

# CHAPTER 11

## Intergovernmental Agreements and Authorities

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## ARTICLE 1

### Joint Powers Agreements

#### Sec.

- 11-1-1. Short title.  
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11-1-4. Terms and conditions of joint agreements.

#### Sec.

- 11-1-5. Powers of administering agency under agreement.  
11-1-6. Privileges and immunities, exemptions, benefits.  
11-1-7. Power to issue revenue bonds.

#### 11-1-1. Short title.

This act [11-1-1 to 11-1-7 NMSA 1978] may be cited as the "Joint Powers Agreements Act."

**History:** 1953 Comp., § 4-22-1, enacted by Laws 1961, ch. 135, § 1.

**Cross references.** — For the Planning District Act, see 4-58-1 to 4-58-6 NMSA 1978.

**Legislative intent.** — The intent of the legisla-

ture in the Joint Powers Agreements Act was to allow a joint and coordinated effort to be undertaken by separate governmental units. 1969 Op. Att'y Gen. No. 69-127.

#### 11-1-2. Definitions.

As used in the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978]:

A. "public agency" means the federal government or any federal department, agency or instrumentality; this state, an adjoining state or any state department, agency or instrumentality; an Indian nation, tribe or pueblo; a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation, tribe or pueblo to

enter into joint powers agreements directly with the state; a county, municipality, public corporation or public district of this state or an adjoining state; a New Mexico educational institution specified in Article 12, Section 11 of the constitution of New Mexico; and a New Mexico school district;

B. "agreement" means a written contractual agreement entered into between two or more public agencies subject to any constitutional or legislative restriction imposed upon any of the contracting public agencies, but the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] does not authorize an interstate water supply agreement or limit the powers of an interstate water compact commission, the interstate stream commission or the state engineer, and it does not limit the powers of a state agency or political subdivision to enter into agreements with the interstate stream commission or the state engineer;

C. "bonds" means revenue bonds;

D. "bondholder" means any person who is the bearer of any outstanding bond or the owner of bonds that are at the time registered to other than the bearer;

E. "indenture" means the instrument providing the terms and conditions for the issuance of the bonds and may be a resolution, order, agreement or other instrument; and

F. "instrumentality" means a public corporate entity created by state law but which is not subject to the general laws of the state and is not a state agency or department.

**History:** 1953 Comp., § 4-22-2, enacted by Laws 1961, ch. 135, § 2; 1963, ch. 253, § 1; 1977, ch. 128, § 1; 1984, ch. 88, § 1; 1998, ch. 63, § 3; 1999, ch. 100, § 1.

The 1984 amendment inserted "an Indian tribe or pueblo" and substituted "of this state" for "or this state" in Subsection A and deleted "revenue" preceding "bonds" in Subsections F and G.

The 1998 amendment, effective July 1, 1998, in Subsection A, inserted "or instrumentality" following "agency", twice, substituted "a New Mexico" for "it also specifically includes any state" and "a New Mexico" for "any", and deleted "in this state" at the end; in Subsection B, deleted "provided that nothing in" following "contracting public agencies", substituted

"does not" for "shall be construed to" following "Act", deleted "to" following "agreement or", deleted "or to" following "state engineer", and inserted "and it does not" preceding "limit the powers"; in Subsection D, deleted "revenue" following "outstanding"; deleted former Subsection E defining governing body and redesignated former Subsection F as Subsection E; deleted former Subsection G defining project; added present Subsection F; and made minor stylistic changes throughout the section.

The 1999 amendment, effective, June 18, 1999, in Subsection A inserted "nation" and inserted the language beginning "a subdivision" and ending "the state".

### 11-1-3. Authority to enter into agreements; approval of the secretary of finance and administration required.

If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting parties may be located outside this state; provided, however, nothing contained in this Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] shall authorize any state officer, board, commission, department or any other state agency, institution or authority, or any county, municipality, public corporation or public district to make any agreement without the approval of the secretary of finance and administration as to the terms and conditions thereof. Joint powers agreements approved by the secretary of finance and administration shall be reported to the state board of finance at its next regularly scheduled public meeting. A list of the approved agreements shall be filed with the office of the state board of finance and made a part of the minutes.

**History:** 1953 Comp., § 4-22-3, enacted by Laws 1961, ch. 135, § 3; 1977, ch. 128, § 2; 1983, ch. 301, § 24.

The 1983 amendment substituted "secretary of finance and administration" for "director of the department of finance and administration" in the catchline and in two places in the section.

**Generally.** — Formerly, this was the only statutory section which gave the state board of finance specific control (now held by the secretary of finance

and administration) over a corporation which was authorized to operate a gas public utility system, and which was jointly owned and jointly controlled by three cities. Other than those financial matters which might possibly come before the board of finance, the major item concerning the corporation which was subject to the control of the state board of finance was the joint powers agreement creating such corporation. 1966 Op. Att'y Gen. No. 66-7.

**Constitutionality.** — The appointment, under

authority of the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978], of a district judge to be chairman of a joint commission for consolidation of two municipalities does not contravene the constitution. There is no incompatibility, inconsistency or subordination, and no interference. The fact that some day an action of the commission might be before a court was not enough to make the positions incompatible. 1968 Op. Att'y Gen. No. 68-67.

**Agreements with federal government.** — The Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] authorizes agreements with the federal government of the type contemplated under 40 U.S.C. § 484. 1964 Op. Att'y Gen. No. 64-138.

Members of water commission had authority under the Joint Powers Agreement Act [11-1-1 to 11-1-7 NMSA 1978] to form the commission and contract with the United States bureau of reclamation for the acquisition of a water supply; the members' "common authority" existed under 72-14-28 NMSA 1978. *San Juan Water Comm'n v. Taxpayers & Water Users*, 116 N.M. 106, 860 P.2d 748 (1993).

**Agreements relating to surplus property.** — The state department of finance and administration by broad general statutory provision has the authority to enter into contractual agreements with the federal government, subject to approval of such agreements by the state board of finance (now by the secretary of finance and administration), for acquisition, administration and disposition of surplus property. 1964 Op. Att'y Gen. No. 64-138. (See now surplus property powers of the general services department, 15-4-2 NMSA 1978.)

**Not applicable to gaming compacts with Indian tribes.** — The governor is not a "public agency" within the meaning of the Joint Powers Agreement Act [11-1-1 to 11-1-7 NMSA 1978] and did not have authority thereunder to enter into compacts and revenue-sharing agreements with Indian tribes which would permit gaming on Indian lands pursuant to the federal Indian Gaming Regulatory Act. *State ex rel. Clark v. Johnson*, 120 N.M. 562, 904 P.2d 11 (1995).

#### 11-1-4. Terms and conditions of joint agreements.

A. Every agreement executed by one or more public agencies shall clearly specify the purpose of the agreement or for any power which is to be exercised. The agreement shall provide for the method by which the purpose will be accomplished and the manner in which any power will be exercised under such agreement.

B. The parties to the agreement may provide therein that:

(1) contributions from the funds of the public agencies may be made for the purpose set forth in the agreement; or

(2) payments of public funds may be made to defray cost of such agreement; or

(3) advances of public funds of the public agencies be made for the purpose set forth in the agreement and that such advances be repaid as provided in such agreement.

C. The agreement may provide that funds be paid to and disbursed by the agency agreed upon by the public agencies under the terms of the agreement.

D. The agreement shall provide for strict accountability of all receipts and disbursements.

E. The agreement may be continued for a definite term or until rescinded or terminated, and may provide for the method by which it may be rescinded or terminated by any party.

F. The agreement shall provide for the disposition, division or distribution of any property acquired as the result of the joint exercise of powers, and shall further provide that after the completion of the agreement's purpose any surplus money on hand shall be returned in proportion to the contributions made.

G. If the purpose set forth in [the] agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide:

(1) for the repayment or return to the parties of all or any part of any contributions, payments or advancements made by the parties pursuant to such agreement; and

(2) for payment to the parties of any sum derived from the revenues of such facilities.

H. Payments, repayments or returns to a public agency shall be made at the time and in the manner specified in the agreement.

**History:** 1953 Comp., § 4-22-4, enacted by Laws 1961, ch. 135, § 4.

**Bracketed material.** — The bracketed material

in Subsection G was inserted by the compiler. It was not enacted by the legislature and it is not a part of the law.

### 11-1-5. Powers of administering agency under agreement.

A. The agency provided by the agreement to administer or execute the agreement may be one of the parties to the agreement or a commission or board constituted pursuant to the agreement.

B. The administering agency under any such agreement shall be considered under the provisions of this Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] as an entity separate from the parties to such agreement.

C. The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement, subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.

**History:** 1953 Comp., § 4-22-5, enacted by Laws 1961, ch. 135, § 5.

**Scope of powers.** — A development district created pursuant to the Joint Powers Agreements Act

[11-1-1 to 11-1-7 NMSA 1978] may only exercise powers common to the contracting parties. 1969 Op. Att'y Gen. No. 69-127.

### 11-1-6. Privileges and immunities, exemptions, benefits.

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978].

**History:** 1953 Comp., § 4-22-6, enacted by Laws 1961, ch. 135, § 6.

**Scope of section.** — This section goes no further than to provide that an official of a participating member of the joint project does not lose his privileges, immunities or benefits during the time that he is serving under the joint project. Thus, participation

by an official previously covered by the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] does not remove him from continued participation in the retirement system, but it does nothing whatever to confer or transfer participation to other officials who are not so covered by the system. 1970 Op. Att'y Gen. No. 70-58.

### 11-1-7. Power to issue revenue bonds.

In addition to other powers, any agency, commission or board provided for by a joint powers agreement pursuant to this Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] may issue revenue bonds to pay the cost and expenses of acquiring or constructing any structures, facilities or equipment necessary to effectuate the purposes of the agreement; provided, however, such authority shall be subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of this state.

**History:** 1953 Comp., § 4-22-7, enacted by Laws 1961, ch. 135, § 7.

## ARTICLE 2

### Commission on Intergovernmental Cooperation

Sec.

11-2-1. Commission on intergovernmental cooperation.

11-2-2. Duties of commission.

Sec.

11-2-3. Appointment of delegations and committees.

11-2-4. Council of state governments; joint governmental agency.

### 11-2-1. Commission on intergovernmental cooperation.

There is created the "commission on intergovernmental cooperation." The members and officers of the legislative council are ex-officio members and officers of the commission, and the director of the legislative council service is ex-officio executive secretary of the commission.

**History:** 1953 Comp., § 4-6-4, enacted by Laws 1963, ch. 90, § 1.

**Cross references.** — As to State legislative council, see Chapter 2, Article 3 NMSA 1978.

**Repeals and reenactments.** — Laws 1963, ch. 90, § 1, repeals 4-6-4, 1953 Comp., and enacts the above section.

### 11-2-2. [Duties of commission.]

It shall be the function of this commission:

A. to carry forward the participation of this state as a member of the council of state governments;

B. to encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other states, of the federal government and of local units of government;

C. to endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

- (1) the adoption of compacts;
- (2) the enactment of uniform or reciprocal statutes;
- (3) the adoption of uniform or reciprocal administrative rules and regulations;
- (4) the informal cooperation of governmental offices with one another;
- (5) the personal cooperation of governmental officials and employees with one another, individually;

(6) the interchange and clearance of research and information; and

(7) any other suitable process;

D. in short, to do all such acts as will, in the opinion of this commission, enable this state to do its part—or more than its part in forming a more perfect union among the various governments in the United States and in developing the council of state governments for that purpose.

**History:** Laws 1937, ch. 64, § 6; 1941 Comp., § 3-506; 1953 Comp., § 4-6-6.

### 11-2-3. [Appointment of delegations and committees.]

The commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the commission in obedience to its decisions. Subject to the approval of the commission, the member or members of each such delegation or committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on intergovernmental cooperation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this state shall not be eligible. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards.

**History:** Laws 1937, ch. 64, § 7; 1941 Comp., § 3-507; 1953 Comp., § 4-6-7.

### 11-2-4. [Council of state governments; joint governmental agency.]

The council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

**History:** Laws 1937, ch. 64, § 10; 1941 Comp., § 3-510; 1953 Comp., § 4-6-10.

## ARTICLE 3

### Regional Housing Authorities

(Repealed by Laws 1994, ch. 132, § 31.)

#### 11-3-1 to 11-3-6. Repealed.

**Repeals.** — Laws 1994, ch. 132, § 31 repeals 11-3-1 to 11-3-6 NMSA 1978, as enacted by Laws 1967, ch. 196, §§ 1 to 6, and as last amended by Laws 1971, ch. 227, §§ 2 and 3, and Laws 1974, ch. 52, § 1, relating to the regional housing authorities,

effective May 18, 1994. For provisions of former sections, see 1983 Replacement Pamphlet. For present comparable provisions, see Chapter 11, Article 3A NMSA 1978.

## ARTICLE 3A

### Regional Housing Law

Sec.

- 11-3A-1. Short title.
- 11-3A-2. Finding and declaration of necessity.
- 11-3A-3. Definitions.
- 11-3A-4. Regional housing authorities created.
- 11-3A-5. Jurisdiction.
- 11-3A-6. Powers of authority in board of commissioners; appointment of board of authorities; terms.
- 11-3A-7. Powers.
- 11-3A-8. Requirements respecting lease.
- 11-3A-9. Nonprofit corporations.
- 11-3A-10. Interested officers or employees.
- 11-3A-11. Eminent domain.
- 11-3A-12. State policy; operation not for profit.
- 11-3A-13. Sales, rentals and tenant selection.
- 11-3A-14. Bonds.
- 11-3A-15. Form and sale of bonds; interest on certain obligations.
- 11-3A-16. Provisions of bonds and trust indentures.

Sec.

- 11-3A-17. Construction of bond provisions.
- 11-3A-18. Certification of attorney general.
- 11-3A-19. Remedies of an obligee.
- 11-3A-20. Additional remedies conferrable to an obligee.
- 11-3A-21. Exemption of property from execution sale.
- 11-3A-22. Exemption of property from taxation.
- 11-3A-23. Aid from state or federal government.
- 11-3A-24. Cooperation in undertaking housing projects.
- 11-3A-25. Procedure for exercising powers.
- 11-3A-26. Supplemental nature of the regional housing law.
- 11-3A-27. Housing bonds; legal investments; security; negotiable.
- 11-3A-28. Law controlling.
- 11-3A-29. Temporary provision; continuation of regional housing authorities and boards of commissioners.

#### 11-3A-1. Short title.

Chapter 11, Article 3A NMSA 1978 may be cited as the "Regional Housing Law".

**History:** Laws 1994, ch. 132, § 1; 1995, ch. 191, § 1.

**Cross references.** — For the Municipal Housing Law, see 3-45-1 NMSA 1978 et seq. For the Urban Development Law, see 3-46-1 NMSA 1978 et seq. For the Community Development Law, see 3-60-1 NMSA 1978 et seq. For the Mortgage Finance Authority Act, see 58-18-1 NMSA 1978 et seq.

The 1995 amendment, effective June 16, 1995,

substituted "Chapter 11, Article 3A NMSA 1978" for "This act".

**Compiler's notes.** — Laws 1995, ch. 191, § 25, effective June 16, 1995, repeals Laws 1994, ch. 132, § 30, which provided for the repeal of this section on July 1, 1995.

**Ann. Jur. 2d, A.L.R. and C.J.S. reference.** — 81A C.J.S. States §§ 82, 133, 134, 136 to 140.