

Art in Public Places Legislation

In 1986, the Legislature of the State of New Mexico passed and the Governor signed into law the Art in Public Places Act (Sections 13-4A-1 through 13-4A-11 NMSA 1978, as amended). This legislation declares it to be “a policy of the State that a portion of appropriations for capital expenditures be set aside for the acquisition or commissioning of works of art to be used in, upon or around public buildings” (Section 13-4A-2, NMSA 1978). The resulting Art in Public Places (AIPP) program is often referred to as the One Percent for Art program because of the requirement in the law that:

All agencies shall allocate as a nondeductible item an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000), to be expended for the acquisition and installation of works of art for the new building to be constructed or the building in which the major renovation is to occur. Section 13-4A-4, NMSA 1978)

Art in Public Places funds may be expended for the following purposes:

The works of art acquired pursuant to the Art in Public Places Act [13-4A-1 to 13-4A-11 NMSA 1978] may be an integral part of the building, attached to the building, detached within or outside the structure or placed on public lands, part of a temporary exhibition or loaned or exhibited by the agency in other public facilities. (Section 13-4A-6, NMSA 1978).

New Mexico Arts, a Division of the State Office of Cultural Affairs is designated as the Art in Public Places Act as the appropriate agency to administer the AIPP program. This charge includes establishing procedures for the selection and acquisition of works of art. Contact the AIPP program for more information on our policies and procedures.

ARTICLE 4A ART IN PUBLIC PLACES

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13-4A-1 Short title (1997 Repl.)
13-4A-1. Short title.

13-4A-1. Short title.

This act [13-4A-1 to 13-4A-11 NMSA 1978] may be cited as the "Art in Public Places Act".

History: Laws 1986, ch. 11, § 1.

13-4A-2 Legislative declaration (1997 Repl.)

13-4A-2. Legislative declaration.

The legislature declares it to be a policy of the state that a portion of appropriations for capital expenditures be set aside for the acquisition or commissioning of works of art to be used in, upon or around public buildings.

History: Laws 1986, ch. 11, § 2.

13-4A-3 Definitions (1997 Repl.)

13-4A-3. Definitions.

As used in the Art in Public Places Act [13-4A-1 to 13-4A-11 NMSA 1978]:

A. "agency" means all state departments and agencies, boards, councils, institutions, commissions and quasi-public corporations, including all state educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, and all statutorily created post-secondary educational institutions;

B. "architect" means the person or firm designing the project for the contracting agency to which the one percent provision pursuant to Section 13-4A-4 NMSA 1978 applies;

C. "contracting agency" means the agency having the control, management and power to enter into contracts for new construction or renovation of any public building;

D. "division" means the arts division of the office of cultural affairs;

E. "public buildings" means those buildings under the control and management of the property control division of the general services department, the department of game and fish, the energy, minerals and natural resources department, the state highway and transportation department, the state fair commission, the supreme court, the commissioner of public lands, the office of cultural affairs, the governing boards of the state educational institutions and statutorily created post-secondary educational institutions, the state department of public education and the legislature or all buildings constructed with funds appropriated by the legislature. For the purposes of the Art in Public Places Act, "public buildings" does not include such auxiliary buildings as maintenance plants, correctional facilities, warehouses or temporary structures; and

F. "work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic or photograph; a work of calligraphy; a work of graphic art, including an etching, lithograph, offset print, silk screen or a work of graphic art of like nature; works in clay, textile, fiber, wood, metal, plastic, glass and like materials; or mixed media, including a collage or assemblage or any combination of the foregoing art media which is chosen to be included in or immediately adjoining the building under consideration. Under special circumstances, the term may include environmental landscaping if approved by the division.

History: Laws 1986, ch. 11, § 3; 1989, ch. 178, § 1.

13-4A-4 Allocation of construction costs (1997 Repl.)

13-4A-4. Allocation of construction costs.

A. All agencies shall allocate as a nondeductible item an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000), to be expended for the acquisition and installation of works of art for the new building to be constructed or the building in which the major renovation is to occur.

B. An amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, allocated from appropriations for new construction or major renovations of excluded structures pursuant to Subsection E of Section 3 [13-4A-3 NMSA 1978] of the Art in Public Places Act shall be accounted for separately and expended for acquisition and installation of art for existing public buildings. The division shall determine the amount, not to exceed fifty thousand dollars (\$50,000), to be made available for the purchase of art in existing buildings in consultation with the contracting agency. The selection process for art for existing buildings shall follow guidelines established by the division pursuant to the Art in Public Places Act [13-4A-1 to 13-4A-11 NMSA 1978].

History: Laws 1986, ch. 11, § 4.

13-4A-5 Art in public places fund; creation (1997 Repl.)

13-4A-5. Art in public places fund; creation.

There is created in the state treasury the "art in public places fund" which shall be administered by the division pursuant to the Art in Public Places Act [13-4A-1 to 13-4A-11 NMSA 1978].

History: Laws 1986, ch. 11, § 5; 1989, ch. 324, § 5.

13-4A-6 Works of art (1997 Repl.)

13-4A-6. Works of art.

The works of art acquired pursuant to the Art in Public Places Act [13-4A-1 to 13-4A-11 NMSA 1978] may be an integral part of the building, attached to the building, detached within or outside the structure or placed on public lands, part of a temporary exhibition or loaned or exhibited by the agency in other public facilities.

History: Laws 1986, ch. 11, § 6.

13-4A-7 Administration of the program (1997 Repl.)

13-4A-7. Administration of the program.

The division shall determine the amount to be made available for the purchase of art, in consultation with the contracting agency responsible for the building to be constructed or renovated, and payments thereof shall be made in accordance with law. All agencies shall notify the division in writing upon legislative approval of construction budgets. One percent of the total appropriation for new construction or renovation of any building shall be deposited into the art in public places fund after the issuance of the appropriate bonds. If the entire one percent of the total funds appropriated for a particular building is not required for the project, the remainder shall accumulate in the art in public places fund and shall be accounted for separately and expended for the acquisition of art for existing buildings, as determined by the division. Any money remaining in the fund at the end of each fiscal year shall not revert but shall remain in the art in public places fund to be used to implement the purposes of the Art in Public Places Act [13-4A-1 to 13-4A-11 NMSA 1978].

History: Laws 1986, ch. 11, § 7.

13-4A-8 Artist selection (1997 Repl.)

13-4A-8. Artist selection.

The division shall establish guidelines for the art selection process. This process shall provide for participation from representatives of the contracting agency, the user agency, the division, the project architect, visual artists or design professionals and interested members of the community.

History: Laws 1986, ch. 11, § 8.

13-4A-9 Separate contracts (1997 Repl.)

13-4A-9. Separate contracts.

Expenditures for works of art as provided in Section 7 [13-4A-7 NMSA 1978] of the Art in Public Places Act shall be contracted for separately from all other items in the new construction of the public building.

History: Laws 1986, ch. 11, § 9.

13-4A-10 Division; rules and regulations (1997 Repl.)

13-4A-10. Division; rules and regulations.

The selection, execution, placement and acceptance of works of art for a construction project shall be the responsibility of the division in consultation with the contracting agency. The division shall adopt rules and regulations to govern the selection, execution, placement and acceptance of the works of art to be acquired in accordance with this section and other rules, regulations and procedures necessary to implement the Art in Public Places Act [13-4A-1 to 13-4A-11 NMSA 1978]. Administrative costs incurred by the division for the implementation of the Art in Public Places Act may be charged against the art in public places fund, provided that such costs have been properly budgeted and the budget has been approved by the state cultural affairs officer and the secretary of finance and administration.

History: Laws 1986, ch. 11, § 10.

13-4A-11 Maintenance (1997 Repl.)

13-4A-11. Maintenance.

The contracting agency or its designee is responsible for inventory, maintenance, repair and security of art work. Any maintenance or repair work shall be done in consultation with the division.

History: Laws 1986, ch. 11, § 11.

**ARTICLE 4B
FINE ART IN PUBLIC BUILDINGS**

Section: 13-4B-1. Findings.
 13-4B-2. Definitions.
 13-4B-3. Fine art; alteration or destruction prohibited; injunctive relief; damages;
 exceptions.

13-4B-1 Findings (1997 Repl.)

13-4B-1. Findings.

The legislature finds that the physical alteration or destruction of fine art, which is an expression of the personality of the artist, is detrimental to the reputation of the artist and artists therefore have an interest in protecting their works of fine art against such alteration or destruction. The legislature also finds that there is a public interest in preserving the integrity of cultural and artistic creations.

History: Laws 1987, ch. 70, § 1.

13-4B-2 Definitions (1997 Repl.)

13-4B-2. Definitions.

As used in this act [13-4B-1 to 13-4B-3 NMSA 1978]:

A. "artist" means the natural person who actually creates a work of fine art but does not include art created by an employee within the scope of his employment. In case of a joint

creation of a work of art, each joint creator shall have the rights of an artist with respect to the work of fine art as a whole;

B. "fine art" means any original work of visual or graphic art of any media including any painting, print, drawing, sculpture, craft, object, photograph, audio or video tape, film, hologram or any combination of such media of recognized quality;

C. "gross negligence" means the exercise of so slight a degree of care as to justify the belief that there was indifference to the particular work of fine art;

D. "public building" means a building owned by the state or any of its branches, agencies, departments, boards, instrumentalities or institutions or a building owned by any political subdivision of the state or any of its agencies, instrumentalities or institutions; and

E. "public view" means on the exterior of a public building or in an interior area of a public building.

History: Laws 1987, ch. 70, § 2.

13-4B-3 Fine art; alteration or destruction prohibited; injunctive relief; damages; exceptions (1997 Repl.)

13-4B-3. Fine art; alteration or destruction prohibited; injunctive relief; damages; exceptions.

A. No person except an artist who owns or possesses a work of fine art which the artist has created shall intentionally commit or authorize the intentional commission of any physical defacement, mutilation, alteration or destruction of a work of fine art in public view. As used in this section, "intentional physical defacement, mutilation, alteration or destruction" includes any such action taken deliberately or through gross negligence.

B. The artist shall retain the right to claim and receive credit under his own name or under a reasonable pseudonym or, for just and valid reason, to disclaim authorship of his work of fine art. Credit shall be determined in accord with the medium of expression and the nature and extent of the contribution of the artist to the work of fine art.

C. The artist or any bona fide union or other artists' organization authorized in writing by the artist for such purpose may commence an action in district court without having as prerequisites to a suit any need for:

- (1) damages already incurred;
- (2) a showing of special damages, if any; or
- (3) general damages in any monetary amount to recover or obtain any of the following:
 - (a) injunctive relief or declaratory relief;
 - (b) actual damages;
 - (c) reasonable attorneys' and expert witness fees and all other costs of the action; or
 - (d) any other relief which the court deems proper.

D. In determining whether a work of fine art is of recognized quality, the court shall rely on the opinions of artists, art dealers, collectors of fine art, curators of art museums, restorers and conservators of fine art and other persons involved with the creation or marketing of fine art.

E. The provisions of this section shall, with respect to the artist, or if any artist is deceased, his heir, legatee, or personal representative, continue until the fiftieth anniversary of the death of such artist, and continue in addition to any other rights and duties which may now or in the future be applicable and, except as provided in Subsection F of this section, may not be waived except by an instrument in writing expressly so providing which is signed by the artist and refers to specific works with identification and such waiver shall only apply to work so identified.

The attorney general may, if the artist is deceased, assert the rights of the artist on the artist's behalf and commence an action for injunctive relief with respect to any work of art which is in public view.

F. If a work of fine art in public view cannot be removed from a building without substantial physical defacement, mutilation, alteration, or destruction of such work, the rights and duties created under this section, unless expressly reserved by an instrument in writing signed by the owner of such building and properly recorded prior to the installation of such art, shall be deemed waived. Such instrument, if recorded, shall be binding on subsequent owners of such building.

G. If the owner of a building wishes to remove a work of fine art which is a part of that building but which can be removed from the building without substantial harm to such fine art, the rights and duties created under this section shall apply unless the owner has diligently attempted without success to notify the artist or, if the artist is deceased, his heir, legatee or personal representative in writing of his intended action affecting the work of fine art, or unless he did provide notice and that person failed within ninety days either to remove the work or to pay for its removal. If such work is removed at the expense of the artist, his heir, legatee or personal representative, title to the fine art shall be deemed to be in such person.

History: Laws 1987, ch. 70, § 3.