

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 61 SPACEPORTS
PART 3 SPACEPORT AUTHORITY BOARD OF DIRECTORS BYLAWS

18.61.3.1 ISSUING AGENCY: New Mexico Spaceport Authority.
[18.61.3.1 NMAC - N, 7/31/2023]

18.61.3.2 SCOPE: This rule applies to the New Mexico spaceport authority and members of the board of directors of the New Mexico spaceport authority.
[18.61.3.2 NMAC - N, 7/31/2023]

18.61.3.3 STATUTORY AUTHORITY: Section 58-31-5, NMSA 1978.
[18.61.3.3 NMAC - N, 7/31/2023]

18.61.3.4 DURATION: Permanent.
[18.61.3.4 NMAC - N, 7/31/2023]

18.61.3.5 EFFECTIVE DATE: July 31, 2023.
[18.61.3.5 NMAC - N, 7/31/2023]

18.61.3.6 OBJECTIVE: The objective of this rule is to codify the bylaws that govern the conduct of the board of directors of the New Mexico spaceport authority.
[18.61.3.6 NMAC - N, 7/31/2023]

18.61.3.7 DEFINITIONS:

A. “The authority”, or New Mexico spaceport authority, means a state agency created by the Spaceport Development Act and administratively attached to the economic development department in accordance with Section 9-1-7 NMSA 1978 and charged with the responsibility of carrying out the day-to-day business of the agency. The authority is also known as “the agency” in business relations with its partners, customers and other governmental entities as an executive agency of the state of New Mexico.

B. “The board” means the board of directors, the entity created by Section 58-31-4, NMSA 1978 comprised of nine members, among whom is the executive director who runs the agency. The board is responsible for making and implementing all rules and regulations necessary for the efficient administration of Spaceport America.

C. “Spaceport America” is the trademarked identity of a commercial spaceport business operated, managed and maintained by the authority in Sierra county, New Mexico, located on state trust land pursuant to Business Lease No. BL-1729, effective January 1, 2007.

D. “Spaceport” means the physical property in Sierra county New Mexico, comprising 18,461.45 acres and the facilities, infrastructure, access roads and other improvements located thereon.
[18.61.3.7 NMAC - N, 7/31/2023]

18.61.3.8 TITLE: These rules shall be known as the “Bylaws of the Board of Directors of the New Mexico Spaceport Authority,” hereinafter referred to as the “bylaws.”
[18.61.3.8 NMAC - N, 7/31/2023]

18.61.3.9 THE AUTHORITY:

A. Spaceport Development Act. The New Mexico spaceport authority (the authority) is a New Mexico state agency organized under the provisions of the Spaceport Development Act, Sections 58-31-1, et seq. NMSA 1978.

B. Governance. The authority is governed by seven voting and two nonvoting members of the board of directors (the “board”). The board shall make all rules and regulations necessary for the administration of Spaceport America.

C. Purpose. The authority shall implement the purposes of the Spaceport Development Act:
(1) encourage and foster development of the state and its cities and counties by developing spaceport facilities in New Mexico;

(2) actively promote and assist public and private sector infrastructure development to attract new industries and businesses, thereby creating new job opportunities in the state;

(3) create the statutory framework that will enable the state to design, finance, construct, equip and operate spaceport facilities necessary to ensure the timely, planned and efficient development of a southwest regional spaceport; and

(4) promote educational involvement in spaceport activities and education and training of the workforce to develop the skills needed for spaceport operations.

[18.61.3.9 NMAC - N, 7/31/2023]

18.61.3.10 BYLAWS AND POLICIES: These bylaws govern the conduct of the board and its implementation and compliance with the Spaceport Development Act. In addition to the bylaws, the board shall, from time to time, adopt policies and other resolutions governing specific matters to confirm and augment the bylaws, as well as govern use and operations at Spaceport America.

[18.61.3.10 NMAC - N, 7/31/2023]

18.61.3.11 EFFECT OF BYLAWS ON PAST ACTIONS AND OBLIGATIONS: The adoption of these bylaws or the repeal of a resolution by the bylaws shall not affect:

A. Vested rights and obligations pertaining to any prior resolution; or

B. Other matters of record referring to resolutions and not included within the bylaws.

[18.61.3.11 NMAC - N, 7/31/2023]

18.61.3.12 MAINTENANCE OF BYLAWS AND OTHER BOARD MATERIALS:

A. Certified copies of the bylaws and all resolutions approved by the board, including those that adopt policies governing the Spaceport, shall be maintained on file in the Spaceport America offices and on the Spaceport America website.

B. Other materials used by the board shall also be maintained on file at the Spaceport America offices, including agendas, minutes, final reports, presentations and other materials used by the board to carry out official business.

[18.61.3.12 NMAC - N, 7/31/2023]

18.61.3.13 MISSION OF BOARD OF DIRECTORS: The mission of the authority board of directors (the board) is to ensure operation of Spaceport America, as described in the Spaceport Development Act and in the best interests of the citizens of New Mexico; establish rules, regulations, and policies for the administration, governance, protection and maintenance of Spaceport America's facilities; establish standards of operation; and operate the authority as an economic development engine for the state of New Mexico.

[18.61.3.13 NMAC - N, 7/31/2023]

18.61.3.14 MEMBERSHIP:

A. Assuming office. A person may become a member of the board only by appointment or on an ex-officio basis. The board shall consist of seven voting and two nonvoting members, six of whom shall be appointed by the governor with the consent of the senate, provided that one of the appointed members shall be a resident of Sierra county. No more than three appointed members shall belong to the same political party. The seventh member shall be the secretary of economic development or the secretary's designee. The lieutenant governor shall serve as a nonvoting ex-officio member. The executive director of the authority shall serve as a nonvoting member.

B. Vacancies. If a vacancy occurs among the appointed voting members of the board, the governor shall appoint a replacement to serve out the term of the former member. If an appointed member's term expires, the member shall continue to serve until the member is reappointed or another person is appointed and confirmed by the senate to replace the member.

C. Qualification and term. The members appointed by the governor shall be residents of the state and shall serve for terms of four years, except for the initial appointees who shall be appointed so that the terms are staggered after initial appointment. Initial appointees shall serve terms as follows: two members for two years, two members for three years and two members for four years.

D. The secretary of economic development or the secretary's designee shall serve as the chairperson of the board (the chair).

E. The members of the board shall not be compensated for their services but may be reimbursed by the agency for reasonable and necessary expenses actually incurred for the benefit of the agency, upon presentation of proper documentation.

[18.61.3.14 NMAC - N, 7/31/2023]

18.61.3.15 ETHICS AND CONFLICT OF INTEREST CODE: It is the intent of the board to act in the highest ethical standard in carrying out its duties to the public and in the operation of its facilities. It is also the intent of the board to protect the authority's interests when entering into a transaction or agreement, and not the private interests of any director, officer, or employee. Accordingly, all board members shall adhere to the requirements of the Governmental Conduct Act (Chapter 10, Article 16, NMSA 1978) and the Governor's Code of Conduct adopted thereunder, as well as any other applicable rules or laws governing their conduct as executive agency appointees, including but not limited to the Financial Disclosure Act (Chapter 10, Article 16A NMSA 1978), the Gift Act (Chapter 10, Article 16B NMSA 1978), the Lobbyist Regulation Act (Chapter 2, Article 11 NMSA 1978), the Personnel Act (Chapter 10, Article 9, NMSA 1978) and the Procurement Code (Chapter 13, Article 1 NMSA 1978).

[18.61.3.15 NMAC - N, 7/31/2023]

18.61.3.16 MEETINGS:

A. Open meetings. Meetings of the board shall be open and public, except as allowed by law, and unless otherwise provided, shall be conducted in accordance with Robert's Rules of Order. All meetings of the board and its committees shall be conducted in accordance with the "Open Meetings Act," Sections 10-15-1, et seq. NMSA 1978. Members of the public shall be permitted to attend any portion of a meeting, except a closed session. A quorum is established when a simple majority of the membership is in attendance, physically, telephonically or by videoconference, as permitted by law. Board actions shall be approved on a majority vote of the quorum present at the meeting.

B. The board shall maintain written minutes of all meetings of the authority and maintain other appropriate records, including financial transaction records in compliance with law and adequate to provide an accurate record for audit purposes pursuant to the Audit Act.

C. Regular meetings. The board shall meet at the call of the chairperson in regular session at least once every three months. Such regular meetings shall comply with the procedural requirements of the Open Meetings Act, Subsections D and F of Sections 10-15-1 NMSA 1978, including reasonable advance notice of not less than 10 days that informs the public of the meeting time, place and date, published or posted in a place and manner accessible to the public (main office or on website) and a final agenda shall be posted 72 hours prior to the meeting (inclusive of any weekend or holidays) on the Governance page of Spaceport America's website at <https://www.spaceportamerica.com/governance/>. Notice requirements are met if notice of the date, time, place and agenda is provided by telephone to newspapers of general circulation in the state and posted in the offices of Spaceport America. Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

D. Special meetings. Special meetings may be called to discuss important topics that should not wait until a regular meeting, or for topics that, for good reason, could occupy an entire meeting. If the need for such a meeting arises outside a regularly scheduled meeting, the board chair may schedule a meeting on reasonable advance notice of not less than three days which shall include an agenda for the meeting, or information on how the public may obtain a copy of the agenda. Aside from the timeframe, the same notice procedures for regular meetings apply to special meetings.

E. Emergency meetings. Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the authority from substantial financial loss. The board will avoid emergency meetings whenever possible. Emergency meetings may be called by the chairperson or a majority of the board members with 24 hours prior notice, unless threat of personal injury or property damage requires less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Within 10 days after taking action on an emergency matter, the board chairperson will notify the attorney general's office. For the purposes of emergency meetings, notice requirements are met if notice of the date, time, place and agenda is provided by telephone to newspapers of general circulation in the state and posted in the offices of Spaceport America. Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

F. Prohibited meetings. A quorum of the board shall not discuss the business of the authority directly, serially, or through an intermediary, except at a properly noticed public meeting in compliance with the Open Meetings Act. Less than a quorum of the board (but not a standing committee) may discuss authority business, including the time, place, and agenda for a meeting, at any time.

G. Closed meetings. The board may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under Subsection H of Sections 10-15-1 NMSA 1978 of the Open Meetings Act.

(1) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the board taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close and the vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting.

(2) If a closed meeting is conducted when the board is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and to the general public.

(3) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

(4) Except as provided in Subsection H of Sections 10-15-1 NMSA 1978 of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the board in an open public meeting.

[18.61.3.16 NMAC - N, 7/31/2023]

18.61.3.17 POWERS COMPULSIVE: The authority shall:

A. hire, and be authorized to fire, an executive director, who shall employ the necessary professional, technical and clerical staff to enable the authority to function efficiently and shall direct the affairs and business of the authority, subject to the direction of the board;

B. advise the governor, the governor's staff and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives involving the Spaceport that may further stimulate space-related business and employment opportunities in New Mexico;

C. initiate, develop, acquire, own, construct, maintain and lease space-related projects;

D. make and execute all contracts and other instruments necessary or convenient to the exercise of its powers and duties;

E. create programs to expand high-technology economic opportunities within New Mexico;

F. create avenues of communication among federal government agencies, the space industry, users of space launch services and academia concerning space business;

G. promote legislation that will further the goals of the authority and development of space business;

H. oversee and fund production of promotional literature related to the authority's goals;

I. identify science and technology trends that are significant to space enterprise and the state and act as a clearinghouse for space enterprise issues and information;

J. coordinate and expedite the involvement of the state executive branch's space-related development efforts;

K. perform environmental, transportation, communication, land use and other technical studies necessary or advisable for projects and programs or to secure licensing by appropriate United States agencies; and

L. review summary scopes of work and approve of all purchases above \$60,000, pursuant to procurement guidelines issued under Procurement Code Section 13-1-125 NMSA 1978, developed by the general services department and the department of finance, provided to the authority and retained by the authority's chief procurement officer for inspection by any board member at any time.

[18.61.3.17 NMAC - N, 7/31/2023]

18.61.3.18 POWERS PERMISSIVE: The authority may:

A. advise and cooperate with municipalities, counties, state agencies and organizations, appropriate federal agencies and organizations and other interested persons and groups;

B. solicit and accept federal, state, local and private grants of funds or property and financial or other aid for the purpose of carrying out the provisions of the Spaceport Development Act;

- C. adopt rules governing the manner in which its business is transacted and the manner in which the powers of the authority are exercised and its duties performed;
 - D. operate spaceport facilities, including acquisition of real property necessary for spaceport facilities and the filing of necessary documents with appropriate agencies;
 - E. construct, purchase, accept donations of or lease projects located within the state;
 - F. sell, lease or otherwise dispose of a project upon terms and conditions acceptable to the authority and in the best interests of the state;
 - G. issue revenue bonds pursuant to the requirements of Sections 58-31-6 thru 58-31-10 NMSA 1978 and borrow money for the purpose of defraying the cost of acquiring a project by purchase or construction and of securing the payment of the bonds or repayment of a loan;
 - H. enter into contracts with regional spaceport districts and issue bonds on behalf of regional spaceport districts for the purpose of financing the purchase, construction, renovation, equipping or furnishing of a regional spaceport or a spaceport-related project;
 - I. refinance a project;
 - J. contract with any competent private or public organization or individual to assist in the fulfillment of its duties;
 - K. fix, alter, charge and collect tolls, fees or rentals and impose any other charges for the use of or for services rendered by any authority facility, program or service; and
 - L. contract with regional spaceport districts to receive municipal spaceport gross receipts tax and county regional spaceport gross receipts tax revenues.
- [18.61.3.18 NMAC - N, 7/31/2023]

18.61.3.19 POWERS PROSCRIPTIVE: The authority shall not:

- A. incur debt as a general obligation of the state or pledge the full faith and credit of the state to repay debt; or
 - B. expend funds or incur debt for the improvement, maintenance, repair or addition to property unless it is owned by the authority, the state or a political subdivision of the state.
- [18.61.3.19 NMAC - N, 7/31/2023]

18.61.3.20 STANDING COMMITTEES: Committees of the board shall be standing or ad hoc. Upon the creation of a standing committee, the chair shall appoint, in consultation with the board, members of the committee, including two board members and, as appropriate, members of staff or the community appointed by the chair. One of the board members shall act as the committee chair. A majority of members of a committee shall count as a quorum for holding a meeting. All committees shall be advisory to the board, except as otherwise expressly specified by the board chair.

[18.61.3.20 NMAC - N, 7/31/2023]

18.61.3.21 AD HOC COMMITTEES: Ad hoc committees may be established by the chair, subject to approval of the board, for defined tasks of a limited duration (for instance, not to exceed six months). An ad hoc committee shall only perform those duties assigned by the chair, and upon their completion be discharged. The chair, in consultation with the board, shall appoint the members of the committee and the chair of the committee.

[18.61.3.21 NMAC - N, 7/31/2023]

18.61.3.22 EXECUTIVE COMMITTEE: The chair, four other voting board members appointed by the chair and the executive director of the authority shall constitute the spaceport authority executive committee. The committee shall have powers and duties as delegated to it by the authority.

[18.61.3.22 NMAC - N, 7/31/2023]

18.61.3.23 EXECUTIVE DIRECTOR:

- A. The executive director shall be appointed by and hold office at the pleasure of the board. The executive director shall receive such annual compensation as set by the board. In addition, the executive director shall be reimbursed for actual, reasonable, and necessary expenses incurred in the performance of official duties and in accordance with 2.42.2 NMAC. The performance of the executive director shall be reviewed annually by the board.

B. Executive director authority. The executive director shall be the administrative head of the authority under the direction of the board. The executive director shall be responsible for the efficient administration of affairs of the authority with the authority to:

- (1) enforce rules and regulations and ensure that contracts, permits, leases and any other privileges are enforced;
- (2) control, order, and give directions and guidance to subordinate employees;
- (3) hire, remove, promote, demote and establish the proper classification of employees, subject to all applicable resolutions, rules, and regulations;
- (4) direct, supervise and monitor daily business and aerospace operations;
- (5) ensure the agency complies with all local, state and federal laws, ordinances and regulations required to maintain an active spaceport launch and/or reentry license, as applicable;
- (6) lead, manage, operate and grow a sales, marketing, and business development team capable of attracting spaceport customers and projects, programs and undertakings suitable for Spaceport America;
- (7) work with customers and other federal and state agencies on aerospace operations with an understanding of scheduling issues, range instrumentation requirements (radar, weather, telemetry), and radiofrequency spectrum usage and deconfliction
- (8) plan, develop, operate, maintain and manage spaceport infrastructure and utilities facilities in an efficient and effective manner;
- (9) establish and manage operational and capital investment budgets;
- (10) attend board meetings, unless excused by the chair, and recommend to the board measures and resolutions;
- (11) keep the board fully advised as to the financial condition and needs of the authority;
- (12) ensure all materials used by the board for the execution of official business, including agendas, minutes, resolutions, and other materials presented to the board are preserved, filed, organized and accessible as Spaceport America records and, where appropriate, published on the Spaceport America website.
- (13) take any other action consistent with the Spaceport Development Act, Sections 58-31-1, et seq., NMSA 1978 the statutes governing the relationship between executive departments and administratively attached agencies, Sections 10-9-1, et seq. NMSA 1978, the State Personnel Act, Sections 10-9-1 to 10-9-25 NMSA 1978 and the rules and regulations contained in 1.7.1 NMAC.

C. The board and its members shall deal with the administrative services of the authority only through the executive director. Except for the purpose of inquiry, board members shall not give orders or instructions to any subordinate of the executive director. The executive director shall take orders and instructions from the board only when sitting in a duly convened meeting of the board, and no individual board member shall give any orders or instructions to the executive director.

D. The board shall assist the executive director in administering the affairs of the authority efficiently and harmoniously.
[18.61.3.23 NMAC - N, 7/31/2023]

18.61.3.24 PERSONNEL SYSTEM: The executive director shall:

- A.** Prepare an organizational structure for board approval, make final determinations of the classified status of each employee and implement those decisions in accordance with the procedures of the state personnel office;
- B.** Provide for publication of employment openings in accordance with state personnel office procedures, conduct interviews of candidates and make determinations for hiring the selected candidate;
- C.** Annually evaluate the performance of each employee either directly or as delegated to a manager; and
- D.** Recommend promotions.

[18.61.3.24 NMAC - N, 7/31/2023]

18.61.3.25 AUDITOR: The authority shall annually hire an independent auditor to audit the books and records of the authority and to certify as to the accuracy of the same. The independent auditor shall not be a director, officer, or employee of the authority.

[18.61.3.25 NMAC - N, 7/31/2023]

18.61.3.26 DIRECT BOARD SUPERVISION: The executive director shall be appointed by the board, report to the board and serve at the pleasure of the board.

[18.61.3.26 NMAC - N, 7/31/2023]

18.61.3.27 REVIEW OF BYLAWS: At least once every five years the board shall review these bylaws to ensure they comply with the Spaceport Development Act and all other applicable federal and state laws and regulations in keeping with the functions of the board.

[18.61.3.27 NMAC - N, 7/31/2023]

18.61.3.28 AMENDMENT OF BYLAWS: These bylaws may be altered, amended or repealed by two-thirds majority vote of the members of the board present at any meeting called specifically for the purpose, among other things, of amending these bylaws.

[18.61.3.28 NMAC - N, 7/31/2023]

History of 18.61.3 NMAC: [RESERVED]