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DIVISION 7: PLANNING, BUDGETING AND AUDITING

§ 7402. Reprogramming Authority.

(a) (1) Except as provided in this section, and in 1 CMC §§ 7302 and 7403, no funds may be reprogrammed, and no obligation or contract for the expenditure of Commonwealth funds shall be made for any purposes other than the public purposes for which the funds are appropriated.

(2) No funds may be reprogrammed to any account which has been zero-funded by the legislature or to any account for which the legislature has not made an appropriation. Any person who reprograms government funds or knowingly receives reprogrammed funds in contravention of this subsection shall be held personally liable for the amount of the reprogrammed account.

(3) No Covenant funds or interest thereon may be reprogrammed or otherwise transferred or borrowed from capital improvement and economic development accounts to government operational accounts.

(b) *Governor's Reprogramming Authority.* The Governor may reprogram funds appropriated by the annual appropriation acts for the operations and activities of departments, agencies, and offices of the executive branch up to 25 percent cumulative and in total; provided, that any reprogramming which increases or decreases the annual appropriations or allocations by the annual appropriation acts for a particular executive office, department, or agency of the Commonwealth by more than 25 percent cumulative and in total shall be subject to prior approval by joint resolution of the legislature pursuant to subsection (d) of this section; and provided further, that any reprogramming pursuant to an executive order issued pursuant to N.M.I. Const. art. III, § 15, which establishes a new position, function, program or duty not otherwise authorized by law, shall be subject to prior approval by joint resolution pursuant to subsection (d) of this section.

Nothing in this section shall authorize the Governor to reprogram funds allocated or appropriated by the annual appropriation acts for Covenant training funds or for the operations and activities listed in 1 CMC § 7401(b) through (p).

(c) *Agency and Department Reprogramming Authority.* The public officials listed in 1 CMC § 7401(b) through (p) may reprogram funds appropriated by the annual appropriation acts for the operations and activities under their jurisdiction up to 10 percent cumulative and in total by line item; provided, that all reprogramming is reported within 30 days to the Special Assistant for Planning and Budgeting, the Chairman of the House Committee on Appropriations, and the Chairman of the Senate Committee on Fiscal Affairs; provided further, that reprogramming shall not be permitted if it will be used for the purposes prohibited by subsections (c)(2) and (3) of this section. The public officials listed in 1 CMC § 7401(b) through (p) may request additional reprogramming authority from the legislature by following the procedures required of the Governor in subsection (d) of this section.

The heads of all executive departments, offices, and agencies of the Commonwealth to which funds are appropriated by annual appropriation acts may,

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with the written authority of the Governor and subject to such reporting requirements as the Governor may by regulation provide, reprogram funds within their jurisdiction in an amount not greater than 10 percent cumulative and in total by line item of the funds appropriated to the department, agency, or office; provided that departmental reprogramming shall not be permitted if it:

(1) Changes the total amount appropriated to the department, office, agency, or instrumentality;

(2) Will be used to fund a new position established by an executive order or a new position not otherwise established by law; or

(3) Will be used to reprogram funds appropriated for nonpersonnel expenses to personnel expenses, except where necessary to pay unexpected overtime or lump sum annual leave, merit increases or monetary awards for exceptional service.

(d) *Other Reprogramming.* The Governor may request the legislature for authority to reprogram funds other than such reprogramming as is authorized by subsections (a), (b) and (c) of this section in the following manner:

(1) Such requests shall be submitted in writing by the Governor or his authorized designee to the presiding officers of the House and Senate. Such request shall be subject to approval by joint resolution.

(e) All reprogramming shall be reported in writing to the Chairman of the House Committee on Appropriations and the Chairman of the Senate Committee on Fiscal Affairs within 30 days after the end of each quarter of the fiscal year. Such reports shall include a description of each item reprogrammed, the reason for each reprogramming, the change in the approved budget caused by the reprogramming, the cumulative amount of all reprogramming during the fiscal year, and such other information as may be requested by the chairmen. The Governor shall submit to the chairmen an annual summary of all reprogramming activity within 60 days after the end of a fiscal year.

Source: PL 3-68, § 402; amended by PL 3-93, §§ 2, 3, 12; (a)(2) amended by PL 15-54, § 2.

Commission Comment: With respect to the reference to the “Special Assistant for Planning and Budgeting,” see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the Commission comment to 1 CMC § 2001.

Public Law 15-54 was enacted on April 23, 2007, and contained the following purpose provision in addition to severability and savings clauses:

Section 1. Purpose. The purpose of this Act is to comply with the Office of the Public Auditor’s recommendation No. 6 in OPA’s Report No. LT-01-02 issued on May 3, 2001. The recommendation was made after the Public Auditor investigated the Challenger boat purchase by the Department of Lands and Natural Resources. Specifically, the OPA found that an official in the Office of Management and Budget may have violated the Planning and Budgeting Act. The Office of the Public

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Auditor (OPA), in conjunction with the Interagency Auditing Coordinating Advisory Group (IACAG), maintains an Audit Recommendations Tracking System to monitor implementation and resolution of audit recommendations. The change proposed through recommendation No. 6 is an amendment to 1 CMC Section 7402, that states “that any government employee that illegally reprograms or knowingly receives illegally reprogrammed funds shall be held personally liable for their actions”. It is the sincere hope of the Legislature that this amendment will provide for increased accountability in the budgeting and reprogramming process.