

# Ethics – Good Land Grant and Acequia Governance

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*Land Grants, Acequias and the Law*

**Continuing Legal Education Workshop**

David Benavides, Adrian Oglesby, Stephanie Russo Baca



# Roadmap

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- State Ethics Commission
- OMA- Open Meetings Act
- GCA- Government Conduct Act
- IPRA- Information of Public Records Act
- Audit & Reporting Requirements
- Procurement Code
- Per Diem & Mileage

## State Ethics Commission

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State v. Padilla

Highlights the new role of the Ethics Commission in interpreting the Government Conduct Act:

The Ethics Commission position is that the state Governmental Conduct Act established specific, mandatory duties prohibiting abuse of office that can be enforced through criminal charges.

- The State Ethics Commission is an independent state agency that promotes the integrity of state government through the interpretation, enforcement, and improvement of New Mexico's campaign finance, lobbying, procurement, and governmental conduct laws.



# Roadmap

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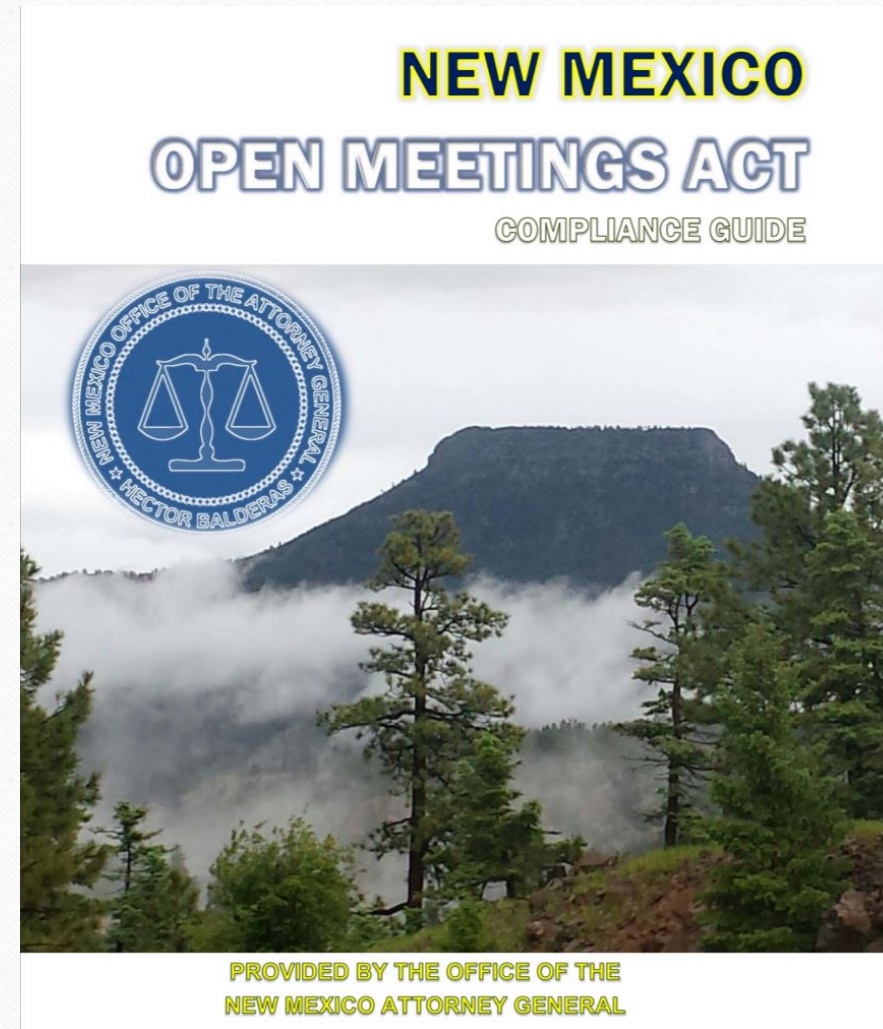
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## Open Meetings Act

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NMSA 1978, Chapter 10, Article 15

The Open Meetings Act (OMA) is a state law, which provides the statutory guidelines for conducting public meetings. The Attorney General has the statutory authority to enforce OMA and to ensure that those public meetings covered by OMA are in compliance with state law.





# Open Meetings Act

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## Land Grants

- 49-1-12. Meetings to be public; annual report
- A. All meetings of the board of trustees shall be held in accordance with the Open Meetings Act [10-15-1.1 NMSA 1978]. Executive sessions shall not be held except in accordance with the Open Meetings Act. All heirs of the land grant-merced shall have the right to be present at all times when the board is in session and to be heard on all matters in which they may be interested.

## Community Acequias

- Community acequias are political subdivisions of the state and are therefore required to comply with the Open Meetings Act (OMA), Sections 10-5-1 to 10-5-4, NMSA 1978.

# OMA

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Reasonable

Proper notice

-Special Circumstances meetings/elections

Legal Advice

Rolling Q

Executive Session

**Compliance is important in order to ensure that decisions can withstand challenges.**

**For instance, a decision to elect a commissioner, adopt bylaws, or approve or deny a water transfer may be deemed invalid the OMA is violated in making that decision.**



# OMA Example

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## “Rolling” or “walking” Quorum

5 Member Board of Directors

Upcoming board business decision

- 1st board member calls 2<sup>nd</sup> board member →
- 2<sup>nd</sup> board member then emails 3<sup>rd</sup> board member on same topic as the 1<sup>st</sup> board member.  
→
- 2<sup>nd</sup> board member emails 4<sup>th</sup> board member on the same business topic.

Quorum? When?





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# Government Conduct Act

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NMSA 1978, Chapter 10, Article 16

In 2011, the law's coverage was expanded to officers and employees of all political subdivisions of the state and their agencies.

All state and local government officers and employees in New Mexico understand their ethical responsibilities under the GCA, as well as the specific prohibitions and limitations that ensure that public officers and employees conduct themselves solely in the interest of the public.

New Mexico

## GOVERNMENTAL CONDUCT ACT *COMPLIANCE GUIDE*

PROVIDED BY THE OFFICE OF THE NEW MEXICO ATTORNEY GENERAL





## GCA Examples

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Example 1: An elected member of a local land grant receives no salary, but is eligible for per diem and mileage reimbursement. This member never asks for reimbursement of his travel expenses, however.

The member is subject to the GCA because he is eligible for reimbursement, whether or not he ever claims it.

Example 2: An employee of a political subdivision of the state is funded totally with federal grants.

Even though the GCA does not apply to federal agencies, all state or local government employees are subject to the GCA, regardless of their funding source.

Example 3: A non-profit agency receives a major portion of its program's budget from state funds. The director of the agency pressures an employee to support a certain political candidate.

While the director's actions would be a violation of the GCA in a state or local government agency, the managers of the nonprofit agency are not subject to the GCA in exercising their supervision of employees even though the non-profit agency receives public money.

# Roadmap

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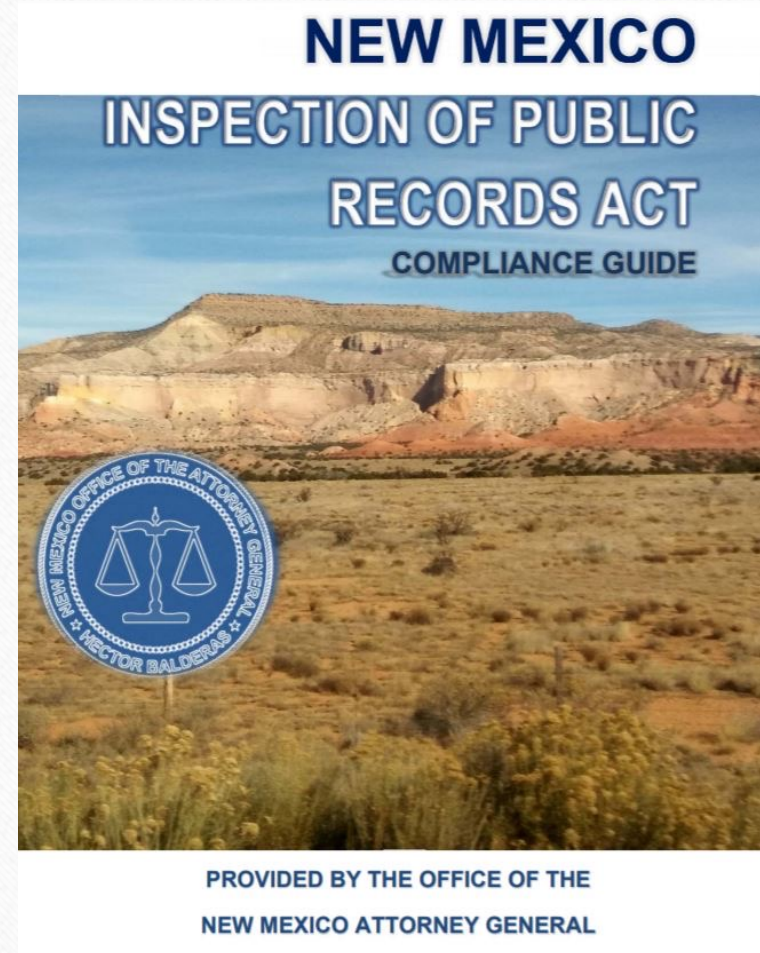
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## The Inspection of Public Records Act

NMSA 1978, Chapter 14, Article 2

(IPRA) is a New Mexico state law that provides the public and media access to public information. The law requires open access to almost all public records in state and local government, with few exceptions. Under IPRA, the public has the right to take legal action if they are denied access to public records, an important mechanism to empower the public.





# IPRA- Does it apply to Land Grants and Acequias?

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“public body” means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including **political subdivisions**, special taxing districts, school districts and institutions of higher education.

- Community acequias are political subdivisions of the state and must therefore comply with the.
- Land grants-Mercedes that operate as political subdivisions of the State.  
Board of Trustees of Land Grant
- Compliance with IPRA is important in order to avoid legal challenges.



# What records do Land Grants and Acequias have to provide?

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“public records” means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, **regardless of physical form or characteristics**, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained.

When determining whether the specific exceptions to the Act apply to a particular record, public entities should keep in mind that, although it excepts certain matters from the right to inspect, the Act should not be interpreted as requiring those matters to be kept **confidential**, such as:

- **Medical Records**
- **Letters of Reference**
- **Matters of Opinion**
- **Law Enforcement Records**
- **Confidential Materials Act**
- **Public Hospital Records**
- **Tactical Response Plans**
- **Protected Personal Identifier Information**
- **As otherwise Provided by Law**



# IPRA

Office of the Attorney General

State of New Mexico

## Appendix III

### MODEL PUBLIC NOTICE DESCRIBING PROCEDURES FOR REQUESTING INSPECTION

#### NOTICE OF RIGHT TO INSPECT PUBLIC RECORDS

By law, under the Inspection of Public Records Act, every person has the right to inspect public records of the (name of public body). Compliance with requests to inspect public records is an integral part of the routine duties of the officers and employees of the (name of public body).

**Procedures for Requesting Inspection.** Requests to inspect public records should be submitted to the records custodian, located at (address, telephone number, fax number and e-mail address of records custodian).

A person desiring to inspect public records may submit a request to the records custodian orally or in writing. However, the procedures and penalties prescribed by the Act apply only to written requests. A written request must contain the name, address and telephone number of the person making the request. Written requests may be submitted in person or sent via US mail, email or facsimile. The request must describe the records sought in sufficient detail to enable the records custodian to identify and locate the requested records.

The records custodian must permit inspection immediately or as soon as practicable, but no later than 15 calendar days after the records custodian receives the inspection request. If inspection is not permitted within three business days, the person making the request will receive a written response explaining when the records will be available for inspection or when the public body will respond to the request. If any of the records sought are not available for public inspection, the person making the request is entitled to a written response from the records custodian explaining the reasons inspection has been denied. The written denial shall be delivered or mailed within 15 calendar days after the records custodian receives the request for inspection.

**Procedures for Requesting Copies and Fees.** If a person requesting inspection would like a copy of a public record, a reasonable fee may be charged. The fee for printed documents 11 inches by 17 inches or smaller is ( ) per page. The fee for larger documents is ( ) per page. The fee for downloading copies of public records to a computer disk or storage device is ( ). If a person requests that a copy of a public record be transmitted, a fee of ( ) may be charged for transmission by mail, ( ) for transmission by e-mail and ( ) for transmission by facsimile. The records custodian may request that applicable fees for copying public records be paid in advance, before the copies are made. A receipt indicating that the fees have been paid will be provided upon request to the person requesting the copies.

*[NOTE: The procedures for copying records specified in this model notice apply to a public body with copy machines or other facilities for making copies of public records. Public bodies that do not have copy machines available for making copies of public records should describe the applicable procedures they follow to furnish copies of public records in compliance with the Act.]*



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Ray Rivera  
Santa Fe  
Mike Stanford  
Albuquerque  
Grant Taylor  
Hobbs  
Kyla Thompson  
Albuquerque  
Doug Turner  
Albuquerque

January 7, 2015

Amy Haas  
General Counsel and Acting Director  
New Mexico Interstate Stream Commission  
PO Box 25102  
Santa Fe, NM 87504-5102  
By email: [amy.haas@state.nm.us](mailto:amy.haas@state.nm.us)

Dear Ms. Haas:

Thank you again for meeting with me earlier this month about the public records request filed by the New Mexico Foundation for Open Government, FOG.

FOG is hereby resubmitting its request for a copy of the following records:

**An unlocked copy of your daily Excel spreadsheet model of divertable Gila River flows for the period of record that would be allowable under the terms of the Arizona Water Settlement Act, including the most recent daily flow data from your most recent model.**

Although you and Craig Roepke did make the spreadsheet available for my review at our meeting, as allowed under the Inspection of Public Records Act, FOG also requests a copy of the spreadsheet model. We are unwilling to sign any agreement that incorporates the terms and conditions set forth in NMSA § 14-3-15.1.C. We believe the model is a public record fully subject to NMSA § 14-2, the Inspection of Public Records Act, and no additional royalty or licensing fees or limitations on use may be imposed.

However, we agree to pay the applicable fees for copying and transmitting the records. If the charges will exceed \$25, please call me to discuss. I understand that we may be asked to pay any copying fees in advance.

Thank you for your attention to this matter.

Very truly yours,

/s/  
Susan Boe  
Executive Director

115 Gold Ave. SW, Suite 201  
Albuquerque, NM 87102  
(505) 764-3750  
fax (505) 433-6441  
[info@nmfog.org](mailto:info@nmfog.org)  
[www.nmfog.org](http://www.nmfog.org)



# IPRA Example

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## Scenario:

A resident sues Public Body X. Before the court issues its decision, the parties agree to settle the case. They enter into a settlement agreement in which Public Body X agrees to pay the plaintiff a specified amount in damages. The settlement agreement includes a provision making the **settlement terms confidential**. The court enters an order dismissing the case. The order does not incorporate the settlement agreement. Soon afterwards, the treasurer of Public Body X signs a voucher for the amount of the settlement payable to the plaintiff in the lawsuit.

## IPRA Request:

An interested citizen makes a request for copies of certain vouchers, including the voucher for the settlement amount. The town provides copies of all vouchers requested, except the one issued in connection with the settlement.

- Access to that voucher is denied on the basis that the settlement amount is confidential under the terms of the settlement agreement.
- Public Body X cannot properly withhold the voucher because, unless protected by law, information relating to a public body's expenditures is public. Public Body X cannot deny access to otherwise public records merely by entering into a voluntary settlement agreement that declares certain information confidential.

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- **Audit & Reporting Requirements**
- Procurement Code
- Per Diem & Mileage



# Audit and Reporting

The screenshot displays the website for the Office of the State Auditor, featuring a navigation menu with items like 'About the OSA', 'At-Risk Lists', 'Laws & Regulations', 'Communications', 'FAQs', 'Contact', and 'Report Fraud'. The main content area is titled 'Our Services' and includes a sidebar for 'Reporting Season' and four service cards: 'Audit Reports', 'Special Audits & Investigations', 'Procuring Contracts', and 'Tiered System Reporting'. Each card provides a brief description and a 'Click Here' link.

Office of the State Auditor  
BRIAN S. COLON, ESQ.

About the OSA | At-Risk Lists | Laws & Regulations | Communications | FAQs | Contact | Report Fraud

Auditing | Contracting | Tiered System Reporting | Accountability Office

## Our Services

**Resources for Reporting Season**  
Important dates for your audit process.

- Firm Profile Process and Due Date
- Contracting for Audit Services and Due Dates
- Audit Report Due Dates
- Tiered Certification Due Dates

**Audit Reports**  
In addition to performing annual financial audits of governmental entities, the Office of the State Auditor regularly conducts special audits and examinations.  
[Click Here](#)

**Special Audits & Investigations**  
In addition to performing annual financial audits of governmental entities, the Office of the State Auditor regularly conducts special audits and examinations.  
[Click Here](#)

**Procuring Contracts**  
If you have not received an e-mail for online registration for the OSA+Connect portal please contact [Jason Chavez](#) or [Balen Bando](#) at 505-476-0300.  
[Click Here](#)

**Tiered System Reporting**  
The purpose of this form is for mutual domestic water consumer associations, land grants, incorporated municipalities and special districts to determine what type of audit services they need under the law.  
[Click Here](#)

- Audit Act (Sections 12-6-1 through 12-6-14 NMSA 1978) and the Audit Rule (2.2.2. NMAC)
- Every government agency in New Mexico that receives or expends public funds is required to account for that money daily, and submit a report to the OSA annually. Accounting for this money may take the form of an audit, a tiered system certification, or a tiered system engagement



## HOW CAN A LAND GRANT-MERCED & ACEQUIA ASSOCIATION COMPLY WITH FINANCIAL REPORTING REQUIREMENTS UNDER THE AUDIT ACT?

- **TIERED SYSTEM OF FINANCIAL REPORTING**
- Seven different tiers for financial reporting.
- Tiers are based on annual income and expenditure of capital outlay appropriations from the State Legislature.
  - Land Grants-mercedes & Acequia Associations will have different procedures for compliance with the Audit Act depending on what revenue tier they fall into.
- Compliance ranges from a simple certification to a complete financial and compliance audit.

### OFFICE OF THE STATE AUDITOR

#### TIERED SYSTEM OF FINANCIAL REPORTING FOR LOCAL PUBLIC BODIES<sup>1</sup>

##### FORM FOR DETERMINING TYPE OF REPORTING REQUIREMENTS AND INDEPENDENT PUBLIC ACCOUNTANT (IPA) SERVICES NEEDED

Pursuant to Sections 12-6-2(B) and Sections 12-6-3(B) NMSA 1978, local public bodies (mutual domestic water consumers associations, land grants, incorporated municipalities, and special districts) may be subject to different types of financial reporting requirements. This form should be used by all local public bodies to determine what type of professional services they are required to procure from an independent public accountant for fiscal years ending on or after June 30, 2010.

**STEP ONE: Determine whether an incorporated municipality associated with a housing authority should**

**include or exclude the housing authority when completing this form. Check the ONE box below that applies to your municipality. If your local public body is not a municipality, then proceed to STEP TWO below.**

- If the municipality has a housing authority that is a component unit, then the component unit housing authority must procure a separate audit pursuant to 2.2.2 NMAC because it is not a local public body under the tiered system. The municipality should check this box and proceed to Step Two of this form. The tiered system may apply to the municipality, excluding its component unit housing authority.
- If the municipality has a housing authority that is a department, then the municipality should check this box and proceed to Step Two of this form. The tiered system may apply to the municipality, including its housing authority department.

**STEP TWO: Determine expenditure of federal funds and application of the tiered system. Check the ONE box below that applies to your local public body.**

- If your local public body (including a component unit housing authority, if applicable) expended \$750,000 or more in federal funds and is required by the grantor to obtain a single audit of the financial statements and federal funds in accordance with the Uniform Guidance for Federal Awards, then check this box and you are done with this form. The tiered system does not apply to your local public body. If you must obtain an audit of your financial statements.
- If your local public body expended \$750,000 or more in federal funds and elects to obtain a program-specific audit in accordance with the Uniform Guidance for Federal Awards, then check this box and proceed to Steps Three and Four of this form. The tiered system may apply to your local public body.
- If your local public body (including a component unit housing authority, if applicable) did not expend \$750,000 or more in federal funds, then check this box and proceed to Steps Three and Four of this form. The tiered system may apply to your local public body.

**STEP THREE: Determine your local public body's revenue and capital outlay award expenditures (if any) for the fiscal year:**

My local public body's total revenues (on a cash basis, excluding capital outlay funds, federal or private grants) were \$ \_\_\_\_\_ for the fiscal year to which this recommendation applies, which is \_\_\_\_\_ (fiscal year end).

<sup>1</sup> Section 12-6-2(B) of the Audit Act (effective July 1, 2010) defines "local public body" as a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district.



# OSA Tier Requirements

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## Tier 1

**Revenue is less than \$10,000 and your local public body did not directly expend at least 50% of, or the remainder of, a single capital outlay award.**

- A local public body under Tier 1 is exempt from submitting a financial report to the State Auditor and is not required to procure the services of an IPA.
- However, the local public body shall certify to the Office and the Local Government Division (LGD) of the Department of Finance and Administration (DFA) that it meets the revenue threshold of Tier 1.

## Tier 2

**Revenue is \$10,000 or more but less than \$50,000.**

- A local public body under Tier 2 is exempt from submitting a financial report to the State Auditor and is not required to procure the services of an IPA.
- However, the local public body is required to comply with quarterly and final budget reporting requirements to LGD of DFA pursuant to Sec. 6-6-3 NMSA 1978. The local public body shall also certify to the Office and the LGD of DFA that it meets the revenue threshold of Tier 2.

# OSA Tier Requirements

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## Tier 3

**Revenue is less than \$50,000 and your local public body expended at least 50% of, or the remainder of a capital outlay award.**

A local public body under Tier 3 is required to procure the services of an IPA for the performance of a Tier 3 agreed-upon procedures engagement in accordance with the Tier 3 agreed-upon procedures checklist on the State Auditor's website.

## Tier 4

**Annual revenue of \$50,000 or more but less than \$250,000.**

The local public body is required to procure the services of an IPA for the performance of a Tier 4 agreed upon procedures engagement in accordance with the Tier 4 agreed upon procedures checklist developed by the State Auditor.

The public body is also required to submit an annual budget to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978.



# OSA Tier Requirements

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## Tier 5

**Annual revenue of \$50,000 or more but less than \$250,000 and the public body has expended any capital outlay funds.**

The public body is required to procure the services of an IPA for the performance of a Tier 5 agreed upon procedures engagement in accordance with the Tier 5 agreed upon procedures checklist developed by the State Auditor. The public body is also required to submit and annual budget to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978.

## Tier 6

**Annual revenue of \$250,000 or more but less than \$500,000.**

The public body is required to procure the services of an IPA for the performance of a Tier 6 agreed upon procedures engagement in accordance with the Tier 6 agreed upon procedures checklist developed by the State Auditor. The public body is also required to submit and annual budget to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978.

# OSA Tier Requirements

## (Tier 7) Full Financial Audit

Annual revenue of \$500,000 or more. The tiered system does not apply to your local public body.

The public body **must** procure the services of an IPA for the performance of a financial and compliance audit in accordance with the generally accepted auditing standards and rules issued by the State Auditor. The public body is also required to submit and annual budget to DFA-LGD and comply with all quarterly and final budget reporting requirements pursuant to Section 6-6-3 NMSA 1978

The purpose of this form is for mutual domestic water consumer associations, land grants, incorporated municipalities and special districts to determine what type of audit services they need under the law.

[Download the Form](#)



### 2021 Agreed-Upon Procedures for Tiers 3 through 6

[Tier 3 Agreed-Upon Procedure](#)



[Tier 4 Agreed-Upon Procedure](#)



[Tier 5 Agreed-Upon Procedure](#)



[Tier 6 Agreed-Upon Procedure](#)



**Note:** All Agreed-Upon Procedures for Tiers 3 through 6 are included in each agency's contract through the OSA-Connect Portal. Please refer to the last pages of the contract.

For Agreed-Upon Procedures effective for 2020 and prior, please contact the OSA at (505) 476-3800.

### Agreed-Upon Procedure and Tier Certification Instructions

**Note:** All Certifications for Tier 1 and 2 will be completed on-line. Please contact our office for login information.

[Agreed-Upon Procedure and Tier Certification Instructions  
Step by Step Instructions](#)



If you have any questions, please contact the OSA at [\(505\) 476-3800](tel:5054763800).



## PROCURING AUDIT AND FINANCIAL REVIEW SERVICES

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Scenarios

\$brought in, \$ amount of money in savings.

- The procurement process for an audit or financial review services is defined by the Office of the State Auditor in 2.2.2. NMAC commonly referred to as the “Audit Rule”.
- Prior to beginning the process for selecting an auditor/CPA the public body must first receive written notification from the Office of the State Auditor authorizing them to proceed with selecting an Independent Public Accountant (IPA) to perform either a financial compliance and control audit or agreed upon procedures in accordance with the relative tier.
- If the public body does not receive a letter or an e-mail from the State Auditor by April please contact the Office of the State Auditor at (505) 476-3800.
- Also keep in mind that during the months of March and April the Office of the State Auditor will host several workshops, on the Audit Rule, to go over the audit selection process as well as any revised regulations since the previous year.

## PROCUREMENT CODE

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NM State Procurement Code and the NM General Services Regulations require political subdivisions of the State are now are required to adopt procurement regulations by resolution

- **SMALL PURCHASE (13-1-125 & 13-1-91 NMSA, 1978)**
- **SOLE SOURCE PURCHASES (13-1-126 NMSA, 1978)**
- **SOLE SOURCE PURCHASES (13-1-126 NMSA, 1978)**
- **COMPETITIVE SEALED BIDS (§13-1-102 - 13-1-110 NMSA 1978)**
- **COMPETITIVE SEALED PROPOSALS (§13-1-111 to 117 NMSA 1978)**
- **COMPETITIVE SEALED QUALIFICATION-BASED PROPOSAL (§13-1-119 - 124 NMSA 1978)**



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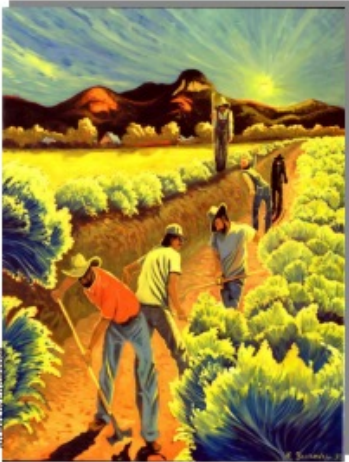
## 49-1-14. Salaries of trustees; records; expenditures.

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- A. The board of trustees may fix in the land grant-merced bylaws and pay to its members a salary not to exceed two hundred dollars (\$200) to any member in one month. The salary as fixed shall be in full as compensation for the duties performed by the board or the individual members within the exterior boundaries of the land grant-merced and for attendance at regularly scheduled meetings. The secretary of the board may be allowed a salary not to exceed two hundred twenty-five dollars (\$225) in one month.
- B. Board members may be authorized Per Diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978].



# Governance Resources



New Mexico Acequia Association  
**Acequia Governance Handbook**



New Mexico Acequia Association  
805 Early St, Suite 203B  
Santa Fe, NM 87505  
(505)995-9644  
[www.lasacequias.org](http://www.lasacequias.org)

Revised  
November 2015

## Contact Info

New Mexico Land Grant Council  
MSC02-1680 1 University of New  
Mexico Albuquerque, NM 87131  
1829 Sigma Chi. Rd NE Albuquerque,  
NM 87106  
Arturo Archuleta: Program Manager P:  
(505)-328-4104  
LGC Email:  
[nmlandgrantcouncil@unm.edu](mailto:nmlandgrantcouncil@unm.edu)



## Council Publications

*\* click on the red text to download*

### **New Mexico Land Grant Governance Guidebook**

**Abstract:** This guidebook provides help for land grants to function as political subdivisions and to help them implement best practices in their management.

**Author:** New Mexico Land Grant Council

### **Land Grant-Merced Guide: Adverse Possession**

**Abstract:** Provides information on what adverse possession is, how it affects land grant communities and explains the types of adverse possession that can occur.

**Authors:** New Mexico Legal Aid Inc. and New Mexico Land Grant Council

### **Land Grant-Merced Guide: Water Rights**

**Abstract:** This guide give information on the proper process of filing a Water Right Declaration to Office of State Engineer.

**Authors:** New Mexico Legal Aid Inc. and New Mexico Land Grant Council

### **New Mexico Land Grant-Merced Laws and Statutes**

**Abstract:** This publication combines all laws and statutes dealing with New Mexico land grants into one guide for ready reference.

**Authors:** New Mexico Land Grant Council

### **Bowden (1969) Excerpts, "Private Land Claims in the Southwest"**

**Abstract:** A list and brief history of each land grant identified by Author J.J. Bowden.

**Authors:** JJ Bowden



# Contact

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David Benavides, Esq.  
NM Legal Aid Land & Water Rights Manager  
davidb@nmlegalaid.org  
505 Marquette Avenue NW,  
(P.O. Box 25486)  
Albuquerque, NM, 87102 (87125-5486)  
1-833-LGL-HELP (1-833-545-4357)



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