

CHAPTER 15

ADMINISTRATION OF GOVERNMENT

ARTICLE 1

INFORMATION SYSTEMS

15-1-1. Short title.

Sections 1 through 13 [15-1-1 to 15-1-13 NMSA 1978] of this act may be cited as the "Information Systems Act".

History: Laws 1986, ch. 81, § 1.

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

15-1-2. Information systems division created.

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

History: Laws 1986, ch. 81, § 2.

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

15-1-3. Purpose.

The purpose of the Information Systems Act [15-1-1 to 15-1-13 NMSA 1978] is to coordinate the central and individual state agency information systems and the necessary private sector facilities in the interest of a fully informative, efficient, integrated and orderly processing, purchasing and recording system.

History: Laws 1986, ch. 81, § 3.

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

15-1-4. Definitions.

As used in the Information Systems Act [15-1-1 to 15-1-13 NMSA 1978]:

A. "automated data processing" or "ADP" means gathering, interpreting, transmitting or converting data through the use of computers;

B. "ADP host center" or "center" means the service organization which provides shared resources for using-groups in areas of teleprocessing, information processing and communications processing. The designated host center is the information systems division of the general services department;

C. "council" means the information systems council;

D. "information systems resources" means software and hardware, including terminals and communications networks and facilities;

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

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

History: Laws 1986, ch. 81, § 4.

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

15-1-5. Information systems council created; composition; staff services; administrative attachment.

A. The "information systems council" is created and is administratively attached to the general services department pursuant to the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978]. The council shall consist of six members appointed as follows:

(1) three public members who shall be appointed by the governor for staggered terms of five years or less; provided that the initial appointments shall be made for terms ending on January 1, 1989; January 1, 1990 and January 1, 1991, respectively. During their tenure in office, these members shall not be employees of the state or its political subdivisions and shall not contract with the state. These three public members shall have experience in automated data processing management and planning. A person whose principal occupation is as a consultant in the automated data processing field shall not be considered for appointment;

(2) two public members who shall be appointed by the governor for staggered terms of five years or less; provided that the initial appointments shall be made for terms expiring January 1, 1987 and January 1, 1988, respectively. These two members shall be experts in the public telecommunications field with experience in television and radio

broadcasting. A person whose principal occupation is as a consultant to the public telecommunications field shall not be considered for appointment; and

(3) the secretary of general services who shall be chairperson of the council and who shall not vote on any question or action before the council.

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

B. Staff for the council shall be provided by the general services department.

History: Laws 1986, ch. 81, § 5.

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

Information Systems Council. - Section 15-1-13 NMSA 1978 provides that the Information Systems Council is terminated on July 1, 1993.

15-1-6. Powers and duties of chairperson and council.

A. The chairperson, with the advice of the council, shall develop and update annually a detailed "information systems master plan" for the governor. The plan shall specify policy and directions with which state agencies shall comply for the following planned topics:

- (1) automated systems development and support standards;
- (2) ADP host center duties, responsibilities and service standards;
- (3) the distribution of processing guidelines and standards;
- (4) office automation standards;
- (5) local area network standards;
- (6) personal computer use guidelines;
- (7) communication network standards;
- (8) network management responsibilities;
- (9) data base management standards;

(10) purchasing policies;

(11) security standards; and

(12) other policy areas which the chairperson determines to be pertinent.

B. The information systems master plan shall provide for a policy framework that can be used to develop, analyze and approve individual state agencies' and ADP host centers' information systems plans and resource allocation. The plan shall define the policy[,] directions and responsibilities for state agency and center compliance concerning use of information processing services.

History: Laws 1986, ch. 81, § 6.

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

15-1-7. Powers and duties of council.

The council shall:

A. receive, analyze, approve and monitor information systems plans for state agencies, subject to the availability of funds and subject to the conformance of such plans with the information systems master plan;

B. approve the acquisition of information systems resources in conformance with the information systems master plan and the approved individual information systems plan for each state agency; and

C. provide that individual information systems plans for state agencies are compiled for each fiscal year and include at least the following for automated systems: support strategies for ongoing systems, proposed new systems, acquisition and disposition of information systems resources and personnel and consultant support. The state budget division of the department of finance and administration shall approve all information systems expenditures if they are in conformance with the information systems master plan and the approved individual agency automated data processing plan.

History: Laws 1986, ch. 81, § 7.

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

15-1-8. Purchasing; information systems resources.

A. The council shall serve as the central purchasing agency for information systems resources. At the request of the council, the state purchasing agent shall provide appropriate assistance.

B. The judicial and legislative branches of state government and state educational institutions are not required to purchase information systems resources through the council.

C. Information systems resources shall be purchased, lease-purchased or leased for use by a state agency only if the information systems resources are consistent with the information systems master plan approved by the governor and the individual state agency information system plan approved by the council.

History: Laws 1986, ch. 81, § 8.

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

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

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

15-1-9. Records of state agencies; public records; copy fees; computer data bases; criminal penalty.

A. Except as otherwise provided by federal or state law, information contained in information systems data bases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency which has inserted that information into the data base, in accordance with the Public Records Act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978], upon the payment of a reasonable fee for the service.

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

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

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

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

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

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

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

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

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

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

G. Except as authorized by law or rule of the secretary, any person who reveals to any unauthorized person information contained in a computer data base or who uses or permits the unauthorized use or access of any computer data base is guilty of a misdemeanor and upon conviction the court shall sentence such person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand dollars (\$5,000) or both. Such person shall not be employed by the state for a period of five years after the date of conviction.

History: Laws 1986, ch. 81, § 9.

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

Repeals. - Laws 1986, ch. 81, § 15 repeals former 15-1-9 NMSA 1978, as enacted by Laws 1984, ch. 64, § 12, relating to records contained in information systems data bases, effective May 21, 1986. For provisions of former section, see 1985 Cumulative Supplement.

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

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

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

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

52A C.J.S. Larceny § 129(2); 76 C.J.S. Records §§ 1 to 3, 34 to 40, 72 to 76.

15-1-10. Data processing equipment revolving fund created; disbursement.

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

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

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

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

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

15-1-11. Communications equipment revolving fund created; disbursement.

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

B. Expenditures from the communications equipment revolving fund shall be made for the purpose of acquiring and replacing communications equipment. Such expenditures

shall be made only upon vouchers approved by the director of the information systems division of the general services department and shall be disbursed pursuant to a five-year plan prepared by the division and approved by the council and presented annually to the department of finance and administration and the legislature.

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

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

15-1-12. Depreciation and replacement fees; assessment; collection; crediting to funds.

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

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

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

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

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

15-1-13. Termination of information systems council.

The information systems council is terminated on July 1, 1993 pursuant to the provisions of the Sunset Act.

History: Laws 1986, ch. 81, § 13.

ARTICLE 1A AUTOMATED DATA PROCESSING

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

ANNOTATIONS

Repeals. - Laws 1984, ch. 64, § 26A, amends Laws 1981, ch. 241, § 12, to repeal 15-1A-1 through 15-1A-17 NMSA 1978. For present provisions relating to automated data processing, see 15-1-1 NMSA 1978 et seq.

ARTICLE 2 COMMUNICATIONS DIVISION

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

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

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

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

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

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

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

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

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

15-2-3. Service charge.

A. The radio communications bureau of the communications division of the general services department shall charge a fee to the state or any officer, agency, department, division, board or commission of the state for any services rendered in the exercise of the radio communications bureau's supervisory control.

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

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

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

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

15-2-4. Exclusion from jurisdiction.

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

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

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

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

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

15-2-5. Property transfer.

Ownership of all radio communication property at mountaintop or remote sites, including buildings, towers, antennas, emergency power plants and radio equipment owned by the New Mexico state police, state highway department, department of game and fish

and the state forestry division, is transferred to the communications division of the general services department.

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

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

ANNOTATIONS

Repeals. - Laws 1986, ch. 81, § 15 repealed former 15-2-6 and 15-2-7 NMSA 1978 as amended by Laws 1978, ch. 124, § 8 and Laws 1980, ch. 151, § 14 relating to radio equipment amortization, effective May 21, 1986. For provisions of former sections see 1983 Replacement Pamphlet. For present provision see 15-1-11 NMSA 1978.

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

The radio equipment purchased in accordance with Laws 1972, Chapter 74 [15-3-21 to 15-3-24 NMSA 1978] by the property control division of the department of finance and administration is transferred to the radio communications bureau of the general services department. The radio communications bureau has the custody and control of the transferred radio equipment.

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

ARTICLE 3 PROPERTY CONTROL DIVISION

15-3-1. Property control division; creation; director.

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

History: 1953 Comp., § 6-2-25, enacted by Laws 1968, ch. 43, § 1; 1977, ch. 247, § 68; 1983, ch. 301, § 45.

Cross-references. - As to appointment of director, see 9-17-5 NMSA 1978.

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 (presently compiled as 15-3-1, 15-3-9 to 15-3-11, 15-3-14 to 15-3-16, 15-3-25 and 15-3-31 NMSA 1978) and the

rules promulgated thereunder, are binding on the judicial branch unless the supreme court determines that such compliance would unreasonably impede or impair the functions of the judiciary. 1967-68 Op. Att'y Gen. No. 68-64.

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

15-3-2. Director of division; duties; federal funds.

A. The director of the property control division shall:

(1) have control over all state buildings and lands except those under the control and management of the state highway department; the state fair commission; state institutions of higher learning; the New Mexico school for the deaf; the New Mexico school for the visually handicapped; the supreme court; the commissioner of public lands; the state armory board, in accordance with Section 20-7-2 NMSA 1978; the building in which the legislature is housed, the adjacent utilities plant and the surrounding grounds; the museum of New Mexico; and the state library building and adjacent grounds. The director shall assign the use or occupancy of state buildings and lands under his control to the state agency or political subdivision which may make the best and highest beneficial use of the property;

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

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

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

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

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

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

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

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

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

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

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

History: Laws 1968, ch. 43, § 2; 1953 Comp., § 6-2-26; Laws 1971, ch. 285, § 2; 1973, ch. 209, § 1; 1977, ch. 247, § 69; 1977, ch. 385, § 14; 1978, ch. 166, § 14; 1980, ch. 151, § 16.

Cross-references. - As to maintenance charges for the use of New Mexico state police facilities, see 15-3-33 NMSA 1978.

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

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

15-3-3. Repealed.

ANNOTATIONS

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

15-3-4. Purpose of act.

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

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

15-3-5. Penitentiary property transferred.

The remaining property on Cordova road held in the name of the New Mexico state penitentiary including the former site of the New Mexico state penitentiary is hereby

transferred to the property control division of the general services department. The land will be held in the name of the state of New Mexico.

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

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

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

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

15-3-7. Prohibition.

No state agency subject to the provisions of Subsection E [Subsection A(5)] of Section 15-3-2 NMSA 1978 may enter into a lease or rental agreement unless the building in which the space is leased or rented meets the standards relating to the physically handicapped set by the general construction board or any trade board [bureau] pursuant to Section 60-13-44 NMSA 1978.

History: 1953 Comp., § 6-2-26.1, enacted by Laws 1975, ch. 10, § 1.

Compiler's note. - The reference to Subsection E of 15-3-2 NMSA 1978 in this section seems incorrect, as that section contains no such subsection. Subsection A of 15-3-2 NMSA 1978 deals with the controlling of leasing and rental of space in private buildings.

Trade board. - The 1977 amendment of 60-13-44 NMSA 1978, referred to in this section, substituted "trade bureau" for "trade board" throughout that section.

15-3-8. Regulations; waiver.

A. The director of the property control division of the general services department may adopt regulations allowing the requirements of Section 15-3-7 NMSA 1978 to be waived in cases where extreme hardship would be caused, except that reasonable diligence must be made to bring a substandard building up to the standards specified in all cases.

B. The director of the property control division of the general services department may allow waivers for and exercise the regulatory powers granted by Subsection A of this

section over all leases and rental agreements entered into by any state agency, which are subject to his control by virtue of Subsection E [Subsection A(5)] of Section 15-3-2 NMSA 1978.

History: 1953 Comp., § 6-2-26.2, enacted by Laws 1975, ch. 10, § 2; 1977, ch. 247, § 70; 1983, ch. 301, § 48.

Compiler's note. - The compiler inserted the bracketed language in Subsection B in the 1980 replacement pamphlet and the bracketed language was subsequently enacted in the 1983 session law.

15-3-9. Power of the property control division to purchase land.

The property control division may do any and all acts necessary and proper in the acquisition of lands. All such acquisitions of land shall first be approved by the state board of finance.

History: 1953 Comp., § 6-2-27, enacted by Laws 1968, ch. 43, § 3; 1971, ch. 285, § 5.

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

15-3-10. Acquisition of land by gift or donation.

The property control division is authorized to acquire land by gift or donation, the title to which shall vest in the state of New Mexico. However, all such gifts or donations of lands must first be approved by the board of finance.

History: 1953 Comp., § 6-2-28, enacted by Laws 1968, ch. 43, § 4.

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

15-3-11. Building and remodeling; leasing.

A. The director of the property control division of the general services department has the authority to do all acts necessary and proper for the redesigning, major renovation and remodeling of present state buildings, and the erection of additional state buildings when needed. The director of the property control division may let contracts for these purposes made according to the established state purchasing procedures for contracts of the type and amount let. However, all such remodeling, major renovation and construction must first be approved by the state board of finance. This subsection shall not apply to any redesigning, major renovation or remodeling or the erection of additional buildings of the state highway department.

B. The director of the property control division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code for the purchase of tangible personal property, has the authority to enter into long-term

leases, for periods not to exceed ten years, of vacant lands, where the lessor contracts with the state to construct and complete buildings, subject to the approval of the staff architect, as a condition precedent to the start of the rental term. Such buildings shall comply with applicable standards for the physically handicapped and applicable codes. No lease shall be executed under this subsection until the staff architect created under the provisions of Section 15-3-13 NMSA 1978 shall have filed with the legislative finance committee a detailed statement of his evaluation and approval of the proposed building.

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

History: 1953 Comp., § 6-2-29, enacted by Laws 1968, ch. 43, § 5; 1971, ch. 285, § 6; 1977, ch. 247, § 71; 1978, ch. 209, § 1; 1983, ch. 301, § 49; 1989, ch. 324, § 9.

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

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

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

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

Contractual provisions authorized. - Inherent in the authority to do all acts necessary and proper in the remodeling or erection of state buildings, including the authority to let

the contract, is the power to include therein a provision that the contractor must obtain a permit from the proper trade board (now bureau), pay the permit fee and submit to inspection to insure compliance with the codes. 1969-70 Op. Att'y Gen. No. 70-38.

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

15-3-12. State building contract; feasibility study of energy sources.

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

History: 1953 Comp., § 6-2-29.1, enacted by Laws 1975, ch. 200, § 1; 1983, ch. 301, § 50.

15-3-13. Position of staff architect created; duties and responsibilities.

A. The position of "staff architect" is created within the property control division of the general services department. The staff architect shall be a legal resident of and an architect registered in the state for at least two years. The staff architect shall assist the director of the property control division in carrying out the provisions and requirements of the Property Control Act. It shall also be his duty and responsibility to:

(1) develop long-range programs for the continuing preservation and repair of buildings and improvements and for the beautification of grounds and premises under the control of the director of the property control division;

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

(3) review plans and specifications developed by architects or engineers contracted for the construction of new buildings or for the remodeling or renovation of existing state buildings under control of the director of the property control division, insuring that all local, state and federal laws and building codes are complied with, that adequate parking is provided according to law and that adequate safety is provided for such buildings and for all persons while they are in or about the building;

(4) develop or contract for the development of plans and specifications for state projects whose expenditures do not exceed five hundred thousand dollars (\$500,000) and for state projects which consist of repair, replacement or remodeling of nonstructural elements of an existing structure or project;

(5) conduct on-site inspections of state buildings while under construction or while being remodeled or repaired to assure that construction specifications are being met. If the state project does not involve expenditures in excess of five hundred thousand dollars (\$500,000), this responsibility may be delegated to the user agency. The division shall develop a standard form which shall be completed by the user agency in the exercise of this responsibility; and

(6) supervise the inspection of all facilities leased or rented by state agencies and recommend structural and facility changes necessary to bring leased or rented facilities up to standard pursuant to Section 60-13-44 NMSA 1978.

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

History: Laws 1968, ch. 43, § 6; 1953 Comp., § 6-2-30; Laws 1975, ch. 177, § 1; 1977, ch. 247, § 72; 1977, ch. 360, § 3; 1978, ch. 69, § 1; 1981, ch. 277, § 1; 1983, ch. 301, § 51.

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

Property Control Act. - See 15-3-32 NMSA 1978.

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

ANNOTATIONS

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

Laws 1984, ch. 65, as amended by Laws 1984 (1st S.S.), ch. 2, § 1, makes the act effective on November 1, 1984.

Laws 1984 (1st S.S.), ch. 2, § 2, makes the act effective immediately. Approved March 28, 1984.

15-3-13.8. Architect rate schedule.

The secretary shall adopt by regulation an "architect rate schedule" which shall set the highest permissible rates for each building type group, which shall be defined in the regulations. The rate schedule shall be in effect upon the approval of the state board of finance and shall apply to all contracts between the secretary or a designee and an architect which are executed after the effective date of the architect rate schedule.

History: 1978 Comp., § 15-3-13.8, enacted by Laws 1984, ch. 64, § 19.

15-3-14. Lease of land or buildings for private use.

The director of the property control division may lease any land or building under his control to private use until the land or building is needed for public use. All income from the leases shall be deposited in the long-term lease guarantee fund. All leases shall be made in accordance with Sections 13-6-2 and 13-6-3 NMSA 1978.

History: 1953 Comp., § 6-2-32, enacted by Laws 1968, ch. 43, § 8; 1971, ch. 285, § 7; 1977, ch. 247, § 73; 1978, ch. 209, § 2.

15-3-15. Concessions.

A. The director of the property control division may grant concession contracts in state buildings under his control, except concession contracts authorized to be entered into by the state park and recreation commission [state park and recreation division] pursuant to Section 16-2-9 NMSA 1978, at such fees as he may prescribe.

B. Concessions shall be granted only under written contract, the faithful performance of which shall be secured by a bond prescribed by the director of the property control division. All income from such concessions shall be deposited in the state capitol improvement fund.

History: 1953 Comp., § 6-2-33, enacted by Laws 1968, ch. 43, § 9; 1971, ch. 285, § 8; 1977, ch. 247, § 74.

State capitol improvement fund. - The reference to the state capitol improvement fund in Subsection B apparently means that fund created by 15-3-18 NMSA 1978, repealed by Laws 1978, ch. 209, § 3. See repeal note to 15-3-18 NMSA 1978.

State park and recreation commission. - The state park and recreation commission was abolished by Laws 1977, ch. 254, § 4. Section 3 of that act establishes the natural resources department, consisting of several divisions, including the state park and recreation division, and § 11 sets out the duties of that division. The natural resources department was abolished by Laws 1987, ch. 234, § 84. Section 3 of that act establishes the energy, minerals and natural resources department, consisting of several divisions, including the state park and recreation division. See 9-5A-1 NMSA 1978 et seq.

15-3-16. Negotiating federal grants and loans.

The director of the property control division shall have the power to negotiate and receive loans and grants from the United States government and to transfer such amounts to the state capitol improvement fund.

History: 1953 Comp., § 6-2-34, enacted by Laws 1968, ch. 43, § 10; 1977, ch. 247, § 75.

State capitol improvement fund. - The reference to the state capitol improvement fund at the end of this section apparently means that fund created by 15-3-18 NMSA 1978, repealed by Laws 1978, ch. 209, § 3. See repeal note to 15-3-18 NMSA 1978.

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

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

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

15-3-18. Repealed.

ANNOTATIONS

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

15-3-19. Parking facilities required for state buildings; standards.

A. No state building shall be constructed or enlarged to a major degree without providing adequate parking facilities for the use of the public officers and employees employed in such building and for the use of those members of the public reasonably expected to enter such building on public business.

B. Whenever any state building is constructed or enlarged to a major degree, adequate parking facilities must be provided which are sufficient to service the state personnel

employed in such building and any members of the public reasonably expected to use such building on public business.

C. The furnishing of at least one parking space for each three hundred square feet of usable floor space, exclusive of hallways, stairways, toilet facilities, utility rooms and similar common areas, shall be deemed to be adequate parking for the use of such state building.

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

History: 1953 Comp., § 6-6-18, enacted by Laws 1977, ch. 360, § 1.

15-3-20. Staff architect approval.

The staff architect of the property control division of the general services department in the case of state buildings, or the university staff architect or the board of educational finance in the case of state educational facilities, shall review all plans for the construction or major enlargement of any state building or state educational facility [facility], prior to the execution of any contract for such work, and shall certify to the state board of finance that adequate parking is provided for in compliance with the provisions of this act. If adequate parking is not provided for pursuant to the provisions of this act, no contract may be entered into on behalf of the state.

History: 1953 Comp., § 6-6-19, enacted by Laws 1977, ch. 360, § 2; 1983, ch. 301, § 52.

15-3-21. Short title.

This act [15-3-21 to 15-3-23, 15-3-24 NMSA 1978] may be cited as the "Capital Program Act".

History: 1953 Comp., § 6-2-42, enacted by Laws 1972, ch. 74, § 1.

15-3-22. Definition.

As used in the Capital Program Act [15-3-21 to 15-3-23, 15-3-24 NMSA 1978] "capital outlay project" means the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including, but not limited to land, buildings, machinery, furniture and equipment, but excluding projects or programs for the construction, improvement or maintenance of highways and bridges under the supervision of the state highway commission. A capital outlay project includes all proposed expenditures related to the entire undertaking.

History: 1953 Comp., § 6-2-43, enacted by Laws 1972, ch. 74, § 2.

15-3-23. Capital program; fund created; allocation and expenditure for capital outlay.

A. The "capital program fund" is created. To this fund shall be credited all appropriations for capital outlay projects under the control of the property control division of the general services department.

B. The capital program fund shall be allocated by the property control division for capital outlay projects specified by the legislature in accordance with the provisions of Sections 15-3-1, 15-3-2, 15-3-7 to 15-3-16, 15-3-25 and 15-3-31 NMSA 1978.

History: 1953 Comp., § 6-2-44, enacted by Laws 1972, ch. 74, § 3; 1983, ch. 301, § 53.

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

Laws 1991, ch. 259, § 16, effective April 5, 1991, provides that \$78,977 remaining from insurance proceeds that were acquired to reimburse an appropriation from the capital program fund to the Fort Bayard medical center, pursuant to Laws 1980, ch. 129, § 1B, shall not be expended, but \$49,977 of that amount is appropriated to the board of regents of western New Mexico university for the seventy-ninth through eighty-second fiscal years for planning and designing handicapped accessibility and for related building improvements at the university located in Grant county and provides that any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the capital program fund.

15-3-23.1. Capital outlay project reserve fund continued; expenditure.

The capital outlay project reserve fund, created by Laws 1979, Chapter 404, Section 7, is continued. The fund shall be used to meet capital project funding requirements for projects the planning of which has been authorized by the legislature. Expenditures from the fund shall be made only upon specific appropriation by the legislature.

History: Laws 1980, ch. 11, § 1.

Cross-references. - As to capital program fund, see 15-3-23 NMSA 1978.

As to capitol buildings repair fund, see 15-3-24 NMSA 1978.

Compiler's note. - The reference to Laws 1979, ch. 404, § 7, in the first sentence means that uncompiled appropriation section of the act.

15-3-23.2. Capital project; contingency limitation.

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

History: 1978 Comp., § 15-3-23.2, enacted by Laws 1984 (1st S.S.), ch. 10, § 10.

15-3-23.3. Capital projects; cost engineer required.

A. For the purposes of this section:

(1) "cost engineer" means a cost engineer or cost consultant certified by the American association of cost engineers or having equivalent experience, certification or registration; and

(2) "capital project" means construction or renovation for those projects appropriated to the capital program fund as defined in Section 15-3-23 NMSA 1978.

B. The general services department may contract with a cost engineer to provide cost engineering services for capital projects under four hundred thousand dollars (\$400,000), and shall contract for such services on any projects over four hundred thousand dollars (\$400,000) unless the department determines that cost engineering services are not necessary. The cost engineer shall provide cost engineering services for the capital project from the planning stage through the end of construction, and the department may contract with the same cost engineer for all capital projects approved by the legislature during any one year.

C. Within twenty days after the end of a legislative session in which capital projects have been authorized by the legislature, the department shall advertise for requests for proposals from qualified persons for cost engineering services for capital projects approved by the legislature during that session. The department shall review the proposals and submit three proposals to the state board of finance for the board's selection. The state board of finance, after consultation with the legislative finance committee, shall select the cost engineer.

D. No capital project shall proceed, and no money transferred, until the department has contracted with a cost engineer to provide cost engineering services for the approved capital projects.

E. The cost engineer shall keep the secretary of general services and the property control division informed of the progress of the capital projects under the cost engineer's control. The secretary and the cost engineer shall make periodic reports to the legislative finance committee.

F. For capital projects not under the control of the general services department, the legislature may require, or the controlling agency may request, the assistance of the cost engineer on those projects.

History: 1978 Comp., § 15-3-23.3, enacted by Laws 1984 (1st S.S.), ch. 10, § 11.

15-3-24. Capitol buildings repair fund; creation; expenditures.

A. The "capitol buildings repair fund" is created. To this fund shall be transferred all income, including earnings on investments, derived from lands granted to the state by the United States congress for legislative, executive and judicial public buildings.

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

C. In the event any capital outlay project exceeds authorized project cost by no more than five percent, the state board of finance may authorize the property control division 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.

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

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

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

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

History: Laws 1989, ch. 315, § 1.

Emergency clauses. - Laws 1989, ch. 315, § 14 makes the act effective immediately. Approved April 7, 1989.

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

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

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

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

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

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

Laws 1990 (1st S.S.), ch. 6, § 1 appropriates \$13,110,200 from the general fund to the capital projects fund for expenditure in the seventh-eighth through eighty-first fiscal years and further provides that in the event that general fund revenues and balances, including all other transfers to the general fund authorized by law, are insufficient to meet the level of this appropriation, an amount not to exceed the difference is authorized by the legislature to be expended from the general fund operating reserve pursuant to 6-4-2.1 NMSA 1978.

Laws 1990 (1st S.S.), ch. 6, §§ 2 and 3, effective April 5, 1990, appropriates specified amounts for specified purposes from the capital projects fund to specified agencies or funds for expenditure in the seventy-eighth through eighty-first fiscal years for the specified purposes, and further provide that unless otherwise specified, any unexpended or unencumbered balances remaining at the end of the eighty-first fiscal year shall revert to the capital projects fund.

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

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

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

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

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

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

15-3-25. State motor pool.

The director of the property control division shall have custody and control of all motor vehicles designed primarily for passenger use which are the property of the state or which are for the public use of any agency or officer and shall make rules governing the maintenance and use of all vehicles of this state under his control. However, the director may determine that it is impractical to retain custody and control of certain motor vehicles, and he may exclude them from the operation of the motor pool in the following cases:

A. required emergency use;

B. the motor vehicle is of a special design or construction which effectively limits its use to a particular purpose;

C. the funds used in the acquisition of the motor vehicles are subject to constitutional or trust limitations that prevent their use as a part of the motor pool; or

D. the motor vehicle is not based in Santa Fe; provided, however, that agencies with vehicles so excluded shall adhere to the rules and regulations promulgated by the director governing the use of such vehicles.

History: 1953 Comp., § 6-2-35, enacted by Laws 1968, ch. 43, § 11; 1975, ch. 76, § 1; 1977, ch. 247, § 76.

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.

15-3-26. Purchase or lease of motor vehicles with state funds; approval of state board of finance; standard equipment.

No motor vehicle, except as hereinafter provided, shall be purchased or leased with state funds by any state officer or state department employee unless such purchase or lease is first specifically provided for in the approved budget. Motor vehicles purchased or leased shall have standard equipment; provided that extra equipment may be allowed by the general services department if it is shown that there is a need for extra equipment in connection with unusual or special services.

History: Laws 1925, ch. 98, § 1; C.S. 1929, § 11-1101; 1941 Comp., § 68-1101; 1953 Comp., § 64-25-1; Laws 1963, ch. 37, § 1; 1983, ch. 301, § 54.

Cross-references. - As to purchases by the state park and recreation division of the natural resources department, see 16-2-19 NMSA 1978.

Public Purchases Act. - The Public Purchases Act has been repealed and replaced by the Procurement Code presently compiled in 13-1-28 to 13-1-199 NMSA 1978.

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.

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.

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

81A C.J.S. States § 145.

15-3-27. [Highway trucks and tractors excepted.]

There shall be excepted from the provisions of this act [15-3-26 to 15-3-29 NMSA 1978] motor trucks or tractors required by the state highway department for the work of that department.

History: Laws 1925, ch. 98, § 2; C.S. 1929, § 11-1102; 1941 Comp., § 68-1102; 1953 Comp., § 64-25-2.

15-3-28. [Identification marks on state-owned vehicles.]

All motor vehicles now owned by or hereafter purchased by or for the use of the state of New Mexico, or any of its departments, shall have painted upon each side thereof in yellow or white paint, and in letters not less than two (2) inches in height, the following designation of ownership "State of New Mexico, Department," and naming the department; and if such department shall have assigned to its use more than one

state-owned motor vehicle, such motor vehicles shall be conspicuously numbered in consecutive order.

History: Laws 1925, ch. 98, § 3; C.S. 1929, § 11-1103; 1941 Comp., § 68-1103; 1953 Comp., § 64-25-3.

Cross-references. - For exemption of vehicles of New Mexico livestock board from provisions of this section, see 77-2-23 and 77-2-24 NMSA 1978.

15-3-29. [Governor's contingent fund expenditures.]

No provision of this act [15-3-26 to 15-3-29 NMSA 1978] shall in any way affect the expenditure of the governor's contingent fund.

History: Laws 1925, ch. 98, § 4; C.S. 1929, § 11-1104; 1941 Comp., § 68-1104; 1953 Comp., § 64-25-4.

15-3-30. [Use of state vehicles for pleasure or private use; penalty.]

Any person who shall use any motor vehicle which is the property of the state or designated for the use of the state or any department or agency thereof for private use or purposes of pleasure shall be deemed guilty of a misdemeanor and for such offense shall be punished by a fine of not less than \$50.00 (fifty dollars), or by imprisonment in the county jail for not more than three months or by both such fine and imprisonment.

History: Laws 1933, ch. 100, § 3; 1941 Comp., § 68-1107; 1953 Comp., § 64-25-7.

Cross-references. - As to exemption of vehicles of New Mexico livestock board, see 77-2-23 and 77-2-24 NMSA 1978.

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.

15-3-31. Aircraft control center.

The director of the property control division shall create and maintain an aircraft control center. In connection with the center, the director shall:

- (1) maintain records of all flights made by state-owned aircraft;
- (2) require the head of each state agency owning an airplane to provide daily reports on all flight schedules including a preflight report of anticipated time of departure and arrival

for each flight, name of the pilot and each passenger, the destination and intermediate stops and a post-flight report of actual departure and arrival times; and

(3) make available, when not in use by the owning agency, state aircraft for the use of other agencies at a reasonable rental rate which he shall determine. However, first priority of assignment shall be given for use by the owning agency. If the director of the property control division determines that it is impractical for aircraft to be made available for use by other agencies as a result of required emergency use or other special considerations, the aircraft may be exempted from this provision. However, the use of the aircraft must still be reported as required above.

History: 1953 Comp., § 6-2-36, enacted by Laws 1968, ch. 43, § 12; 1977, ch. 247, § 77.

15-3-32. Short title.

Sections 15-3-1, 15-3-2, 15-3-7 to 15-3-16, 15-3-25 and 15-3-31 NMSA 1978 may be cited as the "Property Control Act".

History: 1953 Comp., § 6-2-38, enacted by Laws 1971, ch. 285, § 1.

15-3-33. State police facilities; maintenance charges.

The state police may assess maintenance charges to those agencies which occupy New Mexico state police facilities according to a fee schedule approved by the general services department.

History: Laws 1980, ch. 10, § 1; 1983, ch. 301, § 55.

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

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

History: Laws 1991, ch. 39, § 1.

Effective dates. - Laws 1991, ch. 39 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

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.

Effective dates. - Laws 1989, ch. 363 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

15-3A-2. Duties and powers.

A. The governor's residence advisory commission shall:

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

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

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

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

B. The commission may:

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

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

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

History: Laws 1989, ch. 363, § 2.

15-3A-3. Trust fund created.

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

History: Laws 1989, ch. 363, § 3.

ARTICLE 4 FEDERAL PROPERTY AND COMMODITIES DIVISION

15-4-1. Repealed.

ANNOTATIONS

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

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

15-4-2. Surplus property; authority.

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

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

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

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

15-4-3. Surplus property; revenues.

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

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

ARTICLE 5 TELECOMMUNICATIONS BUREAU

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

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

B. The telecommunications bureau shall enter into necessary agreements to provide, where feasible, a central telephone system, including wide-area telephone service, and

related facilities to all executive, legislative, judicial, institutional and other state governmental offices located in the state of New Mexico.

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

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

ARTICLE 7

RISK MANAGEMENT DIVISION

15-7-1. Definitions.

As used in Sections 15-7-1 through 15-7-10 NMSA 1978:

- A. "board" means the risk management advisory board;
- B. "director" means the director of the risk management division of the general services department;
- C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions;
- D. "public employee" means any officer, employee or servant of a governmental entity, including elected or appointed officials, law enforcement officers and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation, but the term does not include an independent contractor; and
- E. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

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

15-7-2. Risk management division.

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

B. The risk management division shall apportion to each state agency its contributions toward the purchase of insurance or for the providing of coverage for any risk not insured. The amount of contribution by each agency shall be determined by the risk management division and shall reflect the respective risks of each agency. All contributions toward the purchase of insurance or for the coverage of any risk not

insured shall be paid into the public liability fund, the workers' compensation retention fund, the public property reserve fund or the group self-insurance fund, as appropriate. The department of finance and administration may collect or transfer funds from each agency to cover insurance or other costs, pursuant to the risk management division's instructions.

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

History: Laws 1976, ch. 58, § 21; 1953 Comp., § 5-14-21; Laws 1977, ch. 247, § 54; 1977, ch. 385, § 5; 1978, ch. 166, § 7; 1983, ch. 301, § 64; 1986, ch. 102, § 5; 1989, ch. 231, § 10.

Cross-references. - As to 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 of the risk management division.

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

(1) enter into contracts;

(2) procure insurance, reinsurance or employee group benefits; provided that reinsurance or excess coverage insurance may be placed by private negotiation, notwithstanding the provisions of the Procurement Code, if such insurance or reinsurance has a restricted number of interested carriers, the board determines that such coverage is in the interest of the state and cannot otherwise be procured for a reasonable cost and the director seeks the advice and review of the board in such placement and in designing private negotiation procedures;

(3) in the manner prescribed by Subsection E of Section 9-6-5 NMSA 1978, after a notice and a public hearing, prescribe by regulation reasonable and objective underwriting and safety standards for governmental entities, and reasonable standards for municipal self-insurance pooling agreements covering liability under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978], and adopt such other regulations as may be deemed necessary;

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

(5) pay expenses and costs;

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

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

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

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

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

(8) study the risks of all governmental entities;

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

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

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

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

B. The director shall report his findings and recommendations, if any, for the consideration of each legislature. The report shall include the amount and name of any person receiving payment from the public liability fund of any claim paid during the previous fiscal year exceeding one thousand dollars (\$1,000). The report shall be made available to the legislature on or before December 15 preceding each regular legislative session.

History: Laws 1976, ch. 58, § 22; 1953 Comp., § 5-14-22; Laws 1977, ch. 247, § 55; 1977, ch. 385, § 6; 1978, ch. 166, § 8; 1979, ch. 287, § 3, 1979, ch. 392, § 1; 1983, ch. 301, § 65; 1986, ch. 102, § 6; 1990, ch. 71, § 1.

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

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

15-7-3.1. Repealed.

ANNOTATIONS

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

15-7-4. Risk management advisory board.

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

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

B. Members of the board appointed by the governor or named by the president of the state bar of New Mexico shall serve for a term of four years. The insurance agent appointed by the governor and the attorney named by the president of the state bar of New Mexico shall be paid by the risk management division per diem and mileage in

accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

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

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

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

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

The advisory board shall review:

A. specifications for all insurance policies to be purchased by the risk management division including specifications setting forth minimum capital and surplus requirements for any insurance company submitting a bid;

B. all professional service and consulting contracts or agreements to be entered into by the risk management division;

C. if insurance is to be purchased by negotiation, the companies and agents to be selected to submit proposals;

D. all rules and regulations to be promulgated by the risk management division;

E. the form, purpose and content of certificates of coverage to be issued by the risk management division; and

F. investments to be made by the risk management division.

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

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

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

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

(1) purchase workers' compensation insurance;

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

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

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

(5) pay any costs or expenses incurred in carrying out the provisions of this section.

C. For the purposes of this section, "covered educational entities" means school districts as defined in Section 22-1-2 NMSA 1978 and educational institutions established pursuant to Chapter 21, Articles 13, 16 and 17 NMSA 1978 which request and are granted coverage from the risk management division of the general services department, if the coverage is commercially unavailable; except that coverage shall be provided to a school district only through the public school group insurance authority or its successor unless the district has been granted a waiver by the authority or the authority is not offering the coverage for the fiscal year for which the division offers its coverage. A local school district to which the division may provide coverage may provide for marketing and servicing to be done by licensed insurance agents who shall receive reasonable compensation for their services.

History: 1953 Comp., § 5-14-25, enacted by Laws 1977, ch. 385, § 9; 1978, ch. 166, § 11; 1983, ch. 301, § 66; 1986, ch. 102, § 7; 1989, ch. 324, § 10.

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

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

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

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

B. No contract shall be entered into pursuant to this section unless proposals have been sought from two or more qualified firms. Contracts shall be awarded on the basis of cost, financial resources of the firm, service facilities in New Mexico, service reputation and experience.

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

Department of finance and administration. - Laws 1983, ch. 301, § 7 states that references to the risk management division of the department of finance and administration are to be construed as references to the risk management division of the general services department. See 15-7-2 NMSA 1978.

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

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

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

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

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

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

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

(1) records pertaining to insurance coverage; provided any record of a particular coverage shall be available to any public officer, public employee or governmental entity insured under such coverage; and

(2) records pertaining to claims for damages or other relief against any governmental entity or public officer or employee; provided such records shall be subject to public inspection by New Mexico citizens one hundred eighty days after the latest of the following dates:

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

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

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

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

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

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

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

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

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

76 C.J.S. Records §§ 35 to 36.

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.

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.