

# **NEW MEXICO COUNTIES WORKERS' COMPENSATION FUND BYLAWS AND JOINT POWERS AGREEMENT**

## **ARTICLE I Definitions**

As used in this agreement, the following terms shall have the meaning hereinafter set out:

- A. ADMINISTRATOR — New Mexico Association of Counties;
- B. BOARD OF DIRECTORS or BOARD — The board of directors of the New Mexico Counties Workers' Compensation Fund;
- C. EXCESS INSURANCE / REINSURANCE — Insurance purchased by the Fund from another insurance provider;
- D. BYLAWS— The Bylaws and Joint Powers Agreement for the New Mexico Counties Workers' Compensation Fund;
- E. DAYS – Days shall mean working days if the reference is for 15 days or fewer and shall mean calendar days if the reference is 16 or more days.
- F. DIRECTOR — A member of the Board of Directors;
- G. EMPLOYEE — An employee of a member;
- H. FUND—New Mexico Counties Workers' Compensation Fund. A fund of public monies established by the Fund to self-insure certain risks jointly within the scope defined in the Certificate of Participation, to purchase excess insurance or reinsurance when deemed prudent, and to pay the necessary expenses for the operation of the Fund;
- I. MEMBER — A county which has become a member of the New Mexico Counties Workers' Compensation Fund;
- J. REPRESENTATIVE — That person who is an elected or appointed officer or employee of a member and is appointed by the county commission to be the member's official representative for the purposes of the Workers' Compensation Fund;
- K. WRITTEN NOTICE – Notice given in writing by regular mail or by electronic mail to include receipt notification; and
- L. WORKERS' COMPENSATION — Insurance coverage for medical and lost-time as mandated by state statute and overseen by the New Mexico Workers' Compensation Administration.

## **ARTICLE II Creation of Fund**

In consideration of the mutual covenants contained herein, this agreement is made and entered into by and among New Mexico Counties which execute this agreement and become members of the New Mexico Counties' Workers' Compensation Fund, each of which hereby agrees to abide by the terms and conditions of this agreement and all actions taken pursuant to this agreement.

### **Effective Date and Duration**

- A. These bylaws shall take effect on July 1, 1987, or upon approval by the New Mexico Secretary of Finance and Administration, whichever is later. Workers' compensation coverage shall begin on the date established and pursuant to Article VIII of these bylaws.
- B. The Fund and these bylaws shall continue until dissolved by vote of the members pursuant to Article V.A.3 of these bylaws. Upon dissolution, disposition of property of the Fund shall be as provided in Article XIV of these bylaws.

The Joint Powers Agreements Act, 11-1-1, et seq., NMSA 1978, and the insurance and pooling law in 3-62-1 and 3-62-3, NMSA 1978, as amended, authorize these bylaws and agreement and the powers commonly held and to be jointly exercised herein by New Mexico Counties which become members of the New Mexico Counties Workers' Compensation Fund.

### **ARTICLE III**

#### **Purposes**

The purposes of these bylaws are to:

- A. Permit the members to more efficiently use their powers and resources by cooperating on a basis that will be of mutual advantage through the creation and operation of a Workers' Compensation Fund. It is also the intent of the members to have the Fund provide needed coverages at reasonable costs. All income and assets of the Fund shall be at all times dedicated to the exclusive benefit of its members.
- B. Secure those workers' compensation insurance and self-insurance benefits, services, and protections for members and their employees, and risk management services related thereto, as established pursuant to these bylaws.
- C. **Non-Waiver of Governmental or Other Immunity or Monetary Limit**  
All money, plus earned interest, contained within the Workers' Compensation Fund is derived from the members. It is the intent of the members that, by entering into this agreement, they do not waive and are not waiving any immunity provided to the members or their employees provided by any law or any monetary limits on the liability of the members of their employees provided by any law.

**ARTICLE IV**  
**Membership / Participation**

- A. Membership in the Fund is limited to those counties which are members in good standing of the New Mexico Association of Counties and which properly enter into these bylaws.
- B. Members may be added to the Fund only upon approval of the Board and subject to the conditions set out in these bylaws and such additional conditions as the Board may from time to time require.
- C. All members shall remain members until withdrawn or expelled pursuant to these bylaws.

**ARTICLE V**  
**Members' Powers and Meetings**

- A. The members shall have the power to:
  - 1. Elect directors to the Board pursuant to Article VII;
  - 2. Remove a director from the Board by a two-thirds vote of the members present at a meeting;
  - 3. Dissolve the Fund by a two-thirds vote of the members present at a meeting;
  - 4. Amend the bylaws by a two-thirds vote of the members present at a duly called or special meeting except that any amendment to Article V must be approved by a two-thirds vote of all members. Written notice via postal and/or electronic mail of any proposed amendment shall be provided to each member at least fifteen (15) days in advance of the vote thereon; and
  - 5. Expel members by a two-thirds vote of all members, pursuant to Article XII.
- B. Members shall meet at least once annually in conjunction with the Annual Conference of the New Mexico Association of Counties.
  - 1. Special meetings may be called by the Board or pursuant to a procedure to be established by the Board.
  - 2. Notice of any member meeting shall be mailed by the Administrator to each Member at least fifteen (15) days in advance.
  - 3. The Chair of the Board shall preside at the meetings.
  - 4. A simple majority of the members shall constitute a quorum to do business.
  - 5. No absentee or proxy voting shall be allowed.
  - 6. Each member shall be entitled to one vote on each issue to be cast by its representative.
  - 7. Meetings shall comply with the Open Meetings Act. On any questions requiring two-thirds vote of the members, notice shall be given by the Administrator at least fifteen (15) days in advance.
- C. Affected members shall be consulted prior to any decision to settle a claim.

**ARTICLE VI**  
**Obligations of Members**

Members shall have the obligation to:

- A. Pay promptly all contributions, assessments, and other payments to the Fund at such times and in such amounts as shall be established in accordance with these bylaws. Any delinquent payments shall be paid with interest which shall be equivalent to the prime interest rate, on the date of delinquency, of the financial institution which invests the majority of the Fund money. Payments will be considered delinquent 45 days following the due date;
- B. Designate in writing to the Board a representative and one alternate for the members' meetings. A member official representative and any alternate must be an employee or elected official of the member county. A designated alternate may exercise all the powers of a representative during a member meeting, in the absence of the representative;
- C. Allow the Fund and its Administrator, agents, contractors, employees, and elected officials reasonable access to all facilities of the member and all records required for the administration of the Fund and implementation of these bylaws;
- D. Cooperate fully with the Fund's attorneys and Administrator, and any other agent, contractor, employee or officer of the Fund in activities relating to the purposes and powers of the Fund;
- E. Provide the Fund, upon request, information on exposures identified by the Fund;
- F. Allow attorneys and others designated by the Fund to represent the member in the investigation, settlement, and litigation of any claim against the member within the scope of loss protection furnished by the Fund;
- G. Follow the loss reduction and prevention procedures established by the Board;
- H. Report to the Fund, in the form and within the time required by statute all incidents or occurrences which would reasonably be expected to result in the Fund being required to consider a claim; and
- I. Report to the Fund, in the form and within the time required by the Board, the addition of new programs and facilities which could cause a material change in the member's potential losses.

**Contributions and Distribution of Equity**

- A. It is the intention of the Fund to levy contributions upon the members as established by the members in such amounts and at such times as necessary to achieve the purposes of the Fund and protect the Fund's solvency.
- B. Any money, and interest thereon, not needed for the purposes of the Fund, will be distributed among those members which contributed the money and which have not withdrawn or been expelled from membership at the time of distribution, pursuant to a formula and policy established by the Board and approved by the members in consideration of contributions and claims made by the member. Any such distribution may be made as a credit against future contributions or a check to the member at the discretion of the Board. The money contributed

by Fund members for any one year of participation shall not be so distributed until it is determined by the Board that no claims currently exist.

## **ARTICLE VII**

### **Board of Directors**

- A. Representation on the Board shall be as set forth below. No member county shall have more than one voting director on the Board.

#### GROUP I

Group I board positions shall be based on geographical representation. Only representatives from the counties in each respective district are eligible to vote for the board member in their district.

**District 1** (Northwest): Cibola, Los Alamos, McKinley, Rio Arriba, Taos, Torrance, Valencia

**District 2** (Northeast): Colfax, Curry, Guadalupe, Harding, Mora, Quay, San Miguel, Union.

**District 3** (Southwest): Catron, Grant, Hidalgo, Luna, Sierra, Socorro.

**District 4** (Southeast): Chaves, De Baca, Eddy, Lea, Lincoln, Roosevelt, Otero.

#### GROUP II

Group II board positions shall be filled by representatives of the Class A counties. These board members shall be nominated by the Class A county's board of county commissioners and ratified by the general membership. The Class A Counties are: Bernalillo, Doña Ana, San Juan, Santa Fe, and Sandoval.

#### GROUP III

There shall be two Group III board members, one representing county members with populations up to 25,000 (small county representative), and one representing county members with populations over 25,000 and below 100,000 (mid-level county representative). Only representatives from counties with populations of 25,000 and below are eligible to vote for the small county director. Only representatives from counties with populations over 25,000 and below 100,000 are eligible to vote for the mid-level county director. Population categories will be determined by the decennial census.

#### EX OFFICIO MEMBERS

The President of the New Mexico Association of Counties and a representative of the New Mexico Association of Counties Attorney Affiliate shall each serve as ex-officio, non-voting members of the Board.

- A. Election of directors shall take place at the annual meeting of the members. Those persons receiving the largest number of votes shall be elected to the available positions and they shall

assume office at the first board meeting following their election.

- B. Terms of the directors shall be two-year overlapping terms, or until their successors are elected, except that the directors first elected from Group I will be elected for an initial one-year term and the remaining directors will be elected for an initial two-year term.
- C. When a director ceases to be an elected or appointed officer or employee of a member, the director's position will be deemed vacant.
- D. A director's position may be declared vacant by the Board, when the director has accumulated two (2) consecutive unexcused absences at duly called meetings for which the director has received notification, or when a director resigns from the Board.
- E. Any vacancy on the Board will be filled by a majority vote of the remaining directors until the next annual meeting of the members, at which time the members shall elect a person to fill the vacancy for the unexpired term.
- F. In the event there are no members present within a group or district to elect a director, that director shall be elected at large by the membership.
- G. Directors may be reimbursed for expenses incurred in the performance of their duties, as authorized by the Board.
- H. The officers of the Board shall be: a Chair, a Vice Chair, and a Secretary/Treasurer. The Board shall establish the powers and duties of each officer, consistent with these bylaws. The Vice Chair may exercise the powers of the chair in the absence of the Chair. Officers shall be elected by the directors, at the first board meeting following each annual meeting of the members.

## **ARTICLE VIII**

### **Powers and Duties of Board of Directors**

- A. The Board shall be the administering agency under these bylaws. The Board shall contract with the Administrator for general administrative services, the contract to include a reasonable fee approved by the Board and Administrator for the services provided.
- B. The Board may appoint such employees, or employ or contract for legal counsel, actuaries, consultants, and other service providers as it deems necessary for the purposes of and to implement these bylaws and the Fund.
- C. The Board shall have all powers necessary or desirable to achieve the purposes of the Fund, except those powers reserved to the members, and all powers necessary and proper for the operation of the Fund and implementation of these bylaws, subject to the limits of these bylaws, including, but not limited to, the power to:
  - 1. Delegate, by motion adopted by two-thirds of directors present at a meeting any of its powers to one or more directors or to any other person;
  - 2. To adopt and adjust contributions to the Fund and to adopt special assessments sufficient to maintain the Fund by a two-thirds vote of Board members at a meeting;
  - 3. May review payment of all expenses of the Fund;

4. Serve as the policy-holder of any policies or plans;
  5. Determine the methods of claim administration and payment; provide for claim experience for the members collectively or separately; and establish claim procedures and conditions to be met prior to the payment or defense of a claim;
  6. To approve insurance brokers, claims administration services, and other service providers necessary for the administration of the Fund, upon recommendation of the Administrator;
  7. Purchase reinsurance or excess insurance, or both, as the Board deems necessary or desirable;
  8. To set dates, places and an agenda for Board and members' meetings in compliance with the Open Meetings Act;
  9. To admit any new member by majority vote of all directors serving on the Board, if the Board determines that the new member will not detrimentally affect the financial status of the Fund or the contribution rates of other members and that the new member has agreed to accept the obligations of members set forth in these bylaws. Either the addition or expulsion of a member shall not be considered a material change to this joint powers agreement and shall not require the amendment of this agreement;
  10. Establish the duties of the Administrator to do all acts necessary and proper for the operation of the Fund and implementation of these bylaws subject to the limits of these bylaws and not in conflict with these bylaws;
  11. Provide for the administration of the monies of the Fund.
  12. Exercise the full power and authority of any member of the Fund when requested to do so by the member's governing body; and otherwise provide for necessary activities to accomplish the purposes of these bylaws and of the Fund;
  13. Provide for an independent audit of claim handling procedures, payments, and overall operations of the Fund, at such time as the Board may determine; and
  14. Establish an advisory Board to assist and advise in investing of the money received pursuant to Paragraph 12, above.
- D. The Board shall have the duty to:
1. Provide to members annually an audit by an independent certified public accountant in accordance with generally accepted accounting principles;
  2. Review financial statements to account for income, expenses, assets, and liabilities of the Fund at each regularly scheduled board meeting;
  3. Provide for an annual actuarial review of the Fund;
  4. To adopt or revise a budget for the Pool by a two-thirds vote of Board members present at a meeting;
  5. Require that fidelity bonds be in effect for each person having access to monies of the Fund;
  6. To adopt policies for the investment and disbursement of funds;
  7. Inform members of the progress of their claim and any proposed settlement;
  8. To form committees as needed by the Fund;

9. To implement the dissolution and disbursement of assets of the Fund following the dissolution determination made pursuant to the provisions of Article XIV and subject to the requirements for notice to and approval of the State of New Mexico as required by Article VI; and
10. To approve attorneys or firms of attorneys retained to represent members in claims within the scope of loss protection furnished by the Fund, to the limitations of Article XIII.

**ARTICLE IX**  
**Meetings of Board of Directors**

- A. The Board shall fix the date, time, and place of regular meetings prior to the start of the calendar year, which may be held in compliance with the Open Meetings Act. Special meetings may be called by the Chair, or by a majority of the directors, by written notice by the Administrator to all directors pursuant to the Open Meetings Act.
- B. A majority of voting directors shall constitute a quorum to do business. All acts of the Board shall require a quorum and a majority vote of the directors present except where a different vote is required by these bylaws.
- C. The Board shall adopt such procedures as it deems necessary or desirable for the conduct of its business.

**ARTICLE X**  
**Liability of Board and Administrator**

The Board of Directors of the Fund, Administrator, and the officers and employees thereof, shall not be personally liable for any acts performed or omitted for the Fund in good faith. The Fund shall be used to defend and indemnify the directors, Administrator, and the officers and employees thereof, against any and all expense, including attorney fees and liability expenses sustained by them or any of them in connection with any suit or suits which may be brought against said directors, Administrator, or the officers or employees thereof, involving or pertaining to any of their acts or duties performed or omitted for this Fund in good faith. The Fund may purchase insurance providing similar coverage for the directors, Administrator, and the officers and employers thereof. Nothing herein shall be deemed to prevent compromises of any such litigation where the compromise is deemed to prevent greater expense or cost in the defense or prosecution of such litigation.

**ARTICLE XI**  
**Withdrawal of Members**

- A. Any member may withdraw from the Fund at the end of any fiscal year (July 1 to June 30 each year) by giving at last one hundred twenty (120) calendar days' prior notice in writing to the Board by certified postal mail, unless the Board agrees to an earlier date.



- B. The withdrawn member shall not be entitled to any reimbursement of contributions that are to be paid or that shall become payable in the future, and shall continue to be obligated to make payment for which an obligation arose prior to withdrawal.

**ARTICLE XII**  
**Expulsion of Members**

- A. A member which terminates its membership in the New Mexico Association of Counties shall be, on the date of such termination, automatically expelled from the Fund.
- B. A member which fails to make any payment due the Fund shall be automatically expelled from the Fund on the sixtieth day following the due date, unless time for payment is extended by the Board and payment is made within any extended period.
- C. A member may be expelled for failure to carry out any other obligation of the member, subject to the following:
  - 1. The member shall receive notice from the Board of the alleged failure and no less than thirty (30) days in which to cure the alleged failure, along with notice that expulsion would result if the failure is not so cured.
  - 2. The member may request a hearing by the membership prior to any decision on the expulsion. The request shall be made in writing to the Board at least five days before the end of the period given by the Board to cure the alleged failure. At such hearing, the Board shall present the case for expulsion and the affected member may present its case. The member proposed to be expelled shall not be counted in determining the number of votes required, nor shall the representative of such member be entitled to vote on the expulsion.
  - 3. If no request is received pursuant to paragraph C.2 of this Article, and if the failure is not cured within the time required by the Board's notice or any extension of such time as the Board may grant, the Board may expel the member. The member may request a hearing before the Board on the proposed expulsion in lieu of a hearing before the membership. The request shall be made in writing and received by the Board at least five days before the end of the period given by the Board to cure the alleged failure, and shall be granted if so made.
  - 4. The Board shall provide the member at least ten (10) days prior written notice of the time and place of any requested hearing, and the proposed expulsion may not take effect until such time after the conclusion of any hearing the Board, may set.
- D. Expulsion shall be in addition to any other remedy which may exist.
- E. An expelled member shall lose all voting rights and privileges. Any claim of title or interest to any asset of the Fund, and any continuing obligation of the Fund to the member or of the member to the Fund, after the member's expulsion, shall be as determined by policy adopted by the Board.

**ARTICLE XIII**  
**Contractual Obligation**

- A. This document constitutes a joint powers agreement among those counties which become members of the Fund. The terms of this contract may be enforced in court by the Fund or by any of its members. The consideration for the duties herewith imposed on the members to take certain actions and to refrain from certain other actions is based upon the mutual promises and agreements of the members set forth herein.
- B. As a joint powers agreement, this document cannot be changed or amended by an individual member. All amendments are governed by Article V Section A4 of this agreement.
- C. A certified or attested copy of the resolution of approval from each member shall be attached to the bylaws and joint powers agreement on file with the Fund.
- D. Except to the extent of the financial contributions to the Fund agreed to herein or such additional obligations as may come about through amendments to these bylaws, no member agrees or contracts herein to be held responsible for any claims made against any other member. The contracting parties intend in the creation of the Fund to establish an organization to operate only within the scope herein set out and have not herein created as between member and member any relationship of surety, indemnification, or responsibility for the debt of or claims against any other member.

**ARTICLE XIV**  
**Dissolution and Disposition of Property**

- A. The title to all property, real and personal, acquired by the Fund shall be vested in the Fund. In the event of dissolution of the Fund, such property shall belong to the members of the fund according to their participation in the fund and in accordance with criteria developed by the Board. Any surplus money on hand shall be returned to the members. Members whose entire contribution was expended in their claims shall not share in the surplus. The other members shall participate in any surplus based upon the percentage remaining from their contributions that result in the surplus. Members shall share surplus in a pro rata basis.
- B. Upon partial or complete dissolution of the Fund, the directors shall determine all other matters relating to the disposition of property and dissolution of the Fund, by a two-thirds vote of all directors.
- C. The Board shall serve as trustees for the disposition of property or funds, payment of the obligations, dissolution and final disposition of the Fund.

**ARTICLE XV**  
**Severability**

In the event that any article, provision, clause, or other part of these bylaws is held invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability with respect to other articles, provisions, clauses, applications, or occurrences, and these bylaws are expressly declared to be severable and any other power authorized by existing law and not otherwise limited by these bylaws.

**DATED:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**Chair, County Commission:** \_\_\_\_\_

**COUNTY:** \_\_\_\_\_

**Reviewed and Approved by Department of Finance and Administration**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_