

MASS. EAI.2:122

Executive Office of Environmental Affairs

LAND AND WATER CONSERVATION FUND PROJECT AGREEMENT

General Provisions



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Part I - Definitions

- A. The term "NPS" as used herein means the National Park Service, United States Department of the Interior.
- B. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.
- C. The term "Manual" as used herein means the Land and Water Conservation Fund Manual.
- D. The term "project" as used herein means a single project, a consolidated grant, a project element of a consolidated grant, or project stage which is subject to the project agreement.
- E. The term "State" as used herein means the State or Territory which is a party to the project agreement, and, where applicable, the political subdivision or public agency to which funds are to be transferred pursuant to this agreement. Wherever a term, condition, obligation, or requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the recipient political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State.
- F. The term "Secretary" as used herein means the Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.

Part II - Continuing Assurances

The parties to the project agreement specifically recognize that the Land and Water Conservation Fund assistance project creates an obligation to maintain the property described in the project agreement consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is the acknowledged intent of the parties hereto that recipients of assistance will use moneys granted hereunder for the purposes of this program, and that assistance granted from the Fund will result in a net increase, commensurate at least with the Federal cost-share, in a participant's outdoor recreation. It is intended by both parties hereto that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

- A. The State agrees, as recipient of this assistance, that it will meet the following specific requirements and that it will further impose these requirements, and the terms of the project agreement, upon any political

APPROVED BY: John J. Manton, State Purchasing Agent.

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subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement.

- B. The State agrees that the property described in the project agreement and the dated project boundary map made part of that agreement is being acquired or developed with Land and Water Conservation Fund assistance, or is integral to such acquisition or development, and that, without the approval of the Secretary, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity or for the term of the lease in the case of leased property. The Secretary shall approve such conversion only if it is found to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location. This replacement land becomes subject to Section 6(f)(3) protection. The approval of conversion shall be at the sole discretion of the Secretary, or his designee. Prior to the completion of this project, the State and the Director may mutually alter the area described in the project agreement and the dated project boundary map to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded Section 6(f)(3) protection as Fund reimbursement is provided.

In the event the NPS provides Land and Water Conservation Fund assistance for the acquisition and/or development of property subject to reversionary interests with full knowledge of those reversionary interests, conversion of said property to other than public outdoor recreation uses as a result of such reversionary interest being exercised is approved. In receipt of this approval, the State agrees to notify the Service of the conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions. The State further agrees to effectuate such replacement within a reasonable period of time, acceptable to the Service, after the conversion of property takes place. The provisions of this paragraph are also applicable to: leased properties acquired and/or developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the Service; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the Service.

- C. The State agrees that the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this
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agreement. The State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement. The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement.

- D. The State agrees to comply with the policies and procedures set forth in the Land and Water Conservation Fund Manual. Provisions of said Manual are incorporated into and made a part of the project agreement.
  - E. The State agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by Manual requirements.
  - F. The State agrees that a permanent record shall be kept in the participant's public property records and available for public inspection to the effect that the property described in the scope of the project agreement, and the dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.
  - G. Nondiscrimination
    - 1. The State shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Department of Interior Regulation (43 CFR 17) issued pursuant to that Title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any property or facility acquired or developed pursuant to the project agreement. The State shall immediately take any measures necessary to effectuate this provision. This assurance shall be binding on the State or any political subdivision or other appropriate public agency to which Fund assistance or property acquired or developed with Fund assistance has been transferred for public recreation purposes.
    - 2. The State shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
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3. The State shall comply with the regulations and guidelines promulgated pursuant to the Civil Rights Act of 1964 by the Secretary of the Interior and the National Park Service.
4. The provisions of the first three paragraphs apply to any part of the recreation system within which the assisted facility or property exists.
5. The State shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the Manual.

### Part III - Project Assurances

#### A. Applicable Federal Circulars

The State shall comply with applicable regulations, policies, guidelines and requirements including Office of Management and Budget Circulars No. A-95 (Evaluation, review, and coordination of Federal assistance programs and projects) and A-102 (Uniform administrative requirements for grants-in-aid to State and local governments) and A-87 (Cost principles applicable to grants and contracts with State and local governments) as they relate to the application, acceptance and use of Federal funds for this federally assisted project.

#### B. Project Application

1. The Application for Federal Assistance bearing the same project number as the agreement and associated documents is by this reference made a part of the agreement.
2. The State possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.
3. The State has the ability and intention to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

#### C. Project Execution

1. The project period shall begin with the date of approval of the project agreement or the effective date of a waiver of retroactivity and shall terminate at the end of the stated or amended project
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period unless the project is completed or terminated sooner in which event the project period shall end on the date of completion or termination. For project elements added to a consolidated grant, the project period will begin on the date the project element is approved.

2. The State shall transfer to the project sponsor identified in the Application for Federal Assistance or the Description and Notification Form all funds granted hereunder except those reimbursed to the State to cover administrative expenses.
  3. The State will cause work on the project to be commenced within a reasonable time after receipt of notification that funds have been approved and assure that the project will be prosecuted to completion with reasonable diligence.
  4. The State will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480), and the General Services Administration's Accessibility Standards (PBS(PCD): DG6, Oct. 14, 1980). The State will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
  5. The State shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.
  6. In the event the project covered by the project agreement, including future stages of the project, cannot be completed in accordance with the plans and specifications for the project; the State shall bring the project to a point of recreational usefulness agreed upon by the State and the Director or his designee.
  7. The State will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the NPS may require.
  8. The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.
  9. The State will comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement of water
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pollution, and Executive Order 11990 relating to the protection of wetlands.

10. The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
11. The State will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities, pursuant to 40 CFR, Part 15.20 and that it will notify the NPS of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA. The State agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. The State further agrees to insert this clause into any contract or subcontract in excess of \$100,000.
12. The State will assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

D. Construction Contracted for by the State Shall Meet the Following Requirements:

1. Contracts for construction in excess of \$10,000 shall be awarded through a process of competitive bidding involving formal advertising, with adequate purchase description, sealed bids, and public openings. Copies of all advertisements, bids, and a copy of the contract shall be retained for inspection by the Director.
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2. The State shall inform all bidders on contracts for construction that Federal funds are being used to assist in construction.
  3. Written change orders shall be issued for all necessary changes in the facility being constructed under contracts of \$10,000 or more. Such change orders shall be made a part of the project file and should be kept available for audit.
  4. Contracts for construction shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by Department of Labor regulations (29 CFR, Part 3).
  5. The State will comply with other procurement standards of OMB Circular A-102, Attachment O, except for provision related to compliance with Davis Bacon Act requirements (unless required by a program providing supplemental funding.) Should supplemental funding be provided which requires compliance with Davis Bacon Act requirements, all construction contracts awarded by the grantee and subgrantee in excess of \$2,000 shall include a provision for compliance with such Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5).
  6. The State shall comply with Executive Order 11246, as amended, regarding equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with contractors performing under federally assisted construction contracts. In addition of Executive Order 11246, the following specific requirements shall be carried out by the State:
    - (1) The State shall include the following in solicitation for offers and bids on federally assisted construction contracts over \$10,000:
      - a. "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity," including goals which are to be inserted by contracting officer or applicant.
      - b. "Standard Federal Equal Employment Opportunity Construction Contract Specification".
    - (2) The State shall include the following in construction contracts over \$10,000:
      - a. Equal Opportunity Clause.
      - b. "Standard Federal Equal Employment Opportunity Construction Contract Specification".
      - c. A Non-Segregated Facilities Certification signed by the prime contractor and subcontractor.
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- (3) The State shall provide notice of contract awards subject to these provisions to Director of OFCCP within 10 days after the award (Notice includes name, address and telephone number of contractor, employer identification number, dollar amount of contract, estimated starting and completion dates, contract number and geographical area in which the contract is to be performed).
- (4) The State shall cooperate with the Director of NPS and the Director of OFCCP in the implementation of the program.
- (5) The State shall insure that EEO posters are displayed on Federally assisted construction sites.
- (6) The State shall insure that contractors engaged in Federally assisted construction contracts are providing data and reports to the appropriate OFCCP regional office as required or requested.
- (7) The State shall insure that the provisions of the Equal Opportunity Clause are followed for construction contracts involving force account labor.
- (8) The State shall carry out sanctions and penalties imposed upon the federally assisted construction contractor or subcontractor by the Secretary of Labor pursuant to Executive Order 11246, as amended, and refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Executive Order 11246, as amended.
- (9) The State shall incorporate, or cause to be incorporated, into all construction contracts exceeding \$10,000 (ten thousand), the following provisions:

"During the performance of this contract, the contractor agrees as follows:

- a. "The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to



employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. "The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.
  - c. "The contractor will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contract's commitments under Section 202 of Executive Order No. 11246 as amended (3 CFR 169 (1974)), and shall post copies of notices in conspicuous places available to employees and applicants for employment.
  - d. "The contractor will comply with all provisions of Executive Order No. 11246, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.  
  
"The contractor will furnish all information and reports required by Executive Order No. 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - e. "In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, as amended, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
  - f. "The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take
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such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. The State shall (1) comply with the above provisions in construction work carried out by itself, (2) assist and cooperate actively with the Secretary of the Interior and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the above contract provisions and with the rules, regulations, and relevant orders of the Secretary of Labor, (3) obtain and furnish to the Secretary of the Interior and to the Secretary of Labor such information as they may require for the supervision of such compliance, (4) enforce the obligation of contractors and subcontractors under such provisions, rules, regulations, and orders, (5) carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the Secretary of the Interior pursuant to Part II, Subpart D, of Executive Order No. 11246, as amended, and (6) refrain from entering into any contract with a contractor debarred from Government contracts under Part II, Subpart D, of Executive Order No. 11246, as amended. In addition, the State agrees that if it fails or refuses to comply with these undertakings, the NPS may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice of appropriate legal proceedings.

#### E. Conflict of Interests

1. No official or employee of the State or Federal Government who is authorized in an official capacity to negotiate, make, accept, or approve, or to take part in such decisions regarding a contract or subcontract in connection with this project shall have any financial or other personal interest in any such contract or subcontract.
  2. No person performing services for the State or Federal Government in connection with this project shall have a financial or other personal interest other than employment or retention by the State, or Federal Government, in any contract or subcontract in connection with this project. No officer or employee of such person retained by the State or Federal Government shall have any financial or other personal
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interest in any real property acquired for this project unless such interest is openly disclosed upon the public records of the State, and such officer, employee or person has not participated in the acquisition for or on behalf of the State.

3. No member of or delegate to Congress shall be admitted to any share or part of this agreement, or to any benefit to arise hereupon, unless such benefit shall be in the form of an agreement made with a corporation for its general benefit,
4. The State and the Director shall be responsible for enforcing the above conflict of interest provisions.

F. Hatch Act

The State will comply with the provisions of the Hatch Act which provides that no officer or employee of the State whose principal employment is in connection with any activity which is financed in whole or in part pursuant to this agreement shall take part in any of the political activity prescribed in the Hatch Political Activity Act, 5 U.S.C. Sec. 118k (1964), with the exceptions therein enumerated.

G. Project Costs

1. Project costs eligible for assistance shall be determined upon the basis of the criteria set forth in the Manual and OMB Circular A-87 (formerly FMC 74-4).
2. The agreement may include the use of the indirect cost rate currently approved, in accordance with Circular A-87 for the State that is a party to this agreement.

H. Project Administration

1. The State shall promptly submit such reports and documentation as the Director may request.
  2. Any moneys advanced to the State are "public moneys" (owned by the Federal government) and shall be deposited in a bank with FDIC insurance coverage and the balances exceeding the FDIC coverage shall be collaterally secured as provided for in 12 U.S.C. 265.
  3. The State shall use any funds received by way of advance payment from the United States under the terms of this agreement solely for the project or project stage described in the agreement.
  4. Properties and facilities acquired or developed with Fund assistance shall be available for inspection by the Service at such intervals as the Director shall require. The State will promptly submit onsite inspection reports prepared under existing agreements between the Service and the State.
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5. When the letter of credit method of grant payments is used, the State commits itself to (1) the practice of initiating cash drawdowns only when actually needed for its disbursements, (2) the timely reporting of cash disbursements and balances as required by the Service, and (3) the imposition of the same standards of timing and amount upon any secondary recipients including the furnishing of reports of cash disbursement and balances with the understanding that failure to adhere to these provisions may cause the unobligated portion of the letter of credit to be revoked by the Service or by the Department of the Treasury.

I. Retention and Custodial Requirements for Records

1. Financial records, supporting documents, statistical records, and all other records pertinent to this grant shall be retained for a period of three years; except the records shall be retained beyond the three-year period if audit findings have not been resolved.
2. The retention period starts from the date of the final expenditure report for the project or the consolidated project element.
3. State and local governments are authorized to substitute microfilm copies in lieu of original records.
4. The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examination, excerpts and transcripts.

J. Project Termination

1. The Director may temporarily suspend Federal assistance under the project pending corrective action by the State or pending a decision to terminate the grant by the Service.
  2. The State may unilaterally terminate the project or consolidated project element at any time prior to the first payment on the project or consolidated project element. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement.
  3. The Director may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the determination and the reasons for the termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
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4. The Director or State may terminate grants in whole, or in part at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the State for the Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.
5. Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the State and the Director or that all funds provided by the National Park Service be returned.

K. Lobbying with Appropriated Funds

Land and Water Conservation Fund moneys will be used in conformance with 18 USC 1913 which states that: "No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriations; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."