219, § 1; 1983, ch. 173, § 2; 1987, ch. 175, § 1; 1988, ch. 28, § 2; 1991, ch. 208, § 1; 2001, ch. 250, § 1; 2001, ch. 265, § 1.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, deleted " 'agency' or" at the beginning of Subsection A and inserted "but is not limited to" in Subsection F.

2001 amendments. - Identical amendments to this section were enacted by Laws 2001, ch 250, § 1 and Laws 2001, ch. 265, § 1, effective June 15, 2001, rewriting Subsection A, which formerly read "'division' means the environmental improvement division of the health and environment department"; deleting Subsection B, which defined "board", adding Subsections F and G, and renumbering the remaining subsections accordingly. This section is set out as amended by Laws 2001, ch. 265, § 1. See 12-1-8 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 94 C.J.S. Waters § 241.

75-1-2.1. Purpose of act.

The purpose of the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978] is to provide financial assistance to local authorities for the construction or modification of water supply and wastewater facilities to correct demonstrably hazardous or inadequate conditions.

History: 1978 Comp., § 75-1-2.1, enacted by Laws 1983, ch. 173, § 3; 1988, ch. 28, § 3; 1991, ch. 208, § 2; 2001, ch. 250, § 2; 2001, ch. 265, § 2.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, inserted "to local authorities" and made a related change and minor stylistic changes.

2001 amendments. - Identical amendments to this section were enacted by Laws 2001, ch 250, § 2 and Laws 2001, ch. 265, § 2, effective June 15, 2001, substituting "water supply and wastewater facilities to" for "water supply facilities that will". This section is set out as amended by Laws 2001, ch. 265, § 2. See 12-1-8 NMSA 1978.

Law reviews. - For article, "Centralized Decisionmaking in the Administration of Groundwater Rights: The Experience of Arizona, California and New Mexico and Suggestions for the Future," see 24 Nat. Resources J. 641 (1984).

75-1-3. Fund created; administration; emergency fund.

A. A special fund is created to be known as the "rural infrastructure revolving loan fund". Money appropriated to the fund or to the department to carry out the provisions of the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978] may be used to make loans and grants to local authorities, individually or jointly, for water supply or wastewater facilities. Appropriations made to the fund but not expended at the end of the fiscal year for which appropriated shall not revert to the general fund but shall accrue to the credit of the fund. Earnings on the balance in the fund shall be credited to the fund. In addition, when the proceeds from the issuance of severance tax bonds appropriated to the fund are deposited in the state treasury, interest earned on that money during the period from deposit in the state treasury until the actual transfer of the money to the fund shall be credited to the fund.

B. Ten percent of any appropriation to the fund or to the department to carry out the provisions of the Rural Infrastructure Act shall be set aside for emergency grants and loans pursuant to Section 75-1-5 NMSA 1978.

C. All water supply and wastewater facilities shall be designed in compliance with the engineering requirements established by the secretary after consulting with and considering the recommendations of the professional engineering societies operating in New Mexico. The secretary shall also establish, by regulations, guidelines for the ranking of projects for top priority based on public health needs.

D. The department shall administer the fund and shall make grant and loan disbursements in accordance with the Rural Infrastructure Act. The secretary shall adopt regulations to govern the application procedure and requirements for disbursing grants and loans under the Rural Infrastructure Act, including requirements consistent with the purpose of the act for determining the eligibility and priority of local authorities for such grants and loans.

E. Receipts from the repayment of loans, including loans approved by the state board of finance pursuant to Section 75-1-5 NMSA 1978, shall be deposited in the fund by the department, including receipts from the repayment of loans made pursuant to appropriations to carry out the purposes of the Water Supply Construction Act made prior to the effective date of the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978].

F. Loans and grants made pursuant to the provisions of the Rural Infrastructure Act shall not be used by the local authority on any project constructed in fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act [Chapter 47, Article 5 NMSA 1978] or the New Mexico Subdivision Act [Chapter 47, Article 6 NMSA 1978].

History: 1953 Comp., § 75-41-3, enacted by Laws 1973, ch. 333, § 3; 1977, ch. 283, § 1; 1979, ch. 219, § 2; 1983, ch. 173, § 4; 1984, ch. 5, § 14; 1987, ch. 175, § 2; 1988, ch. 28, § 4; 1991, ch. 208, § 3; 2001, ch. 250, § 3; 2001, ch. 265, § 3.

ANNOTATIONS

Cross references. - For public project revolving fund, see 6-21-6 NMSA 1978.

For appropriations to other funds from the public project revolving fund, see 6-21-6.1 NMSA 1978.

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

For exemption of environmental improvement board from authority of secretary of environment, see 9-7A-12 NMSA 1978.

The 1991 amendment, effective July 1, 1991, added the final sentence in Subsection A and inserted "including loans approved by the state board of finance pursuant to Section 75-1-5 NMSA 1978" in Subsection E.

2001 amendments. - Identical amendments to this section were enacted by Laws 2001, ch 250, § 3 and Laws 2001, ch. 265, § 3, effective June 15, 2001, substituting "department" for "division" throughout the subsection; inserting "or wastewater" following "water supply" in Subsections A and C; substituting "secretary" for "board" in Subsections C and D; and deleting the former last sentence of Subsection D, which read "The division shall coordinate its application procedures and funding cycle pursuant to the New Mexico Community Assistance Act". This section is set out as amended by Laws 2001, ch. 265, § 3. See 12-1-8 NMSA 1978.

Compiler's notes. - The Water Supply Construction Act, referred to in Subsection E, was replaced by the Rural Infrastructure Act, effective July 1, 1988.

75-1-4. Conditions for grants and loans.

A. Grants and loans shall be made only to local authorities that:

(1) agree to operate and maintain the water supply facilities so that the facilities will function properly over the structural and material design life, which shall not be less than twenty years;

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;

(3) provide a written assurance, signed by an attorney, that the local authority has proper title, easements and rights of way to the property upon or through which the water supply facility proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the department to assure sufficient revenues to operate and maintain the facility for its useful life and to repay the loan;

(5) pledge sufficient revenues for repayment of the loan, provided that such revenues may by law be pledged for that purpose; and

(6) agree to properly maintain financial records and to conduct an audit of the project's financial records.

B. Except as otherwise provided in the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978], a loan shall be for a period of time not to exceed twenty years. Loans may be interest free or bear an annual interest rate set by the secretary that is at or below market interest rates. The repayment of loans shall be in annual installments beginning one year after completion of the project. The repayment of the interest on the loan accumulated during the design and construction of a project may be included in the final loan amount, but it shall not be counted in determining the maximum loan amount.

C. No loan recipient eligible to receive a grant under the Rural Infrastructure Act shall receive grants in any one year totaling more than two hundred thousand dollars (\$200,000).

D. The maximum assistance, including both loans and grants, which a local authority may receive under the Rural Infrastructure Act in any one year is five hundred thousand dollars (\$500,000).

E. Plans and specifications for a water supply or wastewater facility construction project shall be approved by the department before grant or loan disbursements to pay for construction costs are made to a local authority. Interim loan disbursements to pay for engineering and other professional services may be made by the department prior to the approval of the plans and specifications.

F. Privately owned water supply or wastewater facilities are not eligible for assistance under the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978].

G. Grants and loans shall be made only for eligible items. Eligible items include but are not limited to the costs of engineering feasibility reports, contracted engineering design, inspection of construction, special engineering services, archaeological surveys and contracted construction. The costs of water rights, land, system acquisition, easements and rights of way, refinancing of program loans, legal costs and fiscal agents' fees are eligible items only for loan funds. Local authority administrative costs shall not be included as eligible items.

H. In the event the local authority fails to make the prescribed loan repayment, the department is authorized to set water or wastewater user rates in the area of the local

authority's jurisdiction in order to provide sufficient money for repayment of this loan and proper operation and maintenance.

History: 1953 Comp., § 75-41-4, enacted by Laws 1973, ch. 333, § 4; 1977, ch. 283, § 2; 1983, ch. 173, § 5; 1984, ch. 4, § 7; 1984, ch. 5, § 15; 1987, ch. 175, § 3; 1988, ch. 28, § 5; 1991, ch. 208, § 4; 2001, ch. 250, § 4; 2001, ch. 265, § 4.

ANNOTATIONS

Cross references. - For rural infrastructure revolving loan fund, see 75-1-3 NMSA 1978.

The 1991 amendment, effective July 1, 1991, in Subsection B, substituted "five hundred thousand dollars (\$500,000) in any one year" for "three hundred thousand dollars (\$300,000)" at the end of the first sentence, added "beginning one year after completion of the project" at the end of the second sentence and added the third sentence; in Subsection E, inserted "disbursement to pay for construction costs are" in the first sentence and added the second sentence; in Subsection G, inserted "but are not limited to" and "archaeological surveys" in the first sentence and substituted the second and third sentences for a sentence which read "The costs of water rights, land, easements and rights-of-way, legal costs, fiscal agents' fees, local authority and county administrative costs shall not be included as eligible items"; deleted former Subsection H which read "The division may make interim loans and grants to local authorities for contracted engineering services prior to approval of plans and specifications by the division"; designated former Subsection I as Subsection H; and made minor stylistic changes in Subsection A and E.

2001 amendments. - Identical amendments to this section were enacted by Laws 2001, ch 250, § 4 and Laws 2001, ch. 265, § 4, effective June 15, 2001, substituting "department" for "division" throughout the subsection; in Subsection B, deleting the provision that assigned interest rates for loans under specific circumstances, adding the second sentence, and deleting "equal" preceding "annual installments" in the third sentence; in Subsection D, inserting "in any one year"; inserting "or wastewater" following "water supply" in Subsections E, F and H; and deleting "delinquent" preceding "program loans" in Subsection G. This section is set out as amended by Laws 2001, ch. 265, § 4. See 12-1-8 NMSA 1978.

75-1-5. Emergency loans and grants.

Ten percent of the proceeds of each severance tax bond issuance or other appropriation for the purpose of carrying out the provisions of the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978] shall be reserved for emergencies and shall be allocated by the department only upon approval of the state board of finance. This amount shall not be deposited in the fund and shall be allocated only for emergency loans and grants. Emergency loans and grants shall be made in accordance with the applicable provisions for loans pursuant to the Rural Infrastructure Act; provided that a

grant shall not exceed two hundred thousand dollars (\$200,000). At the end of the third quarter of each fiscal year, the unexpended balance of the reserved amount may be transferred by the department to the fund for use in accordance with the Rural Infrastructure Act.

History: 1978 Comp., § 75-1-5, enacted by Laws 1987, ch. 175, § 4; 1988, ch. 28, § 6; 2001, ch. 250, § 5; 2001, ch. 265, § 5.

ANNOTATIONS

2001 amendments. - Identical amendments to this section were enacted by Laws 2001, ch 250, § 5 and Laws 2001, ch. 265, § 5, effective June 15, 2001, substituting "department" for "division" throughout the section. This section is set out as amended by Laws 2001, ch. 265, § 5. See 12-1-8 NMSA 1978.

75-1-6. Average residential user cost reduction grants and zero percent loans.

A. No more than twenty-five percent of the proceeds of each severance tax bond issuance or other appropriation for the purpose of carrying out the provisions of the Rural Infrastructure Act [Chapter 75, Article 1 NMSA 1978] shall be reserved for average residential user cost reduction grants or zero percent loans to reduce average residential user cost to a reasonable level for eligible financially needy loan recipients whose water supply or wastewater facilities serve less than three thousand persons.

B. Average residential user cost reduction grants and zero percent loans shall be allocated by the department in accordance with the provisions for grants and loans pursuant to the Rural Infrastructure Act, provided that an average residential user cost reduction grant or zero percent loan shall not exceed two hundred thousand dollars (\$200,000). Such grants and loans shall reduce only the principal and interest portion of the average residential user cost to a reasonable cost as determined by the department.

C. A zero percent loan or average residential user cost reduction grant shall be approved by the department when, after construction bids have been received, the following conditions have been met by the local authority whose average residential user costs are in need of reduction:

- (1) the construction project is designed using the most cost-effective and dependable option;
- (2) the system is designed with adequate built-in expansion capacity;
- (3) other sources of grant funds have been sought and are not available in a timely manner;

(4) the project cannot feasibly be reduced in scope or phased so as to bring it within available loan funds and within reasonable user cost; and

(5) the local authority's median household income is less than ninety percent of the statewide non-metropolitan median household income based on the most current federal decennial census.

History: 1978 Comp., § 75-1-6, enacted by Laws 1988, ch. 28, § 7; 1991, ch. 208, § 5; 2001, ch. 250, § 6; 2001, ch. 265, § 6.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, inserted "residential" following "average" throughout the section; substituted "eighteen dollars (\$18.00)" for "fifteen dollars (\$15.00)" in Paragraph (5) of Subsection C; and made a minor stylistic change in Subsection A.

2001 amendments. - Identical amendments to this section were enacted by Laws 2001, ch 250, § 6 and Laws 2001, ch. 265, § 6, effective June 15, 2001, substituting "department" for "division" throughout the section; inserting "or wastewater" following "water supply" in Subsection A; and rewriting Paragraph C(5), which formerly read "the local authority's average residential user cost in need of the reduction is at least eighteen dollars (\$18.00) per month". This section is set out as amended by Laws 2001, ch. 265, § 6. See 12-1-8 NMSA 1978.

ARTICLE 2 WATER RESEARCH, CONSERVATION AND DEVELOPMENT

75-2-1. Short title.

This act [75-2-1 to 75-2-5 NMSA 1978] may be cited as the "Water Research, Conservation and Development Act".

History: 1953 Comp., § 75-42-1, enacted by Laws 1975, ch. 265, § 1.

75-2-2. Purpose.

It is the purpose of the Water Research, Conservation and Development Act [75-2-1 to 75-2-5 NMSA 1978] to provide means to seek solutions to water shortage, conservation and utilization problems through research, conservation or development projects for the benefit of the citizens of New Mexico.

History: 1953 Comp., § 75-42-2, enacted by Laws 1975, ch. 265, § 2.

75-2-3. Special fund created.

There is created a special fund to be known as the "water research, conservation and development fund". All money appropriated to this fund or accruing to it through gifts, grants or bequests shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in the Water Research, Conservation and Development Act [75-2-1 to 75-2-5 NMSA 1978]. The fund shall not revert at the end of the fiscal year. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of the interstate stream commission for research, conservation or development projects of merit and potential benefit to the state and approved by the interstate stream commission.

History: 1953 Comp., § 75-42-3, enacted by Laws 1975, ch. 265, § 3; 1977, ch. 247, § 201; 1989, ch. 324, § 40.

75-2-4. Interstate stream commission; additional powers and duties.

In addition to its other powers and duties, the interstate stream commission shall:

- A. meet upon the call of its chairman;
- B. review and approve or deny water research, conservation or development project proposals submitted to the commission by institutions of higher learning, political subdivisions or other appropriate nonprofit research or development entities on the basis of potential merit, benefit to the state and feasibility;
- C. adopt guidelines for project preparation, review, application and approval;
- D. upon approval of a project, allocate available funds for such water research, conservation or development project, provided:
 - (1) no single project shall receive more than forty percent of the total available funds;
 - (2) no less than forty percent of the total available funds shall be allocated for conservation or development projects which have the potential of providing immediate solutions to problems facing the people of the state; and
 - (3) no funds appropriated to the water research, conservation and development fund shall be used for water distribution system construction, including, but not limited to, irrigation canals, acequias, reservoirs, dams or domestic or municipal water distribution systems;
- E. adopt reporting and monitoring procedures for evaluation of research, conservation or development projects being conducted by recipients of disbursements under the

Water Research, Conservation and Development Act [75-2-1 to 75-2-5 NMSA 1978], and, after making the appropriate evaluation of the project, make arrangements for termination of the project, if so indicated;

F. report annually to the governor and the legislature on the status of the various research, conservation or development projects, including a report on total funds expended under this act [75-2-1 to 75-2-5 NMSA 1978], including the amounts and sources of outside matching funds; and

G. expend no more than fifteen thousand dollars (\$15,000) from the water research, conservation and development fund for the administrative purposes of the Water Research, Conservation and Development Act during any fiscal year.

History: 1953 Comp., § 75-42-4, enacted by Laws 1975, ch. 265, § 4; 1977, ch. 205, § 1.

ANNOTATIONS

Cross references. - For provisions relating to the interstate stream commission, see 72-14-1 to 72-14-44 NMSA 1978.

75-2-5. Acceptance of funds and donations.

The interstate stream commission may accept for the purposes of the Water Research, Conservation and Development Act [75-2-1 to 75-2-5 NMSA 1978] any federal matching funds or grants for water research, conservation or development projects and may accept similar donations and bequests from private sources for such projects.

History: 1953 Comp., § 75-42-5, enacted by Laws 1975, ch. 265, § 5.

ARTICLE 3 WEATHER CONTROL AND CLOUD MODIFICATION

75-3-1. Short title.

This act [75-3-1 to 75-3-15 NMSA 1978] may be cited as the "Weather Control Act".

History: 1953 Comp., § 75-37-1, enacted by Laws 1965, ch. 235, § 1.

ANNOTATIONS

Law reviews. - For article, "Weather Modification: Law and Administration," see 8 Nat. Resources J. 207 (1968).

75-3-2. Definition.

As used in the Weather Control Act [75-3-1 to 75-3-15 NMSA 1978], "commission" means the interstate stream commission.

History: 1953 Comp., § 75-37-2, enacted by Laws 1965, ch. 235, § 2; 2003, ch. 194, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "Definition" for "Definitions" in the section catchline and substituted "interstate stream" for "weather control and cloud modification" near the end.

75-3-3. Declaration of rights.

It is declared that the state of New Mexico claims the right to all moisture in the atmosphere which would fall so as to become a part of the natural streams or percolated water of New Mexico, for use in accordance with its laws.

History: 1953 Comp., § 75-37-3, enacted by Laws 1965, ch. 235, § 3.

75-3-4. License required.

No person or corporation shall, without having first received a license from the commission, conduct any weather control or cloud modification operations or attempt to control precipitation.

History: 1953 Comp., § 75-37-4, enacted by Laws 1965, ch. 235, § 4.

75-3-5. Application for license.

Any individual or corporation who proposes to operate weather control or cloud modification projects or who attempts to induce precipitation, shall, before engaging in any such operation, make application to the commission for a license to engage in the particular weather control or cloud modification operation contemplated.

History: 1953 Comp., § 75-37-5, enacted by Laws 1965, ch. 235, § 5.

75-3-6. Annual license fee; statement.

At the time of applying for the license, the applicant shall pay to the commission a fee of one hundred dollars (\$100), and shall file an application in the form prescribed by the commission which shall be accompanied by a statement showing:

A. the name and address of the applicant;

B. the names of the operating personnel, and, if unincorporated, all individuals connected with the organization, or, if a corporation, the names of each of the officers and directors thereof, together with the address of each;

C. the scientific qualifications of all operating and supervising personnel;

D. a statement of all other contracts completed or in process of completion at the time the application is made, giving the names and addresses of the persons to whom the services were furnished and the areas in which such operations have been or are being conducted;

E. the objective of the operation, methods of operation the licensee will use, and the description of the aircraft, ground and meteorological services to be used;

F. names of the contracting parties within the state; including:

(1) the area to be served;

(2) the months in which operations will be conducted;

(3) the methods to be used in evaluating the operation; and

G. any other information the commission deems necessary.

History: 1953 Comp., § 75-37-6, enacted by Laws 1965, ch. 235, § 6.

75-3-7. Issuance of license.

The commission may issue a license to any applicant who demonstrates sufficient financial responsibility necessary to meet obligations reasonably likely to be attached to or result from weather control or cloud modification activities and skill and experience reasonably necessary to accomplishment of weather control without actionable injury to property or person.

History: 1953 Comp., § 75-37-7, enacted by Laws 1965, ch. 235, § 7; 2003, ch. 194, § 2.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, deleted "to the satisfaction of the board" following "sufficient financial responsibility".

Unsound, detrimental or undesirable projects may be refused. - The weather control and cloud modification commission may refuse a license to conduct weather control and cloud modification activities in the state of New Mexico to an applicant who satisfies the requirements for a license specified in this section, but who proposes a

weather modification project which, in the scientific judgment of the commission, may be unsound, detrimental or undesirable. 1971 Op. Att'y Gen. No. 71-53.

75-3-8. License fee; expiration.

A license shall expire at the end of the calendar year in which it is issued and may be renewed upon payment of the annual license fee.

History: 1953 Comp., § 75-37-8, enacted by Laws 1965, ch. 235, § 8.

75-3-9. Reports required from licensees.

Each licensee shall, within ninety days after conclusion of any weather control or cloud modification project, file with the commission a final evaluation of the project. Each three months, during the operation of any project which has not been completed, each licensee shall file a report evaluating the operations for the preceding three months in the project. Failure to file such reports constitute[s] grounds for immediate revocation of the license. Each evaluation report shall contain such information as required by the commission in order to aid in research and development in weather modification and to aid in the protection of life and property.

History: 1953 Comp., § 75-37-9, enacted by Laws 1965, ch. 235, § 9.

75-3-10. Revocation of license.

The commission shall revoke any license if it shall appear that the licensee no longer possesses the qualifications necessary for the issuance of a new license, or is guilty of a violation of any of the provisions of the Weather Control Act [75-3-1 to 75-3-15 NMSA 1978]. Such revocation shall occur only after notice to the licensee, and a reasonable opportunity has been granted the licensee to be heard respecting the grounds of the proposed revocation.

History: 1953 Comp., § 75-37-10, enacted by Laws 1965, ch. 235, § 10.

75-3-11. Judicial review.

Rulings by the commission on the issuance, refusal or revocation of a license are subject to review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 75-37-11, enacted by Laws 1965, ch. 235, § 11; 1998, ch. 55, § 93; 1999, ch. 265, § 95.

ANNOTATIONS

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

75-3-12. Operations affecting weather in other states.

Weather control or cloud modification operations may not be carried on in New Mexico for the purpose of affecting weather in any other state which prohibits such operations, or which prohibits operations in that state for the benefit of New Mexico or its inhabitants.

History: 1953 Comp., § 75-37-12, enacted by Laws 1965, ch. 235, § 12.

75-3-13. Enforcement.

Enforcement of the Weather Control Act [75-3-1 to 75-3-15 NMSA 1978] is vested in the commission. All fees collected by the commission shall be used by the commission for the purposes of carrying out the provisions of the Weather Control Act.

History: 1953 Comp., § 75-37-13, enacted by Laws 1965, ch. 235, § 13; 2003, ch. 194, § 3.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable, deleting reference to the weather control and cloud modification commission.

75-3-14. Powers and duties of commission.

The commission may:

A. make all rules and regulations necessary to carry out the provisions of the Weather Control Act [75-3-1 to 75-3-15 NMSA 1978];

B. make any field investigations and inspections necessary to the enforcement of the Weather Control Act;

C. make periodic reports on weather control and cloud modification activities in this state together with evaluations of the results of such activities; and

D. make recommendations to the legislature through the board of regents on needed legislation in the regard to weather control and cloud modification.

History: 1953 Comp., § 75-37-14, enacted by Laws 1965, ch. 235, § 14.

75-3-15. Penalty.

Any person conducting weather control or cloud modification operations without first having procured a license, or who makes a false statement in the application for a license, or who fails to file any report or evaluation required by the Weather Control Act [75-3-1 to 75-3-15 NMSA 1978], or who conducts any weather control or cloud modification operation after revocation of his license, or who violates any provision of the Weather Control Act is guilty of a misdemeanor.

History: 1953 Comp., § 75-37-15, enacted by Laws 1965, ch. 235, § 15.

ARTICLE 4 STATE CLIMATOLOGIST

75-4-1. Office of state climatologist created; state climatologist.

The "office of state climatologist" is created within the New Mexico department of agriculture. The administrative and executive head of the office of state climatologist shall be known as the "state climatologist". The board of regents of New Mexico state university shall appoint and fix the salary of the state climatologist.

History: Laws 1979, ch. 192, § 1.

75-4-2. Office of state climatologist; purpose.

The purpose of the office of state climatologist is to assist the state to understand and respond to natural and man-induced climate processes and their implications, to cooperate with the federal government in activities relating to climate studies and advisory services, to promote and disseminate a general knowledge of the climatology of the state, to establish a state climate program in accordance with the provisions of the federal National Climate Program Act and regulations promulgated pursuant to that act and to receive and utilize grants made available to the state pursuant to the provisions of the federal National Climate Program Act and other grants, gifts, donations or bequests from any source to be used in carrying out its purpose.

History: Laws 1979, ch. 192, § 2.

ANNOTATIONS

Compiler's notes. - The federal National Climate Program Act appears as 15 U.S.C. § 2901 et seq.

75-4-3. State climatologist; duties.

The duties of the state climatologist shall include:

A. assessing the effect of climate on the natural environment, agricultural production, land and natural resources and human health;

B. coordinating climate impact studies and programs to improve understanding of climate processes, natural and man-induced, and of the social and economic implications of climate change;

C. developing methods and procedures to enable interested state agencies and public institutions of higher education to participate in the program;

D. disseminating climate data, information, advice and assessments to state agencies, local public bodies and the general public;

E. establishing an effective mechanism for consultation and coordination with the federal government and other states in climate related activities; and

F. administering the state intergovernmental climate program.

History: Laws 1979, ch. 192, § 3.

75-4-4. Agency cooperation.

In carrying out the responsibilities enumerated in Section 3 [75-4-3 NMSA 1978] of this act, the state climatologist shall seek the assistance of the geophysical research center at the New Mexico institute of mining and technology, the remote sensing facility at the university of New Mexico and other appropriate agencies and facilities for scientific support.

History: Laws 1979, ch. 192, § 4.

ARTICLE 5 NATURAL LANDS PROTECTION

75-5-1. Short title.

Sections 1 through 6 [75-5-1 to 75-5-6 NMSA 1978] of this act may be cited as the "Natural Lands Protection Act".

History: Laws 1987, ch. 192, § 1.

ANNOTATIONS

Compiler's notes. - Laws 1987, ch. 234, § 82, effective July 1, 1987, recompiled former 9-10-10 NMSA 1978 as 75-5-1 NMSA 1978, but, since Laws 1987, Chapter 192 had already enacted Article 5 of Chapter 75, former 9-10-10 NMSA 1978 has been recompiled as 75-6-1 NMSA 1978.

75-5-2. Purpose.

The purpose of the Natural Lands Protection Act [75-5-1 to 75-5-6 NMSA 1978] is the joint acquisition and protection of unique and ecologically significant lands in New Mexico by the state of New Mexico and New Mexico corporations.

History: Laws 1987, ch. 192, § 2.

75-5-3. Definitions.

As used in the Natural Lands Protection Act [75-5-1 to 75-5-6 NMSA 1978]:

A. "committee" means the natural lands protection committee;

B. "unique and ecologically significant lands" are lands which:

(1) afford habitat for species listed as rare, threatened or endangered by the state or federal government; and

(2) are identified by the natural resources department as constituting the best remaining examples of native ecological communities that are otherwise unprotected; and

C. "corporation" means a New Mexico not-for-profit corporation whose primary purpose is the preservation and conservation of lands.

History: Laws 1987, ch. 192, § 3.

75-5-4. Administration of the act.

A. The Natural Lands Protection Act [75-5-1 to 75-5-6 NMSA 1978] shall be administered by the secretary of natural resources in consultation with a committee consisting of the secretary of natural resources, who shall serve as chairman of the committee, the director of the department of game and fish, the commissioner of public lands, the director of the New Mexico department of agriculture and three public members appointed by the governor, one of whom shall represent the ranching or farming industry.

B. The secretary of natural resources shall present a list of projects to the committee based on priorities generated by the natural resources department.

C. The committee shall recommend lands to be acquired under the provisions of the Natural Lands Protection Act and, subject to appropriation for such purpose by the legislature, pay the state's share of acquisitions. No land shall be acquired unless a corporation jointly acquires the land with the state. A corporation must participate in acquiring a minimum of at least ten percent undivided interest in the land or the state cannot participate in the acquisition. Title to lands acquired shall be held as cotenants having undivided interests in proportion to the state's and the corporation's share of the acquisition and shall be held in the name of the state of New Mexico and the corporation.

D. Priority among projects qualified under the Natural Lands Protection Act [75-5-1 to 75-5-6 NMSA 1978] shall be determined in descending order as follows:

(1) the degree to which the lands in question are subject to the threat of immediate alteration or destruction;

(2) the degree to which ecosystems in question are unduplicated elsewhere; and

(3) usefulness for teaching and research.

History: Laws 1987, ch. 192, § 4.

75-5-5. Management.

A. The purposes of management shall be for education, research and preservation, provided that no use of the lands acquired under the Natural Lands Protection Act [75-5-1 to 75-5-6 NMSA 1978] shall compromise or endanger the natural attributes for which they were acquired.

B. The secretary of natural resources may assign responsibility for management of lands acquired under the Natural Lands Protection Act to the corporation which jointly owns the land.

C. The corporation shall be required to develop and submit to the secretary of natural resources for review a plan for the management of lands for which they are responsible. The secretary of natural resources, in consultation with the committee, will review these plans to insure compliance with the purposes of the Natural Lands Protection Act.

D. Lands adjacent to the land acquired under the Natural Lands Protection Act [75-5-1 to 75-5-6 NMSA 1978] shall not be subjected to any regulation or restriction as a result of such acquisition [acquisition].

E. Access to the land by the general public may be restricted to visits conducted under the direct supervision of an employee or designated representative of the managing corporation.

F. The corporation shall annually pay to the state and its political subdivisions a sum equal to an amount which would have been paid in taxes, levies and assessments. This payment shall be in lieu of such taxes, levies and assessments.

History: Laws 1987, ch. 192, § 5.

ANNOTATIONS

Bracketed material. - The bracketed word "acquisition" in Subsection D was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law.

75-5-6. Acquisition of lands.

No lands or rights of access will be acquired under the Natural Lands Protection Act [75-5-1 to 75-5-6 NMSA 1978] through exercise of the state's power of eminent domain or any other condemnation process.

History: Laws 1987, ch. 192, § 6.

ARTICLE 6 ENDANGERED PLANTS

75-6-1. Endangered plant species; definition; conservation; penalty protection; permits.

A. As used in this section, "endangered plant species" means any plant species whose prospects of survival within the state are in jeopardy or are likely, within the foreseeable future, to become jeopardized. Regulations passed by the natural resources department establishing a list of endangered plant species shall include those species listed in the federal Endangered Species Act of 1973 or as that act may be amended.

B. The natural resources department shall conduct investigations of all species of plants in the state in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data, and to determine conservation measures and requirements necessary for their survival. On the basis of these investigations, the department shall establish a list of endangered plant species.

C. The department shall establish a program necessary for the conservation of listed endangered plant species. That program shall include research, census, law enforcement, habitat maintenance, propagation and transplantation. As used in this section, law enforcement shall be defined to be law enforcement for purposes of enforcement of the prohibition against taking, possession, transportation, exportation from this state, processing, sale or offer for sale or shipment within this state of listed plants or plant materials.

D. The department shall have authority to protect species of plants determined to be endangered by prohibiting the taking, possession, transportation, exportation from this state, processing, sale or offer for sale or shipment within this state of such species. Any person who violates the provisions of this subsection or any regulations issued pursuant to this subsection is guilty of a misdemeanor and upon conviction shall be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000) or be imprisoned for a term of not more than one hundred twenty days or both. As used in this section, "possession" shall be defined to be possession of listed plants or plant materials for purposes of taking, transportation, exportation from this state, processing, sale or offer for sale or shipment within this state.

E. The department may by permit allow collection otherwise prohibited by this section for scientific purposes or to enhance the propagation or survival of the affected species by transplanting or other means, but such permit shall not authorize any action that would violate federal laws or regulations.

F. The department may enter into agreements with federal agencies, other states, agencies or political subdivisions of the state, or with individuals for administration and management of any program established under this section.

History: 1978 Comp., § 9-10-10, enacted by Laws 1985, ch. 143, § 1; recompiled as 1978 Comp., § 75-5-1 by Laws 1987, ch. 234, § 82.

ANNOTATIONS

Compiler's notes. - Laws 1987, ch. 234, § 82, effective July 1, 1987, recompiled former 9-10-10 NMSA 1978 as 75-5-1 NMSA 1978, but, since Laws 1987, Chapter 192 had already enacted Article 5 of Chapter 75, former 9-10-10 NMSA 1978 has been recompiled as 75-6-1 NMSA 1978.

Endangered Species Act of 1973. - The federal Endangered Species Act of 1973, referred to near the end of Subsection A, principally appears as 16 U.S.C. § 1531 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Criminal prosecution under Endangered Species Act of 1973 (16 USCS §§ 1531-1543), 128 A.L.R. Fed. 271.

ARTICLE 7 NATURAL RESOURCES TRUSTEE

75-7-1. Short title.

This act [75-7-1 to 75-7-5 NMSA 1978] may be cited as the "Natural Resources Trustee Act".

History: Laws 1993, ch. 292, § 1.

75-7-2. Natural resources trustee; office of natural resources trustee.

A. The "natural resources trustee" is created. He is appointed by and serves at the pleasure of the governor pursuant to the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the federal Water Pollution Control Act and any other applicable federal law. The natural resources trustee shall act on behalf of the public as trustee of natural resources within the state or belonging to, managed by, controlled by or appertaining to the state, including protecting and representing the state's interest under applicable federal laws regarding injury to, destruction of or loss of natural resources in the state.

B. The "office of natural resources trustee" is created. The office shall be administratively attached to the department of environment. The administrative head of the office of natural resources trustee is the natural resources trustee. For purposes of this subsection, the term "administratively attached" means the same as specified in Section 9-1-7 NMSA 1978.

History: Laws 1993, ch. 292, § 2.

ANNOTATIONS

Federal acts. - The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) is found at 42 U.S.C. § 9601 et seq. The federal Water Pollution Control Act is found at 33 U.S.C. § 1251 et seq.

75-7-3. Natural resources trustee powers and duties.

A. The natural resources trustee shall take all actions necessary to carry out the responsibilities of the natural resources trustee as provided in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the federal Water Pollution Control Act and any other applicable federal law, including the responsibility to:

- (1) act on behalf of the public to protect New Mexico's natural resources by recovering damages for injury to, destruction of or loss of those resources;
- (2) investigate injury to, destruction of or loss of natural resources;
- (3) determine the amount and cause of injury to, destruction of or loss of natural resources;

(4) determine the liability of any person for injury to, destruction of or loss of natural resources;

(5) assess and collect damages for injury to, destruction of or loss of natural resources, including bringing legal actions and collecting the costs of assessing and collecting the damages; and

(6) expend monies for the purposes set forth in the Natural Resources Trustee Act [75-7-1 to 75-7-5 NMSA 1978].

B. The natural resources trustee may:

(1) hire staff, in accordance with the Personnel Act [Chapter 10, Article 9 NMSA 1978], to carry out the provisions of the Natural Resources Trustee Act;

(2) contract with economists, consultants and other experts; and

(3) accept gifts and grants to carry out the provisions of the Natural Resources Trustee Act. Gifts and grants accepted by the natural resources trustee shall be deposited in the natural resources trustee fund.

C. The attorney general shall provide legal counsel and representation to the natural resources trustee and the office of the natural resources trustee.

History: Laws 1993, ch. 292, § 3.

ANNOTATIONS

Federal acts. - The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) is found at 42 U.S.C. § 9601 et seq. The federal Water Pollution Control Act is found at 33 U.S.C. § 1251 et seq.

75-7-4. Natural resources damage; liability; awards for damages.

Awards for damage to natural resources in the state shall consist of those amounts calculated in accordance with federal law, including:

A. the cost of restoration, replacement or acquisition of equivalent resources, plus compensation for the loss of use or enjoyment of the natural resources; and

B. compensation for the state's expenses in investigating, assessing and collecting damages and enforcing the state's rights.

History: Laws 1993, ch. 292, § 4.

75-7-5. Natural resources trustee fund.

A. The "natural resources trustee fund" is created in the state treasury. Money appropriated to the fund or accruing to it through gifts, grants, fees, penalties, bequests or any other source shall be delivered to the state treasurer and deposited in the fund. Money recovered for the state by or on behalf of the natural resources trustee shall be deposited in the natural resources trustee fund. The fund shall be administered by the natural resources trustee. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the natural resources trustee or his designated representative. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. Money in the fund shall be appropriated by the legislature annually to carry out the provisions of the Natural Resources Trustee Act [75-7-1 to 75-7-5 NMSA 1978] by:

(1) restoring, replacing or acquiring natural resources in an area where natural resources have been injured, destroyed or lost, provided that money deposited in the fund because of injury to, destruction of or loss of natural resources in an area shall be disbursed to restore, replace or acquire natural resources in that same area; and

(2) providing for necessary personnel and other costs of the natural resources trustee, the attorney general and the office of natural resources trustee, including the cost of investigation, assessment, collection or enforcement.

C. Money in the fund shall be invested as other state funds are invested, and interest and earnings from the fund shall not revert to the general fund except as provided in this subsection. Interest and earnings from the natural resources trustee fund shall be used first to reimburse the general fund for the initial appropriation of two hundred fifty-eight thousand dollars (\$258,000) to the office of natural resources trustee and seventy-four thousand two hundred fifty dollars (\$74,250) to the attorney general. Next, interest and earnings from the fund shall be available to be appropriated by the legislature to pay for necessary personnel and other costs of the natural resources trustee, the attorney general and the office of natural resources trustee. Thereafter, all interest and earnings from the fund shall be deposited in the game protection fund for the purposes of preserving or improving non-game wildlife and their habitats.

History: Laws 1993, ch. 292, § 5.

ARTICLE 8

WETLANDS AREA RESTORATION

75-8-2. Conditions.

A. Any funds expended for the purpose of restoring native riparian vegetation and wetland areas in the Pecos River valley are contingent upon:

(1) the development of comprehensive plans to monitor all impacts of control activities and to restore native riparian vegetation throughout each project area;

(2) the provision of sufficient funds to undertake those restoration activities; and

(3) the approval of all control, restoration and monitoring plans by the New Mexico department of agriculture, the department of game and fish and the department of environment in consultation with the interstate stream commission.

B. In addition to the conditions set out in Subsection A of this section, any funds expended for the purpose of restoring native riparian vegetation and wetland areas in the Pecos River valley for projects on private lands are contingent upon the owners of those lands agreeing to a sixteen-year covenant running with the land providing for the management and continuity of all restored native riparian vegetation. The covenant shall be enforced by the energy, minerals and natural resources department.

History: Laws 1994, ch. 118, § 1.

ANNOTATIONS

Cross references. - For creation of energy, minerals and natural resources department, see 9-5A-3 NMSA 1978.

For divisions of energy, minerals and natural resources department, see 9-5A-4 NMSA 1978.

For creation of department of environment, see 9-7A-4 NMSA 1978.

For creation of department of game and fish, see 17-1-5 NMSA 1978.

For declarations of purpose on diminishing the impact of man-made depletions of the stream flow in the Pecos River area, see 72-1-2.2 NMSA 1978.

For interstate stream commission, see 74-14-1 to 74-14-44 NMSA 1978.

For creation of department of agriculture, see 76-1-1 NMSA 1978.

Compiler's notes. - There is not a 75-8-1 NMSA 1978.

ARTICLE 9 LAND CONSERVATION INCENTIVES

75-9-1. Short title. (Effective January 1, 2004.).

Sections 1 through 6 [75-9-1 to 75-9-6 NMSA 1978] of this act may be cited as the "Land Conservation Incentives Act".

History: Laws 2003, ch. 331, § 1.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

75-9-2. Purpose. (Effective January 1, 2004.).

The purpose of the Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978] is to encourage private landowners to be stewards of lands that are important habitat areas or contain significant natural, open space and historic resources by providing private landowners with incentives that encourage the protection of private lands for open space, natural resources, biodiversity conservation, outdoor recreation, farmland and forest land preservation, historic preservation and land conservation purposes.

History: Laws 2003, ch. 331, § 2.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

75-9-3. Definitions. (Effective January 1, 2004.).

As used in the Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978]:

A. "interest in real property" means a right in real property, including access, improvements, water rights, fee simple interest, easement and land use easement. The interest shall comply with the requirements of the Section 170(h) of the Internal Revenue Code of 1986, partial interest, mineral right, remainder or future interest or other interest or right in real property;

B. "land" means real property, including rights of way, easements, privileges and all other rights or interests of a land or description relating to or connected with real property; and

C. "public or private conservation agency" means a governmental body or a private not-for-profit charitable corporation or trust authorized to do business in New Mexico that is organized and operated for natural resources, land conservation or historic preservation purposes and that has tax-exempt status as a public charity under the federal Internal Revenue Code of 1986, and the power to acquire, hold or maintain land or interests in land.

History: Laws 2003, ch. 331, § 3.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

Internal Revenue Code of 1986. - The federal Internal Revenue Code of 1986 appears as Title 26 of the United States Code. Section 170(h) of that Code appears as 26 USCS § 170(h).

75-9-4. Administration. (Effective January 1, 2004.)

A. The Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978] shall be administered by the secretary of energy, minerals and natural resources in consultation with the committee established pursuant to the Natural Lands Protection Act [75-5-1 to 75-5-6 NMSA 1978].

B. The secretary of energy, minerals and natural resources may promulgate rules as may be deemed necessary to certify eligible projects for treatment in fulfillment of the purposes of this act. The secretary of taxation and revenue, in consultation with the secretary of energy, minerals and natural resources, shall promulgate rules as may be deemed necessary to administer the tax incentives provided for in the Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978] and shall coordinate the preparation of the report to the legislature showing the fiscal impact on the treasury of the credits claimed pursuant to that act.

History: Laws 2003, ch. 331, § 4.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

75-9-5. Applicability and limitations. (Effective January 1, 2004.)

A. The tax credits provided by the Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978] apply to transfers of land or interests therein in taxable years beginning on or after January 1, 2004 and all taxable years thereafter.

B. A taxpayer claiming a tax credit pursuant to the Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978] may not claim a credit pursuant to a similar law for costs related to the same project.

C. A tax credit that is claimed pursuant to the Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978] from the donation of land or an interest in land made by a pass-through tax entity, such as a trust, estate, partnership, limited liability corporation or partnership, limited partnership, S corporation or other fiduciary, shall be used either by an entity in the event it is the taxpayer on behalf of the entity or by the member, manager, partner, shareholder or beneficiary, as the case may be, in proportion to his

interest in the entity in the event that income, deductions and tax liability pass through the entity to the member, manager, partner, shareholder or beneficiary. Tax credits may not be claimed by both the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

History: Laws 2003, ch. 331, § 5.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.

75-9-6. Interpretation. (Effective January 1, 2004.).

No part or segment of the Land Conservation Incentives Act [75-9-1 to 75-9-6 NMSA 1978] shall be interpreted to alter or amend permit requirements, reporting requirements, allocation procedures or other requirements as set forth in any other provision of state law.

History: Laws 2003, ch. 331, § 6.

ANNOTATIONS

Effective dates. - Laws 2003, ch. 331, § 9 makes the act effective on January 1, 2004.