

# CHAPTER 9 EXECUTIVE DEPARTMENT

## ARTICLE 1 EXECUTIVE REORGANIZATION ACT

### 9-1-1. Short title.

This act [9-1-1 to 9-1-10 NMSA 1978] may be cited as the "Executive Reorganization Act".

**History:** 1953 Comp., § 4-29B-1, enacted by Laws 1977, ch. 248, § 1.

### ANNOTATIONS

**Cross references.** - For constitutional provisions relating to executive department, see N.M. Const., art. V, §§ 1 to 14.

For elected officials generally, see Chapter 8 NMSA 1978.

For public officers and employees generally, see Chapter 10 NMSA 1978.

For Sunset Law, see 12-9-11 to 12-9-21 NMSA 1978.

For State Rules Act, see Chapter 14, Article 4 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 35.

### 9-1-2. Purpose of act.

The purpose of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978] is to allow for more efficient management of the executive branch by creating an executive cabinet composed of secretaries of departments; to eliminate overlapping and duplication of effort; and to provide for administrative and budgetary controls within this organizational structure. It is also the intent of the legislature to provide for an orderly transfer of powers, duties and functions of the various state agencies to such departments with a minimum of disruption of governmental services and functions and with a minimum expense; and to this end, the governor shall begin immediately making such studies and preparations and taking such actions as are necessary to implement the provisions of all reorganization legislation enacted by the first session of the thirty-third legislature.

**History:** 1953 Comp., § 4-29B-2, enacted by Laws 1977, ch. 248, § 2.

## ANNOTATIONS

**Compiler's notes.** - The reorganization laws enacted by the first regular session of the thirty-third legislature are Laws 1977, chs. 245 to 258. For disposition of these laws in NMSA 1978, see the Table of Disposition of Acts in Volume 13.

### **9-1-3. Cabinet created; members; powers and duties.**

A. There is created the "executive cabinet" headed by the governor and consisting of, but not limited to, the lieutenant governor, and the secretaries of such departments as are hereafter created and designated as "cabinet departments" pursuant to law.

B. The cabinet shall:

- (1) advise the governor on problems of state government;
- (2) establish liaison and provide communication between the executive departments and state elected officials;
- (3) investigate problems of public policy;
- (4) study government performance and recommend methods of interagency cooperation;
- (5) review policy problems and recommend solutions;
- (6) strive to minimize and eliminate overlapping jurisdictions and conflicts within the executive branch; and
- (7) assist the governor in defining policies and programs to make the government responsive to the needs of the people.

C. The governor shall call meetings of the cabinet at his pleasure and shall seek the advice of the cabinet members.

**History:** 1953 Comp., § 4-29B-3, enacted by Laws 1977, ch. 248, § 3.

## ANNOTATIONS

**Cross references.** - For cabinet departments and secretaries serving in cabinet, see 9-3-3, 9-3-4A (corrections); 9-5A-3, 9-5A-5A (energy, minerals and natural resources); 9-6-3, 9-6-4 (finance and administration); 9-7-4, 9-7-5A (health); 9-7A-4, 9-7A-5A (environment); 9-8-4, 9-8-5A (human services); 9-11-4, 9-11-5A (taxation and revenue); 9-15-4, 9-15-5 (economic development and tourism), 9-17-3, 9-17-4 (general services), 9-18-4, 9-18-6A (labor) and 9-19-4, 9-19-5A (public safety) NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States §§ 82, 141.

#### **9-1-4. Cabinet departments; structure.**

A. Except otherwise provided by law for its internal structure, the executive branch shall adhere to the following standard terms:

(1) the principal unit of the executive branch is a "department," headed by a "secretary," who shall be appointed by the governor with the consent of the senate and who shall serve at his pleasure;

(2) the principal unit of a department is a "division," headed by a "director," who shall be appointed by the secretary with the approval of the governor and who shall serve at the secretary's pleasure;

(3) the principal unit of a division is a "bureau," headed by a "chief," who is employed by the secretary and who is covered by, and subject to, provisions of the Personnel Act; and

(4) the principal unit of a bureau is a "section," headed by a "supervisor," who is employed by the secretary and who is covered by, and subject to, the provisions of the Personnel Act.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** 1953 Comp., § 4-29B-4, enacted by Laws 1977, ch. 248, § 4.

#### **ANNOTATIONS**

**Cross references.** - For appointment of directors, see 9-3-6 NMSA 1978.

For governor's appointive and removal power, see N.M. Const., art. V, § 5.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Sections not in conflict with Personnel Act in defining exempt positions.** - In defining exempt positions only for the secretary and division heads of the health and environment department (now department of health and department of environment), this section and 9-7-6B(9) NMSA 1978 are not in conflict with the Personnel Act nor are they controlling with respect to the number of exempt positions authorized for the health and environment department. 1980 Op. Att'y Gen. No. 80-38.

#### **9-1-5. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the law with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department, or any division of the department, except where authority conferred upon any division therein is explicitly exempted from the secretary's authority by statute. In accordance with these provisions the secretary shall:

(1) except as otherwise provided in this act [9-1-1 to 9-1-10 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law with the administration or execution of which he is responsible, and to enforce those orders and instructions by appropriate action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, for each division, a "director." These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of such bonds; and

(12) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of such bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap, or a function assigned to one department could better be performed by another department, a secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

F. If this section conflicts with the powers and duties specifically given by statute to a particular secretary, the specific powers and duties shall control. If this section conflicts with other statutes specifically limiting the powers of a secretary, the specific limitations shall control.

**History:** 1953 Comp., § 4-29B-5, enacted by Laws 1977, ch. 248, § 5.

### **ANNOTATIONS**

**Cross references.** - For state budgets, see 6-3-1 to 6-3-22 NMSA 1978.

For public officers and employees generally, see Chapter 10 NMSA 1978.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States §§ 120, 123.

### **9-1-6. Adjunct agencies.**

"Adjunct agencies" are those agencies, boards, commissions, offices or other instrumentalities of the executive branch, not assigned to the elected constitutional officers, which are excluded from any direct or administrative attachment to a department, which retain policymaking and administrative autonomy separate from any other instrumentality of state government.

**History:** 1953 Comp., § 4-29B-6, enacted by Laws 1977, ch. 248, § 6.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States §§ 141, 142.

### **9-1-7. Administratively attached agency; relationships.**

A. An agency attached to a department for administrative purposes only shall:

(1) exercise its functions independently of the department and without approval or control of the department;

(2) submit its budgetary requests through the department; and

(3) submit reports required of it by law or by the governor through the department.

B. The department to which an agency is attached for administrative purposes only shall:

(1) provide, if mutually agreed, the budgeting, record-keeping and related administrative and clerical assistance to the agency; and

(2) include the agency's budgetary requests, as submitted and without changes, in the departmental budget.

C. Unless otherwise provided by law, the agency shall hire its own personnel in accordance with the Personnel Act.

**History:** 1953 Comp., § 4-29B-7, enacted by Laws 1977, ch. 248, § 7.

### **ANNOTATIONS**

**Cross references.** - For state budgets, see 6-3-1 to 6-3-22 NMSA 1978.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-1-8. Creation of agencies; prohibition.**

Unless otherwise provided by law, neither a department secretary nor any other employee of the executive branch of state government, or any agency, may, by administrative action, create an agency, board, commission or any other entity of state government. This section shall not apply to:

A. advisory committees created in accordance with Section 9 [9-1-9 NMSA 1978] of the Executive Reorganization Act; and

B. units within the internal structure of a department established under Subsection A of Section 4 [9-1-4 NMSA 1978] of the Executive Reorganization Act.

**History:** 1953 Comp., § 4-29B-8, enacted by Laws 1977, ch. 248, § 8.

### **ANNOTATIONS**

**Cross references.** - For governor's power of appointment and removal, see N.M. Const., art. V, § 5.

### **9-1-9. Creation of advisory committees; who may create; filing; applications; composition; life span; title; quorum [quorum]; compensation.**

A. Advisory committees may be created. Advisory shall mean furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or

to comply with federal or private funding requirements, and shall not extend to administering a program or function or sitting policy unless specified by law.

B. The governor or a department secretary, with approval of the governor, may create advisory committees.

C. Each creating authority must file with the governor and the secretary of finance and administration a record of the advisory committee created, showing the committee's:

- (1) name;
- (2) composition;
- (3) appointed members' names and addresses; and
- (4) purpose and term of existence.

D. The secretary of each department created by the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978] shall, upon the effective date of the Executive Reorganization Act, file a record of each advisory committee within the department not abolished. Upon the filing of such a record, the provisions of this section shall apply to each such advisory committee.

E. The creating authority shall prescribe the composition and functions of each advisory committee created; appoint its members, who shall serve at the pleasure of the creating authority; and specify a date when the existence of each advisory committee ends.

F. No advisory committee may be created to remain in existence longer than two years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by executive order of the governor. If the existence of an advisory committee is extended, the extension shall not be for more than two years.

G. Each advisory committee created under this section shall be known as the " ..... advisory committee."

H. A majority of the membership of an advisory committee shall constitute a quorum.

I. Each member of an advisory committee may receive compensation for travel and per diem expenses incurred in the performance of their duties within budgeted amounts and in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].



**History:** 1953 Comp., § 4-29B-9, enacted by Laws 1977, ch. 248, § 9.

### ANNOTATIONS

**Cross references.** - For governor's power of appointment and removal, see N.M. Const., art. V, § 5.

**Effective date of the Executive Reorganization Act.** - The effective date of Laws 1977, ch. 248, the Executive Reorganization Act, is April 7, 1977.

### **9-1-10. Reorganization plan; no abatement of actions.**

No suit, action or other proceeding lawfully commenced by or against the head of any agency or other officer of the state, in his official capacity or in relation to the discharge of his duties, shall abate by reason of the taking effect of any reorganization plan under the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978]. The district courts may, on motion or supplemental petition filed at any time within twelve months after the reorganization plan takes effect, showing a necessity for a survival of the unit [suit], action or other proceeding to obtain a settlement of the questions involved, allow the same to be maintained by or against the successor of such head of agency or officer of the state under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the governor shall designate.

**History:** 1953 Comp., § 4-29B-10, enacted by Laws 1977, ch. 248, § 10.

### ANNOTATIONS

**Cross references.** - For substitution of successor to public officer as party, see Rule 1-025D NMRA 1997.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 320.

### **9-1-11. Merger; executive order.**

Upon order issued by the governor, the department of finance and administration and the educational finance and cultural affairs department shall be merged. Their various divisions, boards and commissions may be then grouped in an orderly fashion and given such powers and such autonomy as the governor may set out in such reorganization.

**History:** Laws 1979, ch. 205, § 1.

### **9-1-12. Preservation of powers of policy-making boards.**

All policy-making boards and commissions within the two departments shall retain at least the amount of autonomy and control they possess under present law.

**History:** Laws 1979, ch. 205, § 3.

### **9-1-13. Temporary provision; certain licensing functions; executive order transfer.**

A. The control of the professional and occupational licensing functions of the executive branch of state government may be consolidated under the supervision of the regulation and licensing department upon executive order issued by the governor, and the executive order shall provide for such advisory committees as are deemed necessary or appropriate.

B. In the event an executive order is issued by the governor pursuant to Subsection A of this section, all records, physical properties and money pertaining to professional and occupational licensing functions transferred to the regulation and licensing department shall be transferred to that department.

C. It is the express purpose and intent of the legislature to authorize the consolidation of professional and occupational licensing functions in the regulation and licensing department so as to effect the more economical use and expenditure of public money by eliminating the duplication of services, operations and administration of the various professional and occupational licensing functions for the benefit of the citizens of the state.

**History:** Laws 1983, ch. 297, § 30.

#### **ANNOTATIONS**

**Cross references.** - For the regulation and licensing department, see Chapter 9, Article 16 NMSA 1978.

**Compiler's notes.** - This section was previously uncompiled and was compiled at this location in 1996.

**Current application.** - An Executive Order, issued pursuant to this section, under which the New Mexico Real Estate Commission was placed under the supervision of the New Mexico Regulation and Licensing Department has not yet been replaced or repealed and continues today as does this section and is therefore the current law. *New Mexico Regulation & Licensing Dep't, Admin. Servs. Div. v. Lujan*, 1999-NMCA-059, N.M. , 979 P.2d 744 (Ct. App. 1999).

**Statutes and rules of individual licensing boards not superseded.** - This section and the Regulation and Licensing Department Act (Chapter 9, Article 16 NMSA 1978) do not supersede the specific powers and duties that the legislature has given to the board of veterinary examiners pursuant to the Veterinary Practice Act. 1987 Op. Att'y Gen. No. 87-58.

By enacting this section, the legislature did not delegate to the governor its power to repeal the statutes governing the individual boards and commissions; such an action would be in contravention of article III, § 1 of the New Mexico Constitution. The more reasonable interpretation of the Act is that the legislature merely delegated to the regulation and licensing department administrative or ministerial duties with respect to licensing functions of the autonomous boards; the intent of this section is to give the governor the opportunity to select initially which boards would have the regulation and licensing department administer their licensing functions. 1987 Op. Att'y Gen. No. 87-58.

## **ARTICLE 2**

### **COMMERCE AND INDUSTRY DEPARTMENT**

(Repealed by Laws 1983, ch. 297, § 33.)

#### **9-2-1 to 9-2-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 297, § 33, repeals 9-2-1 to 9-2-13 NMSA 1978, as enacted by Laws 1977, ch. 245, §§ 1, 2, 5 to 7, 9 to 11, and 234 to 236, and as amended by Laws 1978, ch. 120, §§ 1 and 2, relating to the commerce and industry department, effective July 1, 1983. For provisions of former sections, see 1980 Replacement Pamphlet. For present provisions, see 9-15-1 NMSA 1978 et seq. and 9-16-1 NMSA 1978 et seq. relating to new departments which have assumed many of the functions of the commerce and industry department.

**Compiler's notes.** - Laws 1983, ch. 295, § 4, purported to amend 9-2-3 NMSA 1978, relating to the establishment of the commerce and industry department, but this amendment was not given effect due to the repeal of 9-2-3 NMSA 1978 by Laws 1983, ch. 297, § 33. See 12-1-8 NMSA 1978.

## **ARTICLE 2A**

### **CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

#### **9-2A-1. Short title.**

Sections 1 through 16 [9-2A-1 to 9-2A-16 NMSA 1978] of this act may be cited as the "Children, Youth and Families Department Act".

**History:** Laws 1992, ch. 57, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

### **9-2A-2. Purpose.**

The purpose of the Children, Youth and Families Department Act [9-2A-1 to 9-2A-16 NMSA 1978] is to establish a department of state government that shall:

A. administer all laws and exercise all functions formerly administered and exercised by the youth authority, as well as administering certain functions related to children, youth and families that were formerly administered by other departments or agencies of the state;

B. assist in the development of state policies and plans for services to children, youth and families, including policies and plans that endeavor to strengthen client self-sufficiency and that emphasize prevention without jeopardizing the necessary provision of essential treatment and early intervention services; and

C. advocate for services for children, youth and families as an enduring priority in New Mexico.

**History:** Laws 1992, ch. 57, § 2.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

### **9-2A-3. Definitions.**

As used in the Children, Youth and Families Department Act [9-2A-1 to 9-2A-16 NMSA 1978]:

A. "department" means the children, youth and families department; and

B. "secretary" means the secretary of children, youth and families.

**History:** Laws 1992, ch. 57, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

### **9-2A-4. Department created; divisions.**

A. The "children, youth and families department" is created. The department is a cabinet department and consists of, but is not limited to, six divisions as follows:

- (1) the administrative services division;
- (2) the preventive services division;
- (3) the risk reduction services division;
- (4) the moderate intervention services division;
- (5) the community residential services division;
- (6) the juvenile justice services division, until July 1, 1993; and
- (7) the institutional care division, beginning July 1, 1993.

B. The secretary is empowered to organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy.

C. The governor is empowered to merge divisions and to abolish or create divisions of the department by executive order in the interest of efficiency and economy.

**History:** Laws 1992, ch. 57, § 4.

## **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

**Temporary provisions.** - Laws 1992, ch. 57, §§ 51-55, effective July 1, 1992, provide for the abolishment of the juvenile justice services division of the children, youth and families department; provide for the creation of the institutional care division in the department; provide for the transfer of functions, personnel, appropriations, money, records, property, equipment, supplies, and existing contracts of the juvenile justice service division to the institutional care division or other divisions of the department; and provide for the transfer to the department of personnel, appropriations, records, property, contracts, and legal references from the youth authority, the department of public education, the human services department, and the department of health personnel.

**Appropriations.** - Laws 1993, ch. 366, § 2R, effective June 18, 1993, appropriates \$500,000 from the computer systems enhancement fund to the children, youth and families department for expenditure in the eighty-first and eighty-second fiscal years to enhance accounting and client tracking systems.

Subsections FF and GG of Laws 1993, ch. 366, § 4, effective June 18, 1993, appropriate \$1,102,600 and \$200,000, respectively, from the general fund to the children, youth and families department for expenditure in the eighty-second fiscal year

for additional children's court attorneys, families in need of services pilot projects, and to implement changes at the youth diagnostic and development center as necessary to implement the provisions of house bill 473, forty-first legislature, first session (Chapter 77 of Laws 1993), the changes and recodification of the children's code, and to renovate the muchmore house residential treatment facility located in Bernalillo county for severely emotionally impacted adolescents. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Subsections CC and DD of Laws 1994, ch. 147, § 2, effective March 9, 1994, appropriate \$1,500,000, matched with \$1,066,700 in federal funds, and \$750,000 from the computer systems enhancement fund to the children, youth and families department for expenditure in the eighty-second and eighty-third fiscal years to develop a family automated client tracking system that includes interfaces with client systems in the human services department and the department of health, and to upgrade personal computers, printers and software systems throughout the department and to pay the general services department for computer usage. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

Subsections Q and R of Laws 1994, ch. 147, § 3, effective March 9, 1994, appropriate \$1,500,000 and \$900,000, respectively, from the general fund to the New Mexico boys school of the children, youth and families department for 47 permanent full-time equivalent positions, special maintenance and capital items, and for 36 of the previously authorized full-time equivalent positions and to pay utility costs. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Subsections S and T of Laws 1994, ch. 147, § 3, effective March 9, 1994, appropriate \$1,250,000 and \$1,000,000, respectively, from the general fund to the youth diagnostic and development center of the children, youth and families department for expenditure in the eighty-second and eighty-third fiscal years for 37 permanent full-time equivalent positions, installation of modular buildings, capital items, food, supplies, and medical costs. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 3U, effective March 9, 1994, appropriates \$500,000 from the general fund to the social services division of the children, youth and families department for expenditure in the eighty-second and eighty-third fiscal years for 21 term full-time equivalent positions to facilitate placement of 500 children in permanent adoptive homes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 4V, effective March 9, 1994, appropriates \$50,000 for expenditure in the eighty-second fiscal year and \$300,000 for expenditure in the eighty-third fiscal year from the DWI program fund to the children, youth and families department to provide part-time and full-time alcohol and drug prevention specialists, supplies and other operating expenses for existing programs of regional center cooperatives. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Subsections ZZZZZ to EEEEE of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate various amounts from the general fund to the children, youth and families department or specific divisions of the children, youth and families department for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 7GG, effective March 9, 1994, appropriates various amounts from the general fund to the children, youth and families department for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Unexpended or unencumbered balances remaining shall revert to the general fund.

**Extension of expenditure period.** - Laws 1994, ch. 148, § 71A, effective March 9, 1994, provides that certain appropriations made by Chapter 366 of Laws 1993 are extended so that they may be expended through the eighty-fourth fiscal year.

Laws 1995, ch. 169, § 1, effective June 16, 1995, provides that the period of time for expenditure of a general fund appropriation of \$500,000 made to the children, youth and families department to provide matching funds for operation of nonsecure alternatives to detention for juveniles on a statewide basis pursuant to Paragraph (2) of Subsection GG of Section 7 of Chapter 147 of Laws 1994, shall be extended through fiscal year 1996. Any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Laws 1996 (1st S.S.), ch. 11, § 2, effective March 29, 1996, appropriates \$500,000 from the subsequent injury fund to the children, youth and families department for expenditure in fiscal year 1997 for repairs to and maintenance of the youth diagnostic and development center in Albuquerque.

### **9-2A-5. Administratively attached agency.**

The juvenile parole board is administratively attached to the department.

**History:** Laws 1992, ch. 57, § 5.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

**Accrual of annual vacation leave.** - Juvenile probation officers and their staff who were transferred from the New Mexico judicial branch to the New Mexico executive branch pursuant to the Youth Authority Act, Laws 1988, ch. 101, § 8, were not permitted to continue to accrue annual vacation leave at judicial branch rates under § 47(C) of the act. The rate of accrual of annual leave was not an "accrued benefit" under the plain meaning and structure of § 47(C), which clearly required transferred juvenile probation officers to accrue annual leave at Personnel Act rates from the time of transfer to the executive branch. *Whitely v. New Mexico State Personnel Bd.* 115 N.M. 308, 850 P.2d 1011 (1993).

### **9-2A-6. Secretary of children, youth and families; appointment.**

A. The chief executive and administrative officer of the department is the "secretary of children, youth and families". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold office at the pleasure of the governor and shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** Laws 1992, ch. 57, § 6.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

### **9-2A-7. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the law, whether granted to the secretary, the department or any division of the department, except when any division is explicitly exempted from the secretary's power by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Children, Youth and Families Department Act [9-2A-1 to 9-2A-16 NMSA 1978], exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and regulations;

(2) delegate power to subordinates as he deems necessary and appropriate, clearly delineating such delegated power and the limitations to that power;



(3) organize the department into organizational units as necessary to enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with law, to assure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operation of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objectives of improving the operations and efficiency of administration and of promoting comprehensive, coordinated, culturally sensitive services that address the whole child;

(8) prepare an annual budget for the department;

(9) provide cooperation, at the request of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies; and

(10) provide for surety bond coverage for all employees of the department as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of such bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary. Unless otherwise provided by statute, no regulation affecting any person or

agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation or proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

E. If the secretary certifies to the secretary of finance and administration and gives contemporaneous notice of such certification through the human services register that the department has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary, the secretary may engage in interim rulemaking. Notwithstanding any provision to the contrary in the State Rules Act, interim rulemaking shall be conducted pursuant to Subsection D of this section, except:

(1) the period of notice of public hearing shall be fifteen days;

(2) the department shall send individual notices of the interim rulemaking and of the public hearing to affected providers and beneficiaries;

(3) rules and regulations promulgated under this subsection shall be in effect not less than five days after the public hearing;

(4) rules and regulations promulgated under this subsection shall not be in effect for more than ninety days; and

(5) if final rules and regulations are necessary to replace the interim rules and regulations, the department shall give notice of intent to promulgate final rules and regulations at the time of notice herein. The final rules and regulations shall be promulgated not more than forty-five days after the public hearing filed in accordance with the State Rules Act.

**History:** Laws 1992, ch. 57, § 7; 1993, ch. 342, § 1.

### **ANNOTATIONS**

**Cross references.** - For Regional Juvenile Services Act, see 33-12-1 to 33-12-7 NMSA 1978.

**The 1993 amendment,** effective April 8, 1993, added Subsection E.

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

### **9-2A-8. Department; additional duties.**

In addition to other duties provided by law or assigned to the department by the governor, the department shall:

A. develop priorities for state services and resources arising out of state policy and local planning processes;

B. strengthen collaboration and coordination in state and local services for children, youth and families;

C. develop and maintain a statewide database, including client-tracking of services for children, youth and families;

D. develop and disseminate a readily accessible resource database;

E. develop and use community or regional councils to establish community priorities and service strategies in order to enhance community-level decision making and creative solutions;

F. develop standards of service that focus on coordination, monitoring and accountability, including the development of a plan for both process and outcome assessment and evaluation;

G. review and comment on policies of other departments that affect children, youth and families, including assisting in the development of common contracting procedures and common service definitions;

H. develop a uniform system of access to services for children, youth and families; and

I. enact regulations to control disposition and placement of children under the Children's Code [Chapter 32A NMSA 1978], including regulations to limit or prohibit the out-of-state placement of children, including those who are developmentally disabled or mentally disordered, when in-state alternatives are available.

**History:** Laws 1992, ch. 57, § 8; 1993, ch. 77, § 2.

### **ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, added Subsection I and made a related stylistic change.

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

## **9-2A-9. Organizational units of the department; powers and duties specified by law; access to information.**

A. Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 7 [9-2A-7 NMSA 1978] of the Children, Youth and Families Department Act.

B. The department shall have access to all records, data and information of other state departments that are not specifically held confidential by law.

**History:** Laws 1992, ch. 57, § 9.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

## **9-2A-10. Division directors.**

The secretary may appoint, with the approval of the governor, "directors" of such divisions as are established within the department. Directors are exempt from the Personnel Act.

**History:** Laws 1992, ch. 57, § 10.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

## **9-2A-11. Bureaus; chiefs.**

The secretary may establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Children, Youth and Families Department Act [9-2A-1 to 9-2A-16 NMSA 1978]. He shall appoint a "chief" to be the administrative head of any such bureau. The chief and all subsidiary employees of the department shall be covered by the provisions of the Personnel Act.

**History:** Laws 1992, ch. 57, § 11.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-2A-12. Children, youth and families advisory committee created; members; purpose.**

A. The "children, youth and families advisory committee" is created. The committee shall be composed of eleven members appointed by the governor. The governor shall appoint persons with demonstrated interest and involvement in children, youth and family services, particularly those services and programs administered or funded by the department. Members shall be appointed so as to provide adequate representation of ethnic groups and geographic areas of the state. At least two members shall be parents who are recipients of services provided by the department, and at least two members shall be youths between the ages of sixteen and twenty-one.

B. The committee shall assist in the development of policies and procedures for the department.

C. The members of the children, youth and families advisory committee shall be reimbursed for their services as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1992, ch. 57, § 12.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

### **9-2A-13. Interagency coordinating group.**

There is created an interagency coordinating group consisting of the secretary of finance and administration, the secretary of health, the secretary of human services, the secretary of labor, the superintendent of public instruction, the chairman of the joint interim legislative health and human services committee and a member of the governor's office. The group shall assist the secretary of children, youth and families and the children, youth and families advisory committee in planning coordination of services.

**History:** Laws 1992, ch. 57, § 13.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

## **9-2A-14. Juvenile justice programs; federal grants; advisory committee; supervisory function.**

Any juvenile justice advisory committee appointed pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974 shall be advisory to the department, except the committee shall serve as the "supervisory board" under that act and any applicable regulations.

**History:** Laws 1992, ch. 57, § 14.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

**Juvenile Justice and Delinquency Prevention Act of 1974.** - The federal Juvenile Justice and Delinquency Prevention Act of 1974, referred to in this section, appears primarily as 42 U.S.C. § 5601 et seq.

## **9-2A-15. Juvenile justice advisory committee; legislative findings.**

The legislature finds that pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974, federal regulations and state law, the juvenile justice advisory committee is required to be given explicit power to continue to fulfill its duties in administering the federal funds made available to the state if such funding is to continue.

**History:** Laws 1992, ch. 57, § 15.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

**Juvenile Justice and Delinquency Prevention Act of 1974.** - The federal Juvenile Justice and Delinquency Prevention Act of 1974, referred to in this section, appears primarily as 42 U.S.C. § 5601 et seq.

## **9-2A-16. Functions of juvenile justice advisory committee and department.**

A. The juvenile justice advisory committee shall have policymaking, planning and review powers over only the following functions pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974:

(1) in conjunction with the department, approval of a comprehensive state plan and modifications reflecting statewide goals, objectives and priorities for the expenditure of federal funds received under that act;

(2) approval or disapproval of applications or amendments submitted by eligible entities pursuant to that act;

(3) in conjunction with the department, assurance that fund accounting, auditing and evaluation of programs and projects funded pursuant to that act comply with federal requirements and state law;

(4) assistance to the governor, the legislature and entities created or funded pursuant to that act in developing new or improved approaches, policies or legislation designed to improve juvenile justice in New Mexico; and

(5) provision of technical assistance by the department to eligible entities pursuant to that act.

B. All budgetary, evaluation, monitoring and grants administration functions required pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974 shall be carried out by the department.

**History:** Laws 1992, ch. 57, § 16.

## **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 57, § 58 makes the act effective on July 1, 1992.

**Severability clauses.** - Laws 1992, ch. 57, § 57 provides for the severability of the act if any part or application thereof is held invalid.

**Juvenile Justice and Delinquency Prevention Act of 1974.** - The federal Juvenile Justice and Delinquency Prevention Act of 1974, referred to in this section, appears primarily as 42 U.S.C. § 5601 et seq.

### **9-2A-17. Correctional officers; children, youth and families department; acting as peace officers.**

A. Correctional officers of the children, youth and families department who have completed an appropriate American correction association training course and who have at the particular time the principal duty to hold in custody or supervise any person accused or convicted of a delinquent act or criminal offense shall have the power of a peace officer with respect to arrests and enforcement of laws when:

(1) on the premises of a children, youth and families department facility or while transporting a person committed to or under the supervision of the children, youth and families department;

(2) supervising any person committed to or under the supervision of the children, youth and families department anywhere within the state; or

(3) engaged in any effort to pursue or apprehend any such person.

B. No correctional officer of the children, youth and families department shall be convicted or held liable for any act performed pursuant to this section if a peace officer could lawfully have performed the same act in the same circumstances.

C. Crimes against a correctional officer of the children, youth and families department while in the lawful discharge of duties that confer peace officer status pursuant to this section shall be deemed the same crimes and shall bear the same penalties as crimes against a peace officer.

**History:** Laws 1993, ch. 120, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 120, § 2 makes the act effective on July 1, 1993.

**Juvenile correctional officer is a peace officer** for purposes of the battery on a peace officer statute, despite the fact that JCOs are no longer under the control of the New Mexico Corrections Department. *State v. Gutierrez*, 115 N.M. 551, 854 P.2d 878 (Ct. App. 1993).

#### **9-2A-18. Correctional officers; children, youth and families department; qualifications.**

Correctional officers of the children, youth and families department shall:

A. be citizens of the United States;

B. be eighteen years of age or older;

C. possess a high school education or its equivalent;

D. be of good moral character and not have been convicted of a felony offense by a court of this state, any other state or the United States; and

E. successfully pass a physical examination and an aptitude examination administered by the department.



**History:** Laws 1997, ch. 110, § 1.

## **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 110, § 2 makes the act effective July 1, 1997.

# **ARTICLE 3 CORRECTIONS DEPARTMENT**

## **9-3-1. Short title.**

Sections 9-3-1 through 9-3-12 NMSA 1978 may be cited as the "Corrections Department Act".

**History:** 1978 Comp., § 9-3-1, enacted by Laws 1977, ch. 257, § 1; 1980, ch. 150, § 1; 1981, ch. 73, § 1.

## **9-3-2. Purpose.**

The purpose of the Corrections Department Act [9-3-1 to 9-3-12 NMSA 1978] is to create a single, unified department to administer all laws and exercise all functions formerly administered and exercised by the corrections and criminal rehabilitation department and to ensure a comprehensive criminal justice system in New Mexico.

**History:** 1978 Comp., § 9-3-2, enacted by Laws 1977, ch. 257, § 2; 1979, ch. 202, § 1; 1980, ch. 150, § 2; 1981, ch. 73, § 2.

## **9-3-3. Department established.**

There is created in the executive branch the "corrections department". The department shall be a cabinet department and consist of, but not be limited to, five divisions as follows:

- A. the adult institutions division;
- B. the adult probation and parole division;
- C. the training academy division;
- D. the corrections industries division, which shall have administrative supervision of the management of prison industries in every correctional facility under the jurisdiction of the department. Notwithstanding the provisions of Paragraph (10) of Subsection B of Section 9-3-5 NMSA 1978, the director of the corrections industries division shall be appointed by and serve at the pleasure of the secretary of corrections; and

E. the administrative services division, which shall be supportive of and responsive to the divisions and shall provide administrative and personnel services to them.

**History:** 1978 Comp., § 9-3-3, enacted by Laws 1977, ch. 257, § 3; 1979, ch. 202, § 2; 1980, ch. 150, § 3; 1981, ch. 73, § 3; 1981, ch. 127, § 16; 1988, ch. 101, § 17; 1991, ch. 219, § 1.

## ANNOTATIONS

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For children, youth and families department, see 9-2A-1 NMSA 1978 et seq.

For law enforcement generally, see Chapter 29 NMSA 1978.

For probation and parole generally, see 31-21-3 to 31-21-26 NMSA 1978.

For correctional institutions generally, see Chapter 33 NMSA 1978.

**The 1991 amendment,** effective July 1, 1991, substituted "training academy division" for "personnel and training division" in Subsection C and inserted "and personnel" near the end of Subsection E.

**Temporary provisions.** - Laws 1988, ch. 101, § 46 provides that on July 1, 1989, all personnel, appropriations, money, records, property, equipment and supplies of the juvenile facilities division, juvenile facilities, juvenile community corrections programs and all other juvenile functions, programs and services of the corrections department and of the juvenile parole board shall be transferred to the youth authority, that all existing contracts and agreements in effect for the aforementioned groups shall be binding and effective on the youth authority, and that any transfer of federal funds, grants or contracts are contingent upon federal law and regulation.

Laws 1989, ch. 213, § 1, effective June 16, 1989, authorizes the corrections department and the youth authority to convert into four full-time equivalent positions the current four contract positions for one chaplain each at the central New Mexico correctional facility, the southern New Mexico correctional facility, the western New Mexico correctional facility and the youth diagnostic and development center, and provides that the current contractual services funds provided for these positions shall be converted to pay for the personal services for the four new full-time equivalent positions for the prison chaplains.

**Appropriations.** - Laws 1988, ch. 79, § 2, effective May 18, 1988, appropriates \$1,003,300 from the general fund to the corrections department for expenditure in the seventy-seventh fiscal year to contract for the operation of a two hundred-bed facility for housing female inmates during the last quarter of the seventy-seventh fiscal year, and provides that any unexpended or unencumbered balance remaining at the end of the seventy-seventh fiscal year shall revert to the general fund.

Laws 1990, ch. 107, § 2, effective March 5, 1990, appropriates \$281,000 from the general fund to the corrections industries division of the corrections department for the seventy-eighth and seventy-ninth fiscal years for the purpose of purchasing license plate manufacturing equipment and provides that any unexpended or unencumbered balance remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

Laws 1996 (1st S.S.), ch. 9, § 2, effective June 21, 1996, appropriates \$1,000,000 from the subsequent injury fund to the corrections department for expenditure in fiscal year 1997 for the purpose of paying for the operational expenses of that department.

**Reorganizations of department.** - Laws 1977, ch. 257 abolished the corrections department and the police academy and transferred their property and functions to the criminal justice department. Laws 1979, ch. 202 revived the law enforcement academy.

Laws 1980, ch. 150 renamed the criminal justice department as the corrections and criminal rehabilitation department, transferred the property, personnel and obligations of the criminal justice department to the corrections and criminal rehabilitation department and provided that all references in law to the criminal justice department should be construed to be references to the corrections and criminal rehabilitation department; all references in law to the secretary of criminal justice should be construed to be references to the secretary of corrections and criminal rehabilitation; all references in law to the criminal justice support division or the corrections division of the criminal justice department should be construed to be references to the corrections and criminal rehabilitation department; all references in law to the juvenile institutions bureau of the criminal justice department should be construed to be references to the juvenile facilities division of the corrections and criminal rehabilitation department; all references in law to the adult institutions bureau of the criminal justice department should be construed to be references to the adult institutions division of the corrections and criminal rehabilitation department and all references in law to the field services bureau of the criminal justice department should be construed to be references to the field services division of the corrections and criminal rehabilitation department.

Laws 1981, ch. 73 and ch. 127 renamed the corrections and criminal rehabilitation department as the corrections department. Ch. 73 transferred the property, personnel and obligations of the corrections and criminal rehabilitation department to the corrections department and provided that all references in law to the criminal justice department or the corrections and criminal rehabilitation department shall be construed to be references to the corrections department, that all references in law to the secretary of criminal justice or secretary of corrections and criminal rehabilitation shall be construed to be references to the secretary of corrections, that all references in law to the criminal justice support division or the corrections division of the criminal justice department or the corrections and criminal rehabilitation department shall be construed to be references to the corrections department, that all references in law to the juvenile institutions bureau of the criminal justice department or the juvenile facilities division of the corrections and criminal rehabilitation department shall be construed to be

references to the juvenile facilities division of the corrections department, that all references in law to the adult institutions bureaus of the criminal justice department or the adult institutions division of the corrections and criminal rehabilitation department shall be construed to be references to the adult institutions division of the corrections department, and that all references in law to the field services bureau of the criminal justice department or the field services division of the corrections and criminal rehabilitation department shall be construed to be references to the field services division of the corrections department.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 139.

### **9-3-4. Secretary of corrections; appointment.**

A. The chief executive and administrative officer of the department is the "secretary of corrections." The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** 1978 Comp., § 9-3-4, enacted by Laws 1977, ch. 257, § 5; 1980, ch. 150, § 4; 1981, ch. 73, § 4.

### **ANNOTATIONS**

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For appointment and removal power of governor, see N.M. Const., art. V, § 5.

### **9-3-5. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary of the department, or any division of the department, except where authority conferred upon any division therein is explicitly exempted from the secretary's authority by statute. In accordance with these provisions the secretary shall:

(1) except as otherwise provided in the Corrections Department Act [9-3-1 to 9-3-12 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law with the administration or execution of which he is responsible, and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, for each division, a "director." These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of such bonds; and

(12) require performance bonds of such department employees and officers as he deem necessary, as provided in the Surety Bond Act. The department shall pay the costs of such bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap, or a function assigned to one department could better be performed by another department, a secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1978 Comp., § 9-3-5, enacted by Laws 1977, ch. 257, § 6; 1979, ch. 202, § 3; 1980, ch. 150, § 5; 1981, ch. 73, § 5.

## ANNOTATIONS

**Cross references.** - For appointment of directors, see 9-3-6 NMSA 1978.

For state budgets, see 6-3-1 to 6-3-22 NMSA 1978.

For public officers and employees generally, see Chapter 10 NMSA 1978.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Applicability of State Rules Act to disciplinary rules for prisoners.** - Disciplinary rules promulgated by the secretary of corrections, governing the conduct of prisoners confined within a penitentiary, were not required to be filed with the state's record center in the manner required under the State Rules Act. *Johnson v. Francke*, 105 N.M. 564, 734 P.2d 804 (Ct. App. 1987).

**Rules promulgated pursuant to statutory authority may have force and effect of law.** 1980 Op. Att'y Gen. No. 80-4.

**No responsibility by state records center to determine compliance of promulgated rules with hearing and notice requirements.** - See 1978 Op. Att'y Gen. No. 78-7.

### **9-3-6. Division directors.**

Except as otherwise provided by law, the secretary shall appoint, with the approval of the governor, "directors" of such divisions as are established within the department. The directors so appointed are exempt from the Personnel Act.

**History:** 1978 Comp., § 9-3-6, enacted by Laws 1977, ch. 257, § 7; 1981, ch. 127, § 17.

#### **ANNOTATIONS**

**Cross references.** - For appointment of directors, see 9-3-5B(10) NMSA 1978.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-3-7. Bureau [Bureaus]; chiefs.**

The secretary shall establish, within each division, such "bureaus" as he deems necessary to carry out the provisions of the Corrections Department Act [9-3-1 to 9-3-12 NMSA 1978]. He shall appoint a "chief" to be the administrative head of any such bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act, unless otherwise provided by law.

There is created within the administrative services division of the department the "standards and inspection bureau".

**History:** 1978 Comp., § 9-3-7, enacted by Laws 1977, ch. 257, § 8; 1979, ch. 202, § 4; 1980, ch. 150, § 6; 1981, ch. 73, § 6.

#### **ANNOTATIONS**

**Cross references.** - For appointment of directors, see 9-3-6 NMSA 1978.

For state budgets, see 6-3-1 to 6-3-22 NMSA 1978.

For public officers and employees generally, see Chapter 10 NMSA 1978.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-3-8. Administrative services division; duties.**

A. The administrative services division shall provide administrative services to the department, including:

(1) keeping all official records of the department;

(2) providing clerical services in the areas of personnel and budget preparation; and

(3) providing clerical, record-keeping and administrative support to agencies administratively attached to the department, at their request.

B. The division shall, in addition to its other duties, coordinate long- and short-term planning of the department and shall administer programs and grants which have been assigned generally to the department by the governor or by statute.

C. In addition to its other powers and duties, the division is designated the "criminal justice state planning agency" and in such capacity shall perform planning, budgeting, evaluation, monitoring and grants administration functions for federal grants including but not limited to the Federal Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

**History:** 1978 Comp., § 9-3-8, enacted by Laws 1977, ch. 257, § 9.

## ANNOTATIONS

**Federal Omnibus Crime Control and Safe Streets Act.** - The Federal Omnibus Crime Control and Safe Streets Act of 1968, referred to in Subsection C, appears as various sections throughout 5, 18, 40, 42 and 47 U.S.C.

**Juvenile Justice and Delinquency Prevention Act.** - The federal Juvenile Justice and Delinquency Prevention Act of 1974, referred to in Subsection C, appears primarily as 42 U.S.C. § 5601 et seq.

### **§ 9-3-9 Corrections department legislative report. (1994 Repl.)**

#### **9-3-9. Criminal justice department [Corrections department] legislative report.**

On or before December 15 of each year, the secretary shall provide a report to each member of the legislature describing the state's comprehensive law enforcement and criminal justice plan and the programs and projects funded under this plan. The report shall include:

A. funds spent for each part of the state's comprehensive plan and the programs and projects funded under it;



B. a description of the procedure followed by the department in order to audit, monitor and evaluate programs and projects;

C. the description and number of program and project areas, and the funds spent, which are innovative or incorporate advanced techniques and which have demonstrated promise in furthering the purposes of the state's comprehensive plan; and

D. reports submitted by the criminal justice coordinating council.

**History:** 1978 Comp., § 9-3-9, enacted by Laws 1977, ch. 257, § 10.

### **9-3-10. Criminal and juvenile justice coordinating council; creation; membership; duties.**

A. There is created the "criminal and juvenile justice coordinating council".

B. The criminal and juvenile justice coordinating council shall be composed of fifteen members. Appointed members shall serve at the pleasure of the appointing authority. The council shall reflect reasonable geographical and urban-rural balances and regard for the incidence of crime and the distribution and concentration of law enforcement services in the state. The council shall consist of the following individuals or their designees:

(1) the attorney general;

(2) a district attorney appointed by the district attorneys association of New Mexico;

(3) the chief public defender;

(4) two district court judges, one of whom shall be a children's court judge, appointed by the district court judge's association of New Mexico;

(5) a judge from the court of appeals appointed by the chief judge of the court of appeals;

(6) the dean of the university of New Mexico college of law;

(7) the secretary of corrections;

(8) the secretary of public safety;

(9) the secretary of children, youth and families;

(10) a county sheriff appointed by the executive director of the New Mexico association of counties;

(11) two public members appointed by the governor, one of whom shall be designated as chairman of the criminal and juvenile justice coordinating council by the governor;

(12) three public members appointed by the president pro tempore of the senate;

(13) three public members appointed by the speaker of the house of representatives;

(14) two public members appointed by the chief justice of the supreme court;

(15) one public member who is Native American and a practicing attorney, appointed by the president of the state bar association; and

(16) one public member who is the president of the New Mexico victim assistance organization.

C. A majority of the members of the criminal and juvenile justice coordinating council constitutes a quorum for the transaction of council business.

D. The criminal and juvenile justice coordinating council shall:

(1) hold meetings at times and for periods as the council deems necessary;

(2) hire staff as needed to assist the council in the performance of its duties;

(3) prepare an annual budget;

(4) establish policies for the operation of the criminal and juvenile justice coordinating council and supervision of the activities of council staff;

(5) advise the executive, judicial and legislative branches of government on policy matters relating to criminal and juvenile justice;

(6) make recommendations to the legislature concerning proposed changes to laws relating to the criminal and juvenile systems that the council determines would improve those systems; and

(7) assume the following duties as primary responsibilities during the first year when an appropriation is made to the criminal and juvenile justice coordinating council for the purpose of taking action to:

(a) study the Criminal Sentencing Act [Chapter 31, Article 18 NMSA 1978], the Criminal Code and all other New Mexico statutes relating to criminal law, criminal sentencing, criminal procedure and probation and parole;

(b) review past studies or reports regarding proposed changes to the Criminal Code, the Criminal Sentencing Act or other New Mexico statutes relating to criminal law, criminal sentencing, criminal procedure or probation and parole;

(c) study past and current criminal sentencing and release practices and create a statistical database for simulating the impact of various sentencing policies;

(d) study the full range of prison, nonprison and intermediate sanctions;

(e) study, develop and define specific criminal sentencing policies and make recommendations that address major policy issues, including: 1) determining the principal purpose for criminal sanctions; 2) ranking criminal offenses by degree of seriousness; 3) determining the role of criminal history in making criminal sentencing decisions; 4) defining dispositional policy that determines when adult felony offenders are confined in state prisons and county jails or sentenced to nonprison and intermediate sanctions; 5) establishing the length of criminal sentences; 6) establishing the appropriate use of community service and fines; and 7) structuring sentencing guidelines to assure consistency in all aspects of criminal sentencing policy;

(f) assess the impact of council recommendations to modify criminal sentencing policy on the availability of and need for correctional resources and programs;

(g) assess, monitor and report on the impact of any enacted sentencing guidelines on correctional resources and programs;

(h) monitor any enacted sentencing guidelines with respect to uniformity and proportionality;

(i) conduct research relating to the use and effectiveness of any enacted guidelines, prosecution standards, offense charging, plea bargaining, sentencing practices, probation and parole practices and any other matters relating to the criminal justice system; and

(j) serve as a clearinghouse for the systematic collection, analysis and dissemination of information relating to felony offense charges, plea agreements, convictions, sentences imposed, incarceration time actually served and actual and projected inmate population in the state correctional system.

E. The members of the criminal and juvenile justice coordinating council shall be paid pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other perquisite, compensation or allowance.

F. The criminal and juvenile justice coordinating council is administratively attached to the office of the governor.

**History:** 1978 Comp., § 9-3-10, enacted by Laws 1977, ch. 257, § 11; 1979, ch. 202, § 5; 1980, ch. 150, § 7; 1981, ch. 73, § 7; 1994, ch. 19, § 1.

## ANNOTATIONS

**The 1994 amendment**, effective July 1, 1994, inserted "and juvenile" in the section heading and in Subsection A; in Subsection B, substituted Paragraphs (1) to (15) for former Paragraphs (1) to (4), relating to the same subject matter and, in the introductory paragraph, inserted "and juvenile" and substituted "nineteen" for "not less than fifteen nor more than twenty" in the first sentence, substituted the present second sentence for the former second sentence, which read: "All members except the automatic members shall be appointed by the governor", and rewrote the last sentence, which read: "Until mandated otherwise by federal law or regulation as a condition to receiving federal funds, the council shall consist of"; substituted present Subsections C and D for former Subsection C, relating to the duties of the criminal justice coordinating council; redesignated former Subsection D as present Subsection E and, in that subsection, inserted "and juvenile" and deleted "who are not representing governmental entities" following "council"; and added Subsection F.

**Appropriations.** - Laws 1994, ch. 147, § 7M, effective March 9, 1994, appropriates \$350,000 from the general fund to the criminal and juvenile justice coordinating council for expenditure in the eighty-third fiscal year to carry out its duties. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1995, ch. 30, § 4, the General Appropriations Act of 1995, effective June 16, 1995, reappropriates to the criminal and juvenile justice coordinating council the appropriation originally made in Laws 1994, ch. 147, § 7, Subsection M.

**Criminal Code** - See 30-1-1 NMSA 1978 and notes thereto.

**Secure juvenile facility.** - Laws 1996, ch. 88, § 1 provides that the criminal and juvenile justice coordinating council shall review issues attendant to a proposed secure juvenile facility, shall advise the children, youth and families department on the design, location and use of the proposed secure juvenile facility, and shall provide a written report of its findings and recommendations to the children, youth and families department, the corrections department and an interim legislative committee with jurisdiction over juvenile justice issues no later than October 1, 1996.

### **9-3-10.1. Authority to review records or information; exceptions; rules.**

A. The criminal and juvenile justice coordinating council is authorized to inspect, copy, receive and review all records, data and information in the possession of state, county and local government agencies, except records, data or information that:

- (1) are privileged under the Rules of Evidence;
- (2) compromise or tend to disclose any privileged record or information; or
- (3) are reports, memoranda or other internal documents given to or communications made to a prosecutor or defense attorney in connection with the investigation, prosecution or defense of a criminal case.

B. The criminal and juvenile justice coordinating council shall promulgate rules setting forth procedures for inspecting, copying, receiving, reviewing and reporting records, data and information necessary to fulfill its duties. State, county and local government agencies shall assist the council in obtaining the records, data and information necessary to fulfill the council's duties. All records, data and information received or obtained by the council shall have the same status with regard to access or release as when the records, data or information were in the possession of the entity from whom the council received them.

**History:** 1978 Comp., § 9-3-10.1, enacted by Laws 1994, ch. 19, § 2.

#### **ANNOTATIONS**

**Cross references.** - For Rules of Evidence, see Rule 11-101 et seq. NMRA 1997.

**Effective dates.** - Laws 1994, ch. 19, § 5 makes the act effective on July 1, 1994.

#### **9-3-10.2. Authority to accept grants or donations.**

The criminal and juvenile justice coordinating council may, in the name of the state, accept grants, donations or gifts to carry out its functions and purposes.

**History:** 1978 Comp., § 9-3-10.2, enacted by Laws 1994, ch. 19, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1994, ch. 19, § 5 makes the act effective on July 1, 1994.

#### **9-3-11. Administrative attachment.**

A. The following entities are administratively attached to the department:

- (1) the adult parole board;
- (2) the governor's organized crime prevention commission; and
- (3) the public defender department.

B. All powers and duties vested in the entities enumerated in this section shall remain unamended by the provisions of the Criminal Justice Department Act [Corrections Department Act] [9-3-1 to 9-3-12 NMSA 1978].

**History:** 1978 Comp., § 9-3-11, enacted by Laws 1977, ch. 257, § 12.

### **9-3-12. Organizational units of department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary and he shall retain the final decision-making authority and responsibility in accordance with the provisions of Section 6(B) [9-3-5 NMSA 1978] of this act. The department shall have access to all records, data and information of other departments, agencies and institutions, including its own organizational units not specifically held confidential by law.

**History:** 1978 Comp., § 9-3-12, enacted by Laws 1977, ch. 257, § 13.

## **ARTICLES 4 EDUCATIONAL FINANCE AND CULTURAL AFFAIRS DEPARTMENT**

(Repealed by Laws 1980, ch. 151, § 58.)

### **9-4-1 to 9-4-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1980, ch. 151, § 58, repeals 9-4-1 to 9-4-7 NMSA 1978, as enacted by Laws 1977, ch. 246, §§ 1 to 7, relating to the educational finance and cultural affairs department, effective March 5, 1980. For provisions of former sections, see 1977 Original Pamphlet.

## **ARTICLE 5 ENERGY AND MINERALS DEPARTMENT**

(Repealed by Laws 1987, ch. 234, § 84.)

### **9-5-1 to 9-5-8. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 234, § 84 repeals former 9-5-1 to 9-5-8 as enacted by Laws 1977, ch. 255, §§ 1-7 and 10 and as amended by Laws 1979, ch. 68, § 1 and Laws 1985, ch. 123, §§ 1, 2, relating to the energy and minerals department, effective July 1, 1987. For provisions of the former sections see the 1983 Replacement Pamphlet and the 1986 Cumulative Supplement. For present comparable provisions, see 9-5A-1 to 9-5A-7 NMSA 1978.

## **ARTICLE 5A**

# **ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT**

### **9-5A-1. Short title.**

Sections 1 through 7 [9-5A-1 to 9-5A-7 NMSA 1978] of this act may be cited as the "Energy, Minerals and Natural Resources Department Act".

**History:** Laws 1987, ch. 234, § 1.

### **9-5A-2. Purpose.**

The purpose of the Energy, Minerals and Natural Resources Department Act [9-5A-1 to 9-5A-7 NMSA 1978] is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the energy and minerals department and the natural resources department.

**History:** Laws 1987, ch. 234, § 2.

### **9-5A-3. Department established.**

A. There is created in the executive branch the "energy, minerals and natural resources department". The department shall be a cabinet department and shall include, but not be limited to, the following organizational units:

- (1) the administrative services division;
- (2) the state parks division;
- (3) the forestry division which shall include a soil and water conservation bureau;
- (4) the energy conservation and management division;
- (5) the mining and minerals division; and
- (6) the oil conservation division.

B. The state game commission is administratively attached to the department.

**History:** Laws 1987, ch. 234, § 3; 1997, ch. 137, § 1; 1997, ch. 149, § 2.

### **ANNOTATIONS**

**Cross references.** - For parks and recreation, see Chapter 16 NMSA 1978.

For game and fish, see Chapter 17 NMSA 1978.

For forestry, see Chapter 68 NMSA 1978.

For mines, see Chapter 69 NMSA 1978.

For oil conservation, see Chapter 70 NMSA 1978.

For energy and minerals generally, see Chapter 71 NMSA 1978.

**The 1997 amendments.** - Laws 1997, ch. 137, § 1, amending this section effective July 1, 1997 by deleting "which shall include a soil and water conservation bureau" from the end of Paragraph A(3), was approved April 9, 1997. However, Laws 1997, ch. 149, § 2, also amending this section by substituting "parks" for "park and recreation" in Paragraph A(2), but not giving effect to the first 1997 amendment, was also approved April 9, 1997. This section is set out as amended by Laws 1997, ch. 149, § 2. See 12-1-8 NMSA 1978. Laws 1997, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Temporary provisions.** - Laws 1997, ch. 137, § 11, effective July 1, 1997, provides that on July 1, 1997, the soil and water conservation bureau of the forestry division of the energy, minerals and natural resources department is abolished and that, on that date, all functions, appropriations, money, equipment and records belonging to the bureau are transferred to the board of regents of New Mexico state university, and further provides that on July 1, 1997, all existing rules, regulations, contracts and agreements in effect for the bureau shall be binding on the board of regents of New Mexico state university.

**Appropriations.** - Laws 1988, ch. 27, effective February 29, 1988, appropriates \$200,000 from the oil conservation fund to the energy, minerals and natural resources department and authorizes the commissioner of public lands to encumber up to \$100,000 from the unbudgeted and unspent balance of the state lands maintenance fund for expenditure in the seventy-sixth and seventy-seventh fiscal years for a joint project to conduct economic and legal studies relating to regulatory and trade policies and practices of regulatory agencies involved with interstate natural gas markets and



provides that any unexpended and unencumbered balance of the appropriation remaining at the end of the seventy-seventh fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 4W, effective June 18, 1993, appropriates \$100,000 from the general fund to the mining and minerals division of the energy, minerals and natural resources department for expenditure in the eighty-second fiscal year to carry out the purposes of the New Mexico Mining Act. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Subsections L and P of Laws 1994, ch. 147, § 3, effective March 9, 1994, appropriate \$150,000 and \$500,000, respectively, from the general fund to the forestry division of the energy, minerals and natural resources department for expenditure in the eighty-second and eighty-third fiscal years for purchasing fire fighting vehicles, other vehicles, equipment, and phreatophyte removal. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6YYYY, effective March 9, 1994, appropriates \$500,000 from the general fund to the energy, minerals and natural resources department for expenditure in the eighty-third fiscal year for the weatherization program. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 7X, effective March 9, 1994, appropriates \$1,000,000 from the general fund to the energy, minerals and natural resources department for expenditure in the eighty-second and eighty-third fiscal years to weatherize homes for indigents, including \$500,000 to weatherize homes of indigents in Indian communities throughout the state. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1995, ch. 222, § 26, effective April 7, 1995, appropriates \$108,000 from the general fund to the energy, minerals and natural resources department for expenditure in fiscal years 1995 through 1999, for making capital improvements to existing facilities at Red Rock state park in McKinley county in compliance with the Americans with Disabilities Act of 1990, and for making improvements to Oliver Lee state park in Otero county.

Laws 1996 (1st S.S.), ch. 4, § 37, effective April 1, 1997, appropriates \$425,000 from the general fund to the energy, minerals and natural resources department for expenditure in fiscal years 1997 and 1998 for purposes of making land acquisitions, and weatherizing homes for certain low-income individuals.

Laws 1999 (1st S.S.), ch. 10, § 1A, effective May 21, 1999, appropriates \$13,994,400 from various sources to the energy, minerals and natural resources department for expenditure in fiscal year 2000 for the operations and administration of state parks.

Laws 1999 (1st S.S.), ch. 10, § 1B, effective May 21, 1999, provides that the energy, minerals and natural resources department may expend \$13,699,100 in specified amounts for specified purposes.

Laws 1999 (1st S.S.), ch. 10, § 1C, effective May 21, 1999, provides that the energy, minerals and natural resources department may expend \$295,300 in specified amounts for specified purposes.

**Compiler's notes.** - S.J.R. No. 2 (Laws 1990) resolves that the energy, minerals and natural resources department shall cause sale and liquidation of the state's real property located in King county, Washington and further resolves that the secretary of energy, minerals and natural resources is empowered hereby to take all actions necessary or expedient to accomplish sale of the real property at a reasonable price in the near future and use the proceeds to conduct the reclamation work, and that this resolution fulfills all the approval and ratification prerequisites for this sale of real property by the energy, minerals and natural resources department set forth in 13-6-3A NMSA 1978.

**Operation of concessions.** - The state park commission (now the state parks division) has authority to operate directly certain commercial facilities, commonly known as concessions, in state parks, if it desires to do so. 1957-58 Op. Att'y Gen. No. 58-37.

**Control of Conchas dam park.** - No recreational facilities at the Conchas dam area may be maintained or used contrary to the rules, regulations or orders or licenses of the state game commission and the latter may require that all persons going on said reservoir in boats use the facilities furnished through the state game commission. 1951-52 Op. Att'y Gen. No. 5406.

**San Jon amphitheater maintenance.** - The state park and recreation division (now state parks division) of the natural resources department may utilize state funds for the maintenance of the amphitheater at San Jon, constructed pursuant to the provisions of Laws 1980, ch. 19, § 3 and Laws 1982, ch. 70. 1982 Op. Att'y Gen. No. 82-5.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 59 Am. Jur. 2d Parks, Squares, and Playgrounds §§ 17, 18.

Judicial notice of matters relating to thoroughfares and parks, 48 A.L.R.2d 1102, 86 A.L.R.3d 484.

Power to directly regulate or prohibit abutter's access to street or highway, 73 A.L.R.2d 652.

Construction of highway through park as violation of use to which park property may be devoted, 60 A.L.R.3d 581.

State's liability for personal injuries from criminal attack in state park, 59 A.L.R.4th 1236.

81A C.J.S. States § 147.

#### **9-5A-4. Divisions; duties.**

In addition to the duties assigned to each division of the energy, minerals and natural resources department by the secretary of energy, minerals and natural resources:

A. the administrative services division shall provide clerical, recordkeeping and administrative support to the department in the areas of personnel, budget, procurement and contracting;

B. the energy conservation and management division shall plan, administer, review, provide technical assistance, maintain records and monitor state and federal energy conservation and alternative energy technology programs;

C. the forestry division shall enforce and administer all laws and regulations relating to forestry on lands within the state;

D. the mining and minerals division shall enforce and administer laws and regulations relating to mine safety, coal surface mine reclamation and abandoned mine lands reclamation;

E. the oil conservation division shall administer the laws and regulations relating to oil, gas and geothermal resources, except those laws specifically administered by another authority; and

F. the state park and recreation division [state parks division] shall develop, maintain, manage and supervise all state parks and state-owned or state-leased recreation areas.

**History:** Laws 1987, ch. 234, § 4; 1997, ch. 137, § 2.

#### **ANNOTATIONS**

**Cross references.** - For forestry division office, see 68-2-4 NMSA 1978.

For wetlands area restoration, see 75-8-2 NMSA 1978.

**Bracketed material.** - The bracketed reference to the state parks division was inserted by the compiler; see 9-5A-6.1 NMSA 1978. The bracketed material was not enacted by the legislature and is not a part of the law.

**The 1997 amendment**, effective July 1, 1997, deleted "and soil and water conservation" following "relating to forestry" in Subsection C.

**Appropriations.** - Laws 1989, ch. 315, § 11, effective April 7, 1989, provides that in lieu of the purpose specified in Paragraph (4) of Subsection N of Section 1 of Chapter 287 of Laws 1983, three hundred thousand dollars (\$300,000) of severance tax bonds authorized in that paragraph may be issued in accordance with Subsection A of Section 8 [vetoed] of this act when the state park and recreation division (now state parks division) of the energy, minerals and natural resources department certifies that the need exists for issuance of the bonds, and that the proceeds from the sale are appropriated to the department for the purpose of purchasing equipment and for improvements to the Santa Rosa lake, Santa Rosa park lake and the blue hole recreation area with the improvements to include a fountain, a permanent outdoor stage, additional picnic facilities and repairs of roadways, shelters and boat docks.

**Compiler's notes.** - H.J.R. No. 7 (Laws 1990) approves and ratifies the transfer of the real property and improvements comprising the Rio Grande Gorge and Valley of Fires state parks from the energy, minerals and natural resources department to the bureau of land management.

### **9-5A-5. Secretary of energy, minerals and natural resources; appointment.**

A. The administrative head of the energy, minerals and natural resources department is the "secretary of energy, minerals and natural resources", who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet.

B. An appointed secretary of energy, minerals and natural resources shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** Laws 1987, ch. 234, § 5.

### **9-5A-6. Divisions; directors.**

The secretary of energy, minerals and natural resources shall appoint, with the approval of the governor, directors of the divisions established within the energy, minerals and natural resources department. Division directors are exempt from the Personnel Act.

**History:** Laws 1987, ch. 234, § 6.

## **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

## **9-5A-6.1. State parks division designation.**

As used in the NMSA 1978, "state park and recreation division" means the state parks division of the energy, minerals and natural resources department.

**History:** Laws 1997, ch. 149, § 3.

### **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 149 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

## **9-5A-7. Bureaus; chiefs.**

The secretary of energy, minerals and natural resources shall establish, within each division of the energy, minerals and natural resources department, such bureaus as he deems necessary to carry out the provisions of the Energy, Minerals and Natural Resources Department Act [9-5A-1 to 9-5A-7 NMSA 1978]. He shall employ a chief to be the administrative head of each bureau. The chiefs and all subsidiary employees of the department shall be covered by the Personnel Act.

**History:** Laws 1987, ch. 234, § 7.

### **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Transfer of personnel, equipment and funds and transitional provisions.** - Laws 1987, ch. 234, § 83, effective July 1, 1987, provides for the transfer of personnel, appropriations, federal funds, grants-in-aid, supplies, records and money from the energy and minerals department and from the natural resources department to the energy, minerals and natural resources department; it further provides that all existing contracts and agreements shall be binding and effective on the newly created agencies and officers; and further provides that the secretary shall not reduce staff except by attrition, transfer, or dismissal for cause except for positions already vacant.

## **9-5A-8. State alternative fuel program manager; creation; duties.**

A "state alternative fuel program manager" is created in the energy conservation and management division of the energy, minerals and natural resources department, and his duties shall include:

A. promoting, coordinating and monitoring the implementation of state clean alternative fuel transportation programs, including a mass transit demonstration project and other

demonstration projects that place New Mexico on the leading edge of new clean fuel technologies;

B. coordinating and directing the provisions of the Alternative Fuel Conversion Act [13-1B-1 to 13-1B-7 NMSA 1978]; and

C. mobilizing and coordinating necessary resources and expertise from government, education and the private sector to assist in clean alternative fuel transportation programs and projects.

**History:** Laws 1992, ch. 58, § 8; 1994, ch. 119, § 13; 1995, ch. 161, § 2; recompiled and amended as 1978 Comp., § 9-5A-8 by Laws 1998, ch. 22, § 1.

## ANNOTATIONS

**The 1994 amendment,** effective May 18, 1994, inserted "motor pool division of the" in the introductory paragraph.

**The 1995 amendment,** effective June 16, 1995, substituted "program" for "transportation" in the section heading, and, in the introductory language, substituted "program manager" for "transportation manager" and "transportation services" for "motor pool".

**The 1998 amendment,** effective July 1, 1998, recompiled former 9-17-7 NMSA 1978 as 9-5A-8 NMSA 1978, and substituted "energy conservation and management division of the energy, minerals and natural resources department" for "transportation services division of the department" in the introductory language.

**Effective dates.** - Laws 1992, ch. 58 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Temporary provisions.** - Laws 1998, ch. 22, § 3, effective July 1, 1998, provides that on July 1, 1998, all personnel, appropriations, money, records, property, equipment and supplies of the state alternative fuel program shall be transferred to the energy, minerals and natural resources department; all contracts and other obligations of the general services department pertaining to the state alternative fuel program shall be binding and effective on the energy, minerals and natural resources department; and all references in law to the state alternative fuel program in the general services department shall be deemed to be references to the state alternative fuel program of the energy, minerals and natural resources department.

## ARTICLE 5B YOUTH CONSERVATION CORPS

**9-5B-1. Short title.**

This act [9-5B-1 to 9-5B-11 NMSA 1978] may be cited as the "New Mexico Youth Conservation Corps Act".

**History:** Laws 1992, ch. 91, § 1.

### **ANNOTATIONS**

**Cross references.** - For Apprenticeship Assistance Act, see 21-19A-1 NMSA 1978 et seq.

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **9-5B-2. Purpose.**

The purpose of the New Mexico Youth Conservation Corps Act [9-5B-1 to 9-5B-11 NMSA 1978] is to provide a process to employ young persons in public projects that conserve New Mexico's natural resources and provide community benefits of lasting value. New Mexico will benefit by having its natural and urban environments improved and enhanced and its youth instilled with an appreciation of natural resources, cooperation, hard work and accomplishment.

**History:** Laws 1992, ch. 91, § 2.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **9-5B-3. Definitions.**

As used in the New Mexico Youth Conservation Corps Act [9-5B-1 to 9-5B-11 NMSA 1978]:

- A. "commission" means the New Mexico youth conservation corps commission;
- B. "corps" means the New Mexico youth conservation corps;
- C. "corps member" means a person enrolled in the corps;
- D. "department" means the energy, minerals and natural resources department;
- E. "nonprofit organization" means any organization that has been granted an exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c) of the United States Internal Revenue Code of 1986, as amended or renumbered;

F. "project" means an activity that can be completed in six months or less, results in a specific identifiable service or product that otherwise would not be accomplished with existing funds and does not duplicate the routine services or functions of the sponsor;

G. "resident" means an individual who has resided in New Mexico for at least six months before applying for employment with the corps; and

H. "sponsor" means any local unit of government, state agency, federal agency, nonprofit organization or federally recognized Native American tribe.

**History:** Laws 1992, ch. 91, § 3.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Internal Revenue Code of 1986.** - Section 501(c) of the United States Internal Revenue Code of 1986, referred to in Subsection E, appears as 26 U.S.C. § 501(c).

#### **9-5B-4. Project objectives.**

Corps members shall generally be involved in projects in New Mexico that:

- A. preserve, maintain and enhance natural resources;
- B. rehabilitate and improve cultural, historical and agricultural resources;
- C. benefit recreational areas and parks by improving their use and access;
- D. assist in emergency operations, including fires, floods and rescue of lost or injured persons;
- E. beautify, improve and restore urban areas; and
- F. renovate community facilities, including those for the elderly or indigent.

**History:** Laws 1992, ch. 91, § 4.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

#### **9-5B-5. Commission created; membership; appointments; terms; vacancies; compensation.**



A. There is created a nine-member "New Mexico youth conservation corps commission" which is administratively attached to the department. The commission consists of the following members:

(1) the superintendent of public instruction or his designee;

(2) the commissioner of public lands or his designee;

(3) the secretary of energy, minerals and natural resources or his designee;

(4) the secretary of the youth authority [children, youth, and families department] or his designee; and

(5) five members of the general public appointed by the governor to reflect the geographic diversity of the state, one of whom is knowledgeable in the current policies of the United States forest service and one of whom is Native American.

B. One of the members of the commission shall be appointed by the governor for a one-year term, two members shall be appointed for two-year terms, two members shall be appointed for three-year terms and all subsequent appointments shall be made for three-year terms.

C. The public members shall serve at the pleasure of the governor. Vacancies on the commission shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy. Commission members shall serve until their successors have been appointed.

D. A majority of the members of the commission constitutes a quorum for transaction of business. The commission shall elect a chairman from its membership.

E. Members of the commission shall be compensated as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1992, ch. 91, § 5.

## **ANNOTATIONS**

**Bracketed material.** - The bracketed material in Subsection A(4) was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**9-5B-6. Commission; powers and duties.**

A. The commission may:

(1) accept gifts, devises, grants and donations from others to carry out the provisions of the New Mexico Youth Conservation Corps Act [9-5B-1 to 9-5B-11 NMSA 1978];

(2) request assistance and staff support from the department;

(3) employ such personnel as necessary to carry out the provisions of the New Mexico Youth Conservation Corps Act;

(4) delegate responsibility for the administration and implementation of conservation projects, corps members' employment and supervision, project coordination and other program matters;

(5) establish work camps and long-term residential facilities to house corps members and their supervisors; and

(6) contact potential sponsors and funding sources for support.

B. The commission shall:

(1) adopt rules and regulations that are necessary for the proper administration of the New Mexico Youth Conservation Corps Act;

(2) administer and enforce the provisions of the New Mexico Youth Conservation Corps Act and rules and regulations adopted pursuant to Paragraph (1) of this subsection;

(3) develop and approve corps work projects, activities and contracts with project sponsors;

(4) establish standards, procedures and policies for selecting, hiring, providing compensation for and other personnel matters involving corps members and other personnel;

(5) foster partnerships and cooperation between the corps and New Mexico's secondary and post-secondary schools to assist corps members in obtaining education and job training; and

(6) hire a program manager, who shall be the administrative officer of the corps.

**History:** Laws 1992, ch. 91, § 6.

## **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

## **9-5B-7. Application for project approval; considerations for approval.**

A. Sponsors shall apply to the commission for project approval.

B. A sponsor's application shall include:

- (1) a comprehensive work plan;
- (2) a complete project cost estimate;
- (3) the number of corps members required; and
- (4) the estimated time necessary to complete the project.

C. The commission shall examine the following in considering a project for approval or rejection:

- (1) the opportunities the project provides in the development of skills, discipline and good work habits;
- (2) the degree of difficulty in carrying out the project;
- (3) the project's compliance with conservation and community service objectives, as set forth in Section 4 [9-5B-4 NMSA 1978] of the New Mexico Youth Conservation Corps Act;
- (4) the sponsor's ability to contribute the necessary financial and human resources to the project; and
- (5) the project's compatibility with concurrent corps projects, including the availability of the required corps work force.

D. A project shall not be approved if its implementation would result in the displacement of currently employed workers, including a partial displacement, such as reduction in hours or benefits. Participating sponsors shall not terminate, lay off or reduce the working hours of any employee in order to use a corps member to perform the employee's duties.

**History:** Laws 1992, ch. 91, § 7.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **9-5B-8. Eligibility requirements; benefits.**

A. Persons eligible for enrollment as corps members are persons who:

- (1) are unemployed;
- (2) are between the ages of fourteen and twenty-five years old;
- (3) are New Mexico residents; and
- (4) meet any additional eligibility standards for employment as deemed necessary by the commission.

B. Corps members are not entitled to any employee benefits provided to state employees under the Personnel Act. Corps members shall be entitled to receive workers' compensation benefits provided by the commission.

**History:** Laws 1992, ch. 91, § 8.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-5B-9. Education; training.**

A. Corps members shall be encouraged to increase their opportunities for employment by education and training. Corps personnel shall seek cooperative agreements with community colleges, vocational schools and other institutions of higher learning in an effort to aid corps members in achieving their educational goals. Corps personnel shall provide opportunities for corps members to achieve basic education, literacy and high school or equivalency diplomas.

B. On completion of employment, a corps member who has one full year of continuous employment as a corps member, and who has received satisfactory evaluations throughout his employment, is entitled to receive as additional compensation five hundred dollars (\$500) or a one thousand dollar (\$1,000) educational tuition voucher at a New Mexico public institution of higher education. The educational tuition voucher is valid for two years. If the corps member receives a satisfactory employment evaluation and the program manager determines that the corps member's employment was completed in less than a year due to circumstances beyond the corps member's control, the program manager may authorize a partial compensation payment or a partial educational tuition voucher to that corps member.

**History:** Laws 1992, ch. 91, § 9.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

#### **9-5B-10. Fund created; disposition.**

A. The "New Mexico youth conservation corps fund" is created in the state treasury. All appropriations, gifts, devises, grants and donations received shall be deposited in the fund. Money in the fund is appropriated to the commission for the purpose of carrying out the provisions of the New Mexico Youth Conservation Corps Act [9-5B-1 to 9-5B-11 NMSA 1978]. Any interest accruing to the fund shall remain in the fund. Money in the fund shall not revert at the end of a fiscal year.

B. The fund shall be administered by the department. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the chairman of the commission or his designee for the purpose of carrying out the provisions of the New Mexico Youth Conservation Corps Act.

**History:** Laws 1992, ch. 91, § 10.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

#### **9-5B-11. Report by commission.**

At least forty-five days prior to each legislative session, the commission shall submit a report concerning its activities, the projects implemented and any recommendations to the governor and the legislature.

**History:** Laws 1992, ch. 91, § 11.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

## **ARTICLE 6**

## **DEPARTMENT OF FINANCE AND ADMINISTRATION**

## **9-6-1. Short title.**

Sections 1 through 7 [9-6-1 to 9-6-3, 9-6-4, 9-6-5, 9-6-6 NMSA 1978] of this act may be cited as the "Department of Finance and Administration Act".

**History:** 1978 Comp., § 9-6-1, enacted by Laws 1977, ch. 247, § 1.

### **ANNOTATIONS**

**Compiler's notes.** - Section 7 of the Department of Finance and Administration Act (Laws 1977, ch. 247, § 7) enacts temporary provisions and has therefore not been compiled. See the notes to 9-6-6 NMSA 1978.

## **9-6-2. Purpose.**

The purpose of the Department of Finance and Administration Act [9-6-1 to 9-6-3, 9-6-4, 9-6-5, 9-6-6 NMSA 1978] is to make state government more efficient and responsive through consolidating, and eliminating the overlapping of, certain state government functions; and to establish a single, unified department to administer laws relating to finance of state government; and to perform other duties as provided by law.

**History:** 1978 Comp., § 9-6-2, enacted by Laws 1977, ch. 247, § 2; 1983, ch. 301, § 13.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 133.

## **9-6-3. Department of finance and administration; creation; transfer and merger of division functions; merger and creation of divisions.**

A. The "department of finance and administration" is created. The department shall consist of those divisions created by law or executive order, as modified by executive order pursuant to Subsection C of this section, including but not limited to:

- (1) the board of finance division;
- (2) the financial control division;
- (3) the local government division;
- (4) the management and contracts review division; and
- (5) the state budget division.

B. The secretary is empowered to organize the department and the divisions thereof specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy.

C. The governor is empowered to merge divisions of the department or to create additional divisions by executive order in the interest of efficiency and economy.

**History:** 1978 Comp., § 9-8-3, enacted by Laws 1977, ch. 247, § 3; 1978, ch. 124, § 1; 1980, ch. 151, § 4; 1983, ch. 301, § 14; 1988, ch. 64, § 2.

## ANNOTATIONS

**Cross references.** - For annexation of territory by municipalities, see 3-7-1 to 3-7-18 NMSA 1978.

For municipal street improvement funds, see 3-34-1 to 3-34-4 NMSA 1978.

For regional planning, see 3-56-1 to 3-56-9 NMSA 1978.

For planning districts, see 4-58-1 to 4-58-6 NMSA 1978.

For public finances generally, see Chapter 6 NMSA 1978.

For financial control division, see 6-2-1, 6-5-1 to 6-5-9 NMSA 1978.

For state budgets, see 6-3-1 to 6-3-22 NMSA 1978.

For local government finances, see 6-6-1 to 6-6-18 NMSA 1978.

For investment of public money, see 6-8-1 to 6-8-18 NMSA 1978.

For administration of government generally, see Chapter 15 NMSA 1978.

For statewide post-secondary educational planning, see 21-2-1 to 21-2-9 NMSA 1978.

**Appropriations.** - Laws 1988, ch. 7, § 1, effective May 18, 1988, appropriates \$200,000 from the general fund to the department of finance and administration to be distributed to all state agencies during the seventy-seventh fiscal year for the purpose of providing a \$739 annual base salary increase to state employees making an annual salary of \$40,000 or more, to be effective not later than the first full pay period in October, 1988.

Laws 1988, ch. 13, § 13, provides that all appropriations for each of the objects contained under the general fund column in Sections 4 and 5 of the General Appropriations Act of 1988 shall be reduced by one and one-half percent and after the reductions are made, are appropriated at the revised level and that the department of

finance and administration shall, except for those junior colleges receiving a state support distribution, adjust all totals, rates of distribution and language accordingly.

Laws 1988, ch. 158, effective March 9, 1988, appropriates \$250,000 from the general fund to the department of finance and administration for expenditure in the seventy-sixth and seventy-seventh fiscal years for the purpose of reimbursing the village of Ruidoso for hydrological, technical and legal expenses incurred in the water adjudication case of State of New Mexico ex rel. Reynolds v. Lewis, et al., and provides that none of the appropriation may be used against another political subdivision of the state which is also a party to the water adjudication suit covering the Pecos river system, and that any unexpended or unencumbered balance remaining at the end of the seventy-seventh fiscal year shall revert to the general fund.

Laws 1989, ch. 18, § 1, effective March 9, 1989, provides that notwithstanding the provisions of Laws 1988, ch. 13, any unexpended or unencumbered balance remaining in the appropriation to the local government division of the department of finance and administration for water resource planning shall not revert to the general fund at the end of the seventy-seventh fiscal year and is reappropriated to the local government division of the department of finance and administration for expenditure in the seventy-eighth fiscal year for the purposes enumerated in Laws 1988, ch. 163. Any unexpended or unencumbered balance remaining at the end of the seventy-eighth fiscal year shall revert to the general fund.

Laws 1989, ch. 107, § 13 provides: "All appropriations for each of the objects contained under the general fund column in Sections 4 and 5 of the General Appropriation Act of 1989, to the right of the decimal point shall be reduced to zero. This provision shall not apply to the minority business program in the general services department, the civil air patrol of the department of military affairs, the crime stoppers commission and any object of appropriation that would be eliminated. The department of finance and administration shall adjust all totals, rates of distribution and language accordingly. The state department of education, for public schools, shall adjust all totals, unit values, rates of distribution and language accordingly. All appropriations for the employee benefits category for each of the objects contained in Section 4 of the General Appropriation Act of 1989, shall be reduced to correspond with group insurance premium rates equal to a twenty percent increase over the seventy-seventh fiscal year group insurance rates. The department of finance and administration shall adjust all totals, distributions and language accordingly".

Laws 1990, ch. 59, § 1, effective March 2, 1990, provides that notwithstanding Laws 1989, ch. 18, any unexpended or unencumbered balance remaining in the appropriation to the local government division of the department of finance and administration for water resource planning shall not revert to the general fund at the end of the seventy-eighth fiscal year and is reappropriated to the local government division of the department of finance and administration for expenditure in the seventy-ninth fiscal year for the purposes enumerated in Laws 1988, ch. 163, and provides that any unexpended



or unencumbered balance remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

Laws 1990 (1st S.S.), ch. 1, § 5, effective June 18, 1990, in Subsection A, appropriates \$14,838,000 from the general fund to the department of finance and administration for expenditure in the seventy-ninth fiscal year to be distributed to state agencies in the executive branch of state government whose funds are derived in whole or in part from the general fund to provide salary increases and associated employee benefits effective September 15, 1990, to specified state employees in specified amounts and for specified purposes and further provides that any unexpended or unencumbered balance remaining at the end of the seventy-ninth fiscal year shall revert to the general fund. Subsection B provides for the funding of salary increases and associated employee benefits by those state agencies in the executive branch of state government whose funds are derived from state funds other than the general fund and further provides that any unexpended or unencumbered balance remaining at the end of the seventy-ninth fiscal year shall revert to the appropriate fund. Subsection E authorizes the department of finance and administration to implement the Hay plan for exempt employees covered by the exempt salary plan pursuant to 10-9-5 NMSA 1978 from appropriations contained in Laws 1990, ch. 131.

Laws 1990 (1st S.S.), ch. 1, § 6, effective June 18, 1990, appropriates \$114,000 from the general fund to the department of finance and administration to fund a five percent salary increase and associated employee benefits for certified public school personnel employed by the youth authority and the health and environment department in the seventy-ninth fiscal year and further provides that any unexpended or unencumbered balance remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

Laws 1990 (1st S.S.), ch. 1, § 7, effective June 18, 1990, appropriates \$384,000 from the general fund to the department of finance and administration to fund an average five percent salary increase and associated employee benefits for district attorney employees in the seventy-ninth fiscal year and further provides that any unexpended or unencumbered balance remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

Laws 1991, ch. 10, § 10, effective March 15, 1991, provides that all appropriations for each of the objects contained in the general fund column in Subsections A to J of § 4 of the General Appropriations Act of 1991 shall be reduced by thirty-two one-hundredths of one percent rounded to the nearest tenth of a thousand dollars and provides that the department of finance and administration shall adjust all totals, rates of distribution and language accordingly.

Laws 1991, ch. 63, § 1, effective April 1, 1991, amends Laws 1990, ch. 59, § 1 to substitute reference to "seventy-ninth fiscal year" for reference to "seventy-eighth fiscal year" and references to "eightieth fiscal year" for references to "seventy ninth fiscal year".

Laws 1991, ch. 256, § 1 amends Laws 1991, ch. 10, § 10, effective June 14, 1991, to substitute "eighty-two one-hundredths of one percent" for "thirty-two one-hundredths of one percent" in the first sentence.

Laws 1992, ch. 9, § 29, effective May 20, 1992, appropriates \$355,000 from the general fund to the department of finance and administration for expenditure in the eighty-first fiscal year for the purpose of carrying out the provisions of the Public Employees Bargaining Act.

Laws 1992, ch. 94, § 11, effective March 10, 1992, provides that, to implement the governor's eightieth fiscal year expenditure restraint directive dated January 21, 1992, the department of finance and administration is authorized to reduce the eightieth fiscal year budgets of state agencies under the governor's explicit control by an aggregate amount of \$7,000,000.

Laws 1992, ch. 112, § 4, effective May 20, 1992, appropriates from the computer systems enhancement fund to the following agencies for the following purposes for expenditure in the specified fiscal years: (A) \$2,000,000 to the department of finance and administration for expenditure in the eightieth and eighty-first fiscal years for the statewide accounting system, and (B) \$595,900 to the department of finance and administration for expenditure in the eighty-first fiscal year for the purpose of meeting the cost of information systems division services for the statewide accounting system.

Subsections E to H of Laws 1993, ch. 366, § 2, effective June 18, 1993, appropriate various amounts from the computer systems enhancement fund to the department of finance and administration for expenditure in the eighty-first and eighty-second fiscal years to pay information systems division charges and for various computer systems enhancements.

Subsections H and SS of Laws 1993, ch. 366, § 3, effective June 18, 1993, appropriate \$300,000 and \$2,400,000, respectively, from the general fund and the general fund operating reserve to the department of finance and administration for expenditure in the eighty-first and eighty-second fiscal years for the court expense contingency fund, provided that balances in the fund shall not revert, and for quarterly distribution to the corrections department in the eighty-second fiscal year based upon marginal cost of growth in state prison population beyond 3,327, provided the department of finance and administration makes quarterly reports to the legislative finance committee on this distribution.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1994, ch. 147, § 2I, effective March 9, 1994, appropriates \$1,230,000 from the computer systems enhancement fund to the department of finance and administration for expenditure in the eighty-second and eighty-third fiscal years for implementation of the statewide financial systems network and three permanent full-time equivalent

positions. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

Laws 1994, ch. 147, § 2J, effective March 9, 1994, provides that \$170,000 of the appropriation to the department of finance and administration made by Laws 1993, ch. 366, § 2G, for gross net files, is reappropriated to the department of finance and administration for implementation of the statewide financial systems network.

Laws 1994, ch. 147, § 3E, effective March 9, 1994, appropriates \$1,000,000 from the general fund and \$5,000,000 from the general fund operating reserve fund to the department of finance and administration for expenditure in the eighty-second and eighty-third fiscal years for distribution to the corrections department to resolve outstanding items identified by the special master appointed by the U.S. district court for the district of New Mexico in *Duran et al. v. King et al.* (cause no. civil 77-0721JB) consent decree, to be distributed upon approval of the secretary of the department of finance and administration and review by the legislative finance committee. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1997, ch. 175, § 1 appropriates \$4,477,300 from the general fund to the department of finance and administration for expenditure in fiscal year 1998 for the purpose of providing a salary increase to eligible classified employees in agencies governed by the Personnel Act and provides that any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.

Laws 1997, ch. 175, § 2 appropriates \$1,327,757 from the general fund to the department of finance and administration for expenditure in fiscal year 1998 for the purpose of providing salary increases to certain public employees as follows: \$246,915 to provide commissioned officers of the New Mexico state police division of the department of public safety with a salary increase or a lump-sum payment equivalent to two and one-half percent of the midpoint value of the officer's salary range; \$425,295 to provide district attorney permanent employees with a salary increase or a lump-sum payment equivalent to two and one-half percent of the midpoint value of the employee's salary range; \$519,247 to provide judicial permanent employees, other than employees whose salaries are set by statute, with a salary increase or lump-sum equivalent to two and one-half percent of the midpoint value of the employee's salary range; \$136,300 to provide permanent legislative employees, including permanent employees of the legislative council service, legislative finance committee, legislative education study committee, legislative maintenance and the house and senate, but excluding the directors and deputy directors of the legislative council service, legislative finance committee, legislative education study committee, and the chief clerks of the house and senate, with a salary increase or a lump-sum payment equivalent to two and one-half percent of the midpoint value of the employee's salary range; and provides that any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.

Laws 1997, ch. 175, § 3 provides that, for those employees whose salaries are referenced in or received as a result of non-general fund appropriations in the General Appropriation Act of 1997, the department of finance and administration shall transfer from the appropriate fund to the appropriate agency the amount required for the salary increases equivalent to those provided for in the act, and such amounts are appropriated for expenditure in fiscal year 1998, and the act provides that any unexpended or unencumbered balance remaining at the end of fiscal year 1998 shall revert to the general fund.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Right of citizen or taxpayer to enjoin waste or expenditure of state funds, 58 A.L.R. 588.

Taxpayer's right to maintain action to enjoin wrongful expenditure of public funds, as affected by the fact that the funds in question were not raised by taxation, 131 A.L.R. 1230.

### **9-6-3.1. Office of education abolished; transfer of powers and duties.**

The office of education in the department of finance and administration is abolished. On the effective date of this act, all powers and duties conferred by law upon the office of education shall be exercised by the state department of public education. All powers and duties conferred by law upon the director of the office of education or the chief of the public school finance division shall be exercised by the superintendent of public instruction. On the effective date of this act, all references in law to the office of education of the department of finance and administration shall be construed to be references to the state department of public education. All references in law to the director of the office of education or to the chief of the public school finance division shall be construed to be references to the superintendent of public instruction.

**History:** 1978 Comp., § 9-6-3.1, enacted by Laws 1988, ch. 64, § 3.

#### **ANNOTATIONS**

**Compiler's notes.** - The former provisions of this section, relating to the creation of the automated data processing division, were recompiled as 15-1-1 NMSA 1978 by Laws 1983, ch. 301, § 15, effective July 1, 1983. Prior to being compiled as 9-6-3.1 NMSA 1978, the section was compiled as 15-1-5 NMSA 1978.

**Meaning of "effective date of this act".** - The phrase "effective date of this act", referred to in this section, means May 18, 1988, the effective date of Laws 1988, Chapter 64.

### **9-6-3.2. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** - Laws 1983, ch. 301, § 16, recompiles 9-6-3.2 NMSA 1978, relating to the purposes and powers of the automated data processing division, as 15-1-2 NMSA 1978, effective July 1, 1983. Prior to being compiled as 9-6-3.2 NMSA 1978, the section was compiled as 15-1-5 NMSA 1978.

#### **9-6-4. Department of finance and administration; secretary; appointment; qualifications.**

The administrative and executive head of the department of finance and administration is the "secretary of finance and administration," who shall be a member of the executive cabinet. The secretary shall be appointed by the governor with the advice and consent of the senate. The secretary shall be well versed in governmental finance.

**History:** 1978 Comp., § 9-6-4, enacted by Laws 1977, ch. 247, § 4; 1983, ch. 301, § 17.

#### **ANNOTATIONS**

**Cross references.** - For appointment and removal power of governor, see N.M. Const., art. V, § 5.

#### **9-6-5. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary of the department, or any division or office of the department, except where authority conferred upon any division or office is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Department of Finance and Administration Act [9-6-1 to 9-6-3, 9-6-4, 9-6-5, 9-6-6 NMSA 1978] exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law with the administration or execution of which he is responsible, and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies and adjunct agencies in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, one "deputy secretary," and, for each division and office, a "director." These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) serve as, or designate the deputy secretary to serve as, executive officer of the state board of finance;

(12) give bond as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the cost of such bond; and

(13) require faithful performance or other fidelity bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of such bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap, or a function assigned to one department could better be performed by another department, a secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable administrative and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division or office in carrying out the functions and duties of the division or office shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1978 Comp., § 9-6-5, enacted by Laws 1977, ch. 247, § 5; 1980, ch. 151, § 5; 1983, ch. 301, § 18.

## ANNOTATIONS

**Cross references.** - For state budgets, see 6-3-1 to 6-3-22 NMSA 1978.

For appointment of director of state budget division, see 6-3-2 NMSA 1978.

For public officers and employees generally, see Chapter 10 NMSA 1978.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Per diem, mileage, and expenses of public officers.** - Rule governing the payment of per diem and mileage and the reimbursement of all expenses for salaried and non-salaried public officers (except state legislators), did not exceed the department's delegated authority. 1988 Op. Att'y Gen. No. 88-65.

**No responsibility by state records center to determine compliance of promulgated rules with hearing and notice requirements.** - See 1978 Op. Att'y Gen. No. 78-7.

**Applicability of rulemaking procedures.** - The risk management division's endorsement of a certificate of coverage issued to a county denying coverage for

mandamus actions was a ministerial act, fulfilling the requirements of the Tort Claims Act, and not a discretionary decision altering the scope of the county's coverage; accordingly, the refusal to cover mandamus claims in the endorsement was not subject to rulemaking requirements. Board of County Comm'rs v. Risk Mgt. Div. 120 N.M. 178, 899 P.2d 1132 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Power of board or officials to depart from literal requirements in respect of deposits or loans of public funds in their control, 104 A.L.R. 623.

### **9-6-5.1. Planning powers and duties of secretary of finance and administration.**

The secretary of the department of finance and administration, in addition to the other powers and duties conferred:

- A. shall review federal grant applications and provide management assistance;
- B. shall coordinate, in accordance with directives from the governor's office of policy and planning, state agency plans for economic, natural resource, energy resource and human resource development;
- C. shall provide aid to planning and development districts in developing grant proposals, and cooperate with other local entities in developing grant proposals;
- D. shall acquire, study and review all plans for capital projects proposed by state agencies and render advice on the plans. The secretary shall maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects;
- E. may contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private;
- F. may provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment. The secretary, incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government, and may participate in, or receive aid from, any federal or private program in relation to such a planning program or assistance;
- G. shall confer with the state budget division of the department of finance and administration in developing comprehensive plans to assure coordination of planning and budgeting functions;



- H. shall coordinate the state clearinghouse review process;
- I. shall develop a status of the state report;
- J. shall review and coordinate comment by state agencies on draft environmental impact statements;
- K. shall provide community development block grant technical assistance to local governments;
- L. shall administer, in consultation with and upon advice and direction from the community development block grant policy committee, the program for the state community development block grant program;
- M. shall serve as staff to the New Mexico Association of Regional Councils;
- N. shall maintain a state planning library; and
- O. shall provide planning assistance to county and multicounty districts relative to application by such districts for financial assistance and for regional plan development.

**History:** Laws 1983, ch. 296, § 7.

#### **ANNOTATIONS**

**Cross references.** - For governor's office of policy and planning, see 9-14-1 NMSA 1978 et seq.

#### **9-6-6. Department of finance and administration; administratively attached agencies.**

A. The board of educational finance is administratively attached to the department of finance and administration as provided in Section 21-1-28 NMSA 1978.

B. The office of cultural affairs is administratively attached to the department of finance and administration as provided in the Office of Cultural Affairs Act [9-6-7 to 9-6-11 NMSA 1978].

**History:** 1978 Comp., § 9-6-6, enacted by Laws 1977, ch. 247, § 6; 1980, ch. 151, § 6; 1983, ch. 301, § 19.

#### **ANNOTATIONS**

**Construction of references.** - Laws 1977, ch. 247, § 7, provides that all references in law to the director of the department of finance and administration shall mean the secretary of finance administration, all references in law to the office of state purchasing

agent or state purchasing agent shall mean, respectively, the purchasing division or the state purchasing agent of the department of finance and administration, all references in law to the radio communications department or the radio communications engineer shall mean the communications division of the department of finance and administration and all references in law to the state planning office or the state planning officer shall mean the planning division of the department of finance and administration.

The purchasing division and the communications division have been transferred from the finance and administration department to the general services department. See 9-17-3 NMSA 1978 and notes thereto. The department of finance and administration no longer contains a planning division (see 9-6-3 NMSA 1978) although the secretary has certain planning powers and duties under 9-6-5.1 NMSA 1978. The governor's office of policy and planning has been created to guide executive planning. See 9-14-3 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81A C.J.S. States § 137.

### **9-6-7. Short title.**

Sections 52 through 56 [9-6-7 to 9-6-11 NMSA 1978] of this act may be cited as the "Office of Cultural Affairs Act".

**History:** Laws 1980, ch. 151, § 52.

### **9-6-8. Purpose of act.**

The purpose of the Office of Cultural Affairs Act [9-6-7 to 9-6-11 NMSA 1978] is to consolidate in one office, hereby administratively attached to the department of finance and administration, the several cultural affairs divisions, of the former educational finance and cultural affairs department.

**History:** Laws 1980, ch. 151, § 53.

### **9-6-9. Creation of office.**

The "office of cultural affairs" is created. The office shall consist of such divisions as are created by law or executive order, including but not limited to:

- A. the administrative services division;
- B. the arts division;
- C. the library division;
- D. the museum division;

- E. the space center division;
- F. the New Mexico farm and ranch heritage museum division;
- G. the historic preservation division;
- H. the natural history and science museum division; and
- I. the Hispanic cultural division.

**History:** Laws 1980, ch. 151, § 54; 1983, ch. 296, § 16; 1993, ch. 42, § 9.

### **ANNOTATIONS**

**Cross references.** - For libraries and museums, see Chapter 18 NMSA 1978.

For creation and duties of arts division, see 18-5-6 and 18-5-7 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, substituted "the space center division" for "the international space hall of fame division" in Subsection E; added current Subsection F and Subsections H and I; redesignated former Subsection F as current Subsection G; and made a minor stylistic change.

**Appropriations.** - Laws 1993, ch. 366, § 4U, effective June 18, 1993, appropriates \$1,500,000 from the general fund to the office of cultural affairs for expenditure in the eighty-second fiscal year for the purchase and renovation of a building for the New Mexico museum of natural history in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1993, ch. 367, § 47, effective April 8, 1993, appropriates \$310,000 from the capital projects fund to the office of cultural affairs for expenditure in the eighty-first through eighty-third fiscal years to plan, design, construct or equip the Hispanic cultural center in Albuquerque in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the capital projects fund.

Laws 1994, ch. 147, § 2Q, effective March 9, 1994, appropriates \$150,000 from the computer systems enhancement fund to the administrative services division of the office of cultural affairs for expenditure in the eighty-second and eighty-third fiscal years for a central financial reporting and accounting system. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

Subsections BBBB to DDDD and SSSSSSSS of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate various amounts from the general fund to the office of cultural affairs for expenditure in the eighty-second through eighty-fourth fiscal years for various purposes. Unexpended or unencumbered balances remaining shall revert to the general fund.

Laws 1994, ch. 147, § 7V, effective March 9, 1994, appropriates various amounts from the general fund to the office of cultural affairs for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 148, § 44, effective March 9, 1994, appropriates various amounts from the general fund to the office of cultural affairs for expenditure in the eighty-second through eighty-fourth fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the general fund.

Laws 1995, ch. 71, § 1, effective April 5, 1995, provides that the period of time in which appropriations from the general fund to the office of cultural affairs made in Laws 1994, ch. 147 may be expended is extended through fiscal year 1996 for the purpose of building a data base of cultural holdings in state and local museums, for improvements and acquisitions at the palace of the governors in Santa Fe, and to design a state monument interpretive center to commemorate the Camino Real de Tierra Adentro in Socorro county pursuant to the provisions of Laws 1994, ch. 147, § 7V(1),(4) and (8).

Laws 1995, ch. 156, § 1, effective April 5, 1995, provides that the appropriation of \$100,000 pursuant to Laws 1994, ch. 147, § 6, to the office of cultural affairs to conduct a comprehensive statewide study of the economic, educational and quality of life impact of New Mexico's museums, historic sites, visual and performing arts, and other cultural assets shall be extended through fiscal year 1996.

Laws 1995, ch. 218, § 23, effective April 7, 1995, provides that the period of time for expenditure of the general fund appropriation to the office of cultural affairs provided in Laws 1994, ch. 147, § 7V is extended through fiscal year 1999 for certain purposes.

Laws 1995, ch. 218, § 41, effective April 7, 1995, provides that the general fund appropriation to the office of cultural affairs to plan and design a multicultural center in Grants located in Cibola county provided in Laws 1994, ch. 147, § 6CCCC is expanded to include expenditure for construction of the center.

Laws 1995, ch. 218, § 44, effective April 7, 1995, provides that the period of time for expenditure of the general fund appropriation to the office of cultural affairs to conduct a comprehensive statewide study of the economic, educational and quality of life impact of New Mexico's museums, historic sites, visual and performing arts, arts organizations,

community celebrations and other cultural assets provided in Laws 1994, ch. 147, § 6DDDD is extended through fiscal year 1996.

Laws 1995, ch. 222, § 22, effective April 7, 1995, appropriates \$3,000,000 from the general fund to the office of cultural affairs for expenditure in fiscal years 1995 through 1999 for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 24, effective April 1, 1997, appropriates \$600,000 from the general fund to the office of cultural affairs for expenditure in fiscal years 1997 and 1998 for the purposes of purchasing permanent exhibits for the New Mexico farm and ranch heritage museum in Las Cruces, and designing, constructing or equipping a living traditions education center at the museum of Indian arts and culture in Santa Fe county.

**Extension of expenditure period.** - Laws 1994, ch. 148, § 71A, effective March 9, 1994, provides that certain appropriations made by Chapter 366 of Laws 1993 are extended so that they may be expended through the eighty-fourth fiscal year.

Laws 1996, ch. 14, § 38, effective March 4, 1996, provides that the period of time for expenditure of the general fund appropriation to the library division of the office of cultural affairs made by 1994, ch. 148, § 44 shall be extended through fiscal year 1997.

Laws 1999 (1st S.S.), ch. 2, § 103, effective May 12, 1999, appropriates to the office of cultural affairs for expenditure in fiscal years 1999 through 2003: \$1,500,000 to construct, equip, furnish and acquire exhibits for the Anderson-Abruzzo international balloon museum in Albuquerque in Bernalillo county and \$1,500,000 for phase 1 construction of the Hispanic cultural center in Albuquerque in Bernalillo county.

### **9-6-10. State cultural affairs officer; appointment.**

The administrative and executive head of the office of cultural affairs is the "state cultural affairs officer." He shall be appointed by the secretary of finance and administration with the approval of the governor.

**History:** Laws 1980, ch. 151, § 55.

### **9-6-11. State cultural affairs officer; duties; powers.**

A. The state cultural affairs officer is responsible to the secretary of finance and administration for the operation of the office of cultural affairs. It is his duty to manage all operations of the office and to administer and enforce the laws with which he or the office is charged.

B. To perform his duties, the state cultural affairs officer has every power expressly enumerated in the laws, whether granted to him or to the office of cultural affairs or to any division of the office, except where authority conferred upon any division therein is explicitly exempted from the state cultural affairs officer's authority by statute.

C. Subject to other provisions of law, the state cultural affairs officer shall appoint, with the secretary's consent, a "director" for each division established within the office of cultural affairs. These appointed positions are exempt from the provisions of the Personnel Act.

D. The state cultural affairs officer may apply for and receive, with the secretary's approval, in the name of the office, any public or private funds, including but not limited to United States government funds, available to the office to carry out its programs, duties or services.

E. The state cultural affairs officer may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the office and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the state cultural affairs officer unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the office shall be adopted, amended or repealed without a public hearing on the proposed action before the state cultural affairs officer or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1980, ch. 151, § 56.

## ANNOTATIONS

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Public hearing requirement.** - Before the board of regents can adopt an amendment to the Palace of the Governors Portal Vendor Program rules and regulations to impose a fee, the officer of cultural affairs or a hearing officer appointed by him, must conduct a public hearing in accordance with the provisions of this section. 1988 Op. Att'y Gen. No. 88-25.

**Right to hearing prior to adoption of rule is statutory only.** - There is no fundamental right to notice and hearing before the adoption of a rule. Such a right is statutory only. *Livingston v. Ewing*, 98 N.M. 685, 652 P.2d 235 (1982).

**And is not retroactively applicable.** - Subsection E, requiring a public hearing, is not retroactively applicable to the adoption of a rule. *Livingston v. Ewing*, 98 N.M. 685, 652 P.2d 235 (1982).

## **ARTICLE 7**

### **DEPARTMENT OF HEALTH**

#### **9-7-1. Short title.**

Chapter 9, Article 7 NMSA 1978 may be cited as the "Department of Health Act".

**History:** 1978 Comp., § 9-7-1, enacted by Laws 1977, ch. 253, § 1; 1991, ch. 25, § 13.

#### **ANNOTATIONS**

**Cross references.** - For provisions regarding the office of guardianship services, see 8-5-16 NMSA 1978.

**The 1991 amendment**, effective March 29, 1991, rewrote this section, which read "Sections 1 through 15 of this act may be cited as the 'Health and Environment Department Act' ".

#### **9-7-2. Definitions.**

As used in the Department of Health Act [this article]:

A. "department" means the department of health created under the Department of Health Act; and

B. "secretary" means the secretary of health.

**History:** 1978 Comp., § 9-7-2, enacted by Laws 1977, ch. 253, § 2; 1991, ch. 25, § 14.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 29, 1991, substituted "Department of Health Act" for "Health and Environment Department Act" in the introductory phrase and in Subsection A; substituted "department of health" for "health and environment department" in Subsection A; and substituted "health" for "the department" in Subsection B.

#### **9-7-3. Purpose.**

The purpose of the Department of Health Act [this article] is to establish a single, unified department to administer the laws and exercise the functions relating to health formerly

administered and exercised by various organizational units of state government, including the state health agency, the scientific laboratory system and an appropriate allocation of administrative support services of the health and social services department and the hospital and institutions department. All public health, behavioral health and scientific laboratory functions formerly performed by the health and environment department shall be performed by the department of health.

**History:** 1978 Comp., § 9-7-3, enacted by Laws 1977, ch. 253, § 3; 1991, ch. 25, § 15.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 29, 1991, in the first sentence, substituted "Department of Health Act" for "Health and Environment Department Act", deleted "and environment and" preceding "formerly administered" and "the environmental improvement agency" preceding "the scientific"; and added the second sentence.

#### **9-7-4. Department established.**

A. There is created in the executive branch the "department of health". The department shall be a cabinet department and shall include, but not be limited to, the programs and functions of the public health division, the behavioral health services division and the scientific laboratory.

B. All references in the law to the "health services division" shall be construed to be references to the "public health division". All references in the law to the public health division of the health and environment department, the behavioral health services division of the health and environment department, the state department of public health, the public health department, the health services division or the state board of health shall be construed as referring to the department of health.

C. The administrative services division of the department of health shall provide clerical, recordkeeping and administrative support to the department of health and to the department of environment, including, but not limited to, the areas of personnel, budget, procurement and contracting.

**History:** 1978 Comp., § 9-7-4, enacted by Laws 1991, ch. 25, § 16.

### **ANNOTATIONS**

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For Department of Environment, see 9-7A-1 NMSA 1978 et seq.

For health and hospital records, see 14-6-1, 14-6-2 NMSA 1978.

For state health institutions generally, see Chapter 23 NMSA 1978.



For health and safety generally, see Chapter 24 NMSA 1978.

For appointment and establishment of powers and duties of district health officers and assistants, see 24-1-4 NMSA 1978.

For development by scientific laboratory division of methods to test persons operating motor vehicle under influence of drugs or alcohol, see 24-1-22 NMSA 1978.

For duties with regard to immunization, see Chapter 24, Article 5 NMSA 1978.

For vital statistics, see 24-14-1 to 24-14-31 NMSA 1978.

For establishment of vital statistics bureau, see 24-14-3 NMSA 1978.

For food generally, see Chapter 25 NMSA 1978.

For duties with regard to meat inspection, see 25-3-6 NMSA 1978 et seq.

For Drug Abuse Act, see 26-2-1 to 26-2-14 NMSA 1978.

For controlled substances, see 30-31-1 to 30-31-40 NMSA 1978.

For occupational health and safety, see 50-9-1 to 50-9-25 NMSA 1978.

For pharmacy regulation and licensing, see Chapter 61, Article 11 NMSA 1978.

**Repeals and reenactments.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, as enacted by Laws 1977, ch. 253, § 4, relating to establishment of the health and environment department, and enacts the above section, effective March 29, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

**The 1989 amendment,** effective June 16, 1989, in the undesignated introductory paragraph deleted "program" preceding "divisions" in the second sentence; substituted the present language of Subsection A for "the health services division"; and added the undesignated single-sentence paragraph at the end of the section.

**Temporary provisions.** - Laws 1992, ch. 60, § 8, effective July 1, 1992, provides that on July 1, 1992: (1) all personnel, appropriations, money, records, property, equipment and supplies of the secure treatment facility shall be transferred to the department of health for the adolescent treatment hospital and adolescent residential treatment facility; (2) all contracts and agreements of the secure treatment facility shall be binding and effective on the adolescent treatment hospital and adolescent residential treatment facility; and (3) all references in law to the secure treatment facility shall be deemed to be references to the adolescent treatment hospital and adolescent residential treatment facility.

**Medical residency programs.** - Laws 1994, ch. 57, § 17, effective March 4, 1994, provides that the department of health and the university of New Mexico school of medicine shall assist hospitals in the state to develop and expand physician residencies in family practice, internal medicine, obstetrics, gynecology and pediatrics in rural or other medically underserved areas, and the department and school shall provide information and technical assistance to enhance hospital physician residency programs in those areas.

**Appropriations.** - Laws 1989, ch. 243, § 1, effective June 16, 1989, appropriates \$50,000 from the general fund to the health and environment department for expenditure in the seventy-eighth fiscal year for the purpose of contracting with an Albuquerque-based volunteer organization of persons with acquired immune deficiency syndrome (AIDS) and infected with the human immunodeficiency virus (HIV) to provide self-help, prevention, and education for persons with AIDS and HIV-positive individuals and to consult with and make recommendations to state agencies, and provides that any unexpended or unencumbered balance remaining at the end of the seventy-eighth fiscal year shall revert to the general fund.

Laws 1989, ch. 336, § 1 appropriates \$50,000 from the petroleum storage cleanup fund to the environmental improvement division to contract with the board of regents of the university of New Mexico for expenditure in the seventy-eighth fiscal year to provide for a study conducted by the institute of public law of a self-insurance program for owners of petroleum products storage systems for payment for petroleum storage cleanup, provided that no expenditure may be made from this appropriation without the approval in advance by the environmental improvement division. The environmental improvement division shall report to the second session of the thirty-ninth legislature its findings and recommendations including any necessary proposed legislation, regarding the self-insurance program. Any unexpended or unencumbered balance remaining at the end of the seventy-eighth fiscal year is to revert to the general fund.

Laws 1992, ch. 31, § 6, effective May 20, 1992, appropriates \$395,600 for expenditure in the eightieth fiscal year from the county-supported medicaid fund to the department of health for providing primary health care services pursuant to Subsection E of 24-1A-3.1 NMSA 1978, provides for allocation of appropriations in the event the full amount is not available, and provides that any unexpended or unencumbered balance remaining at the end of the eightieth fiscal year shall revert to the county-supported medicaid fund.

Laws 1992, ch. 31, § 6, effective May 20, 1992, appropriates \$741,760 for expenditure in the eighty-first fiscal year from the county-supported medicaid fund to the department of health for providing primary health care services pursuant to Subsection E of 24-1A-3.1 NMSA 1978, provides for allocation of appropriations in the event the full amounts are not available, and provides that any unexpended or unencumbered balance remaining at the end of the eighty-first fiscal year shall revert to the county-supported medicaid fund.

Laws 1993, ch. 366, § 2P, effective June 18, 1993, appropriates \$207,000 from the computer systems enhancement fund to the department of health for expenditure in the eighty-second fiscal year to develop a facilities information system.

Subsections LL to NN of Laws 1993, ch. 366, § 3, effective June 18, 1993, appropriate \$300,000, \$175,200 and \$130,000, respectively, from the general fund to the department of health for expenditure in the eighty-first and eighty-second fiscal years to provide an asthma pilot project, and to be matched with Robert Wood Johnson foundation funds to operate the health policy commission, and to purchase milk inspection equipment. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 4BB, effective June 18, 1993, appropriates \$400,000 from the general fund to the developmental disabilities division of the department of health for expenditure in the eighty-second fiscal year for pre-admission screening and annual resident review (PASARR) to meet federal mandates which require all states to annually assess current nursing facility residents and all applicants who are mentally ill or require a nursing facility of care, and whether specialized services are required. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 4CC, effective June 18, 1993, appropriates \$500,000 from the general fund to the New Mexico state hospital of the department of health for expenditure in the eighty-second fiscal year for the secure treatment cottage that provides care and services for a dangerous population requiring a highly secure, protective environment. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1994, ch. 147, § 2BB, effective March 9, 1994, appropriates \$600,000 from the computer systems enhancement fund to the department of health for expenditure in the eighty-second and eighty-third fiscal years for the scientific laboratory intergrated database and medicaid waivers information systems. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

Laws 1994, ch. 147, § 4U, effective March 9, 1994, appropriates \$350,000 from the DWI program fund to the public health division of the department of health for expenditure in the eighty-second and eighty-third fiscal years for development and implementation of a statewide comprehensive DWI prevention program and four permanent full-time equivalent positions. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Subsections II, BBBB to HHHH, and JJJJ to NNNN of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate various amounts from the general fund to the department of health or specific divisions of the department of health for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 7EE, effective March 9, 1994, appropriates various amounts from the general fund to the department of health for expenditure in the eighty-second through eighty-fourth fiscal years for various purposes. Unexpended or unencumbered balances remaining shall revert to the general fund.

Laws 1995, ch. 30, § 4, the General Appropriations Act of 1995, as added by Laws 1996, ch. 5, § 1, continues for fiscal year 1996 the appropriation to the department of health for the scientific laboratory integrated database and medicaid waivers information system originally appropriated in Laws 1994, ch. 147, § 2, Subsection BB.

Laws 1995, ch. 219, § 3, effective June 16, 1995, appropriates \$2,869,000 from the general fund to the department of health for expenditure in fiscal year 1996 to provide six full-time equivalent staff and operating costs in district health offices, operational expenses and contractual services for healthier schools' model sites, operational expenses, and to establish a breast cancer prevention information and services program and to provide staff, contractual services and operational expenses for the breast cancer prevention program.

**Extension of expenditure period.** - Laws 1995, ch. 30, § 4, as added by Laws 1996, ch. 5, § 1, the General Appropriations Act of 1995, provides that unexpended or unencumbered balances from the appropriation made in Laws 1994, ch. 147, § 2, Subsection BB to the department of health for the scientific laboratory integrated database and medicaid waivers information systems are appropriated for fiscal year 1996 for the same purpose.

Laws 1995, ch. 30, § 4, as added by Laws 1996, ch. 5, § 1, the General Appropriations Act of 1995, provides that the unexpended or unencumbered balances for the appropriation to the health policy commission in the contractual services category in paragraph (7) of the health policy commission appropriation under the department of health in Laws 1994, ch. 6, § 4, Subsection F for the health information alliance shall not revert at the end of fiscal year 1995 but are appropriated for expenditure by the health policy commission for the health information alliance in fiscal year 1996.

Laws 1997, ch. 133, § 1 appropriates \$25,000 from the general fund to the department of environment for expenditure in fiscal year 1998 for the purpose of planning and designing water system improvements for the Desert Aire community in Dona Ana county.

### **9-7-5. Secretary of health; appointment.**

A. The administrative head of the department of health is the "secretary of health", who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** 1978 Comp., § 9-7-5, enacted by Laws 1977, ch. 253, § 6; 1991, ch. 25, § 17.

## ANNOTATIONS

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For appointment and removal power of governor, see N.M. Const., art. V, § 5.

**The 1991 amendment**, effective March 29, 1991, deleted "and environment" following "health" in the catchline and in Subsection A and substituted "department of health" for "health and environment department" in Subsection A.

### **9-7-6. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Department of Health Act [this article], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(10) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of those bonds; and

(11) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of those bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary shall be responsible for providing appropriate educational programs for all school age persons, as defined in Section 22-1-2 NMSA 1978, who are clients, as defined in Section 43-1-3 NMSA 1978, of institutions under his authority as follows:

(1) he shall arrange with school districts for the enrollment of all school age residents of institutions under his authority who have been evaluated and recommended for placement in a public school according to the provisions of the Department of Health Education Act [Chapter 24, Article 3B NMSA 1978]. He shall notify the superintendent of public instruction prior to public school enrollment of any school age resident under his authority; and

(2) he shall provide educational programs, in accordance with the special education regulations of the state board of education, for school age persons who are clients of institutions under his authority but who are enrolled in a public school by:

- (a) using the facilities and personnel of the department;
- (b) contracting with a school district for the provision of educational services; or
- (c) using a combination of Subparagraphs (a) and (b) of this subsection.

E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1978 Comp., § 9-7-6, enacted by Laws 1977, ch. 253, § 7; 1978, ch. 211, § 5; 1991, ch. 25, § 18.

## ANNOTATIONS

**Cross references.** - For appointment of directors, see 9-7-8 NMSA 1978.

For cooperation with federal financial or other participation in programs, see 9-7-12 NMSA 1978.

For state budgets, see 6-3-1 to 6-3-22 NMSA 1978.

For public officers and employees generally, see Chapter 10 NMSA 1978.

**The 1991 amendment**, effective March 29, 1991, substituted "the Department of Health Act" for "this act" in Paragraph (1) of Subsection B; deleted former Subsection D, which read "Where functions of departments overlap or a function assigned to one department could be better performed by another department, a secretary may recommend

appropriate legislation to the next session of the legislation for its approval"; redesignated former Subsections E and F as present Subsections D and E; substituted "22-1-2 NMSA 1978" for "77-1-2 NMSA 1953" and "43-1-3 MNSA 1978" for "34-2A-2 NMSA 1953" in the introductory paragraph of Subsection D; in Paragraph (1) of Subsection D, substituted "Department of Health Education Act" for "Health and Environment Department Act" in the first sentence and deleted "state" preceding "superintendent" in the second sentence; and made stylistic changes throughout Subsection B.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Exempt position provisions of Personnel Act applicable to department.** - Provisions of the Personnel Act, authorizing exempt positions other than secretary and division director, are applicable to the department and may be given effect as written. 1980 Op. Att'y Gen. No. 80-38.

**As sections not in conflict with Personnel Act in defining exempt positions.** - In defining exempt positions only for the secretary and division heads of the department, 9-1-4 NMSA 1978 and Subsection B(9) of this section are not in conflict with the Personnel Act, nor are they controlling with respect to the number of exempt positions authorized for the department. 1980 Op. Att'y Gen. No. 80-38.

**No responsibility by state records center to determine compliance of promulgated rules with hearing and notice requirements.** - See 1978 Op. Att'y Gen. No. 78-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 39 Am. Jur. 2d Health §§ 1, 3, 4, 9 to 16.

### **9-7-6.1. Behavioral health services; powers and duties of the department of health.**

Subject to appropriation, the department of health shall:

A. contract for behavioral health services, including mental health, alcoholism and other substance abuse services;

B. establish standards for the delivery of behavioral health services, including quality management and improvement, performance measures, accessibility and availability of services, utilization management, credentialing and recredentialing, rights and responsibilities of providers, preventive behavioral health services, clinical treatment and evaluation and the documentation and confidentiality of client records;

C. establish criteria for determining individual eligibility for behavioral health services; and



D. maintain a management information system in accordance with standards for reporting clinical and fiscal information.

**History:** Laws 1999, ch. 270, § 1.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1999, ch. 270, § 11, makes the act effective on July 1, 1999.

### **9-7-6.2. Contract eligibility.**

The department of health may enter into contracts for behavioral health services with municipalities, counties, state institutions of higher education, tribal or pueblo governments or organizations, regional provider service networks or private nonprofit or for-profit corporations authorized to do business in New Mexico.

**History:** Laws 1999, ch. 270, § 2.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1999, ch. 270, § 11, makes the act effective on July 1, 1999.

### **9-7-6.3. Rules.**

The department of health shall adopt rules pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978] and the Department of Health Act [Chapter 9, Article 9 NMSA 1978] to implement the provision of behavioral health services.

**History:** Laws 1999, ch. 270, § 3.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1999, ch. 270, § 11, makes the act effective on July 1, 1999.

### **9-7-7. Organizational units of department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-7-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

**History:** 1978 Comp., § 9-7-7, enacted by Laws 1977, ch. 253, § 8; 1991, ch. 25, § 19.

## **ANNOTATIONS**

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For Department of Environment, see 9-7A-1 NMSA 1978 et seq.

For health and hospital records, see 14-6-1, 14-6-2 NMSA 1978.

For state health institutions generally, see Chapter 23 NMSA 1978.

For health and safety generally, see Chapter 24 NMSA 1978.

For appointment and establishment of powers and duties of district health officers and assistants, see 24-1-4 NMSA 1978.

For development by scientific laboratory division of methods to test persons operating motor vehicle under influence of drugs or alcohol, see 24-1-22 NMSA 1978.

For duties with regard to immunization, see Chapter 24, Article 5 NMSA 1978.

For vital statistics, see 24-14-1 to 24-14-31 NMSA 1978.

For establishment of vital statistics bureau, see 24-14-3 NMSA 1978.

For food generally, see Chapter 25 NMSA 1978.

For duties with regard to meat inspection, see 25-3-6 NMSA 1978 et seq.

For Drug Abuse Act, see 26-2-1 to 26-2-14 NMSA 1978.

For controlled substances, see 30-31-1 to 30-31-40 NMSA 1978.

For occupational health and safety, see 50-9-1 to 50-9-25 NMSA 1978.

For pharmacy regulation and licensing, see Chapter 61, Article 11 NMSA 1978.

**The 1991 amendment**, effective March 29, 1991, substituted "9-7-6 NMSA 1978" for "7 of the Health and Environment Department Act" at the end of the second sentence.

### **9-7-8. Directors.**

The secretary shall appoint with the approval of the governor "directors" of divisions established within the department. The positions so appointed are exempt from the Personnel Act.

**History:** 1978 Comp., § 9-7-8, enacted by Laws 1977, ch. 253, § 9; 1991, ch. 25, § 20.

#### **ANNOTATIONS**

**Cross references.** - For appointment of directors, see 9-7-6B(9) NMSA 1978.

**The 1991 amendment,** effective March 29, 1991, substituted "divisions established" for "such divisions as are established" in the first sentence.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

#### **9-7-9. Bureaus; chiefs.**

The secretary shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Department of Health Act [this article]. He shall employ a "chief" to be the administrative head of each bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act unless otherwise provided by law.

**History:** 1978 Comp., § 9-7-9, enacted by Laws 1977, ch. 253, § 10; 1991, ch. 25, § 21.

#### **ANNOTATIONS**

**The 1991 amendment,** effective March 29, 1991, substituted "Department of Health Act" for "Health and Environment Department Act" at the end of the first sentence and made a minor stylistic change in the second sentence.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

#### **9-7-10. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 328, § 2 repeals 9-7-10 NMSA 1978, as amended by Laws 1983, ch. 177, § 1, relating to creation of the behavioral health services division, effective June 19, 1987. For provisions of the former section, see the 1983 Replacement Pamphlet.

#### **9-7-10.1. Rehabilitation centers.**

There are created within the department of health the "northern New Mexico rehabilitation center" and the "southern New Mexico rehabilitation center". The centers shall be at Las Vegas and Roswell, respectively, and shall provide the citizens of New Mexico with physical therapy, speech and hearing diagnoses and therapy and family counseling services in conjunction with such therapy and in cooperation with related programs of other governmental and nonprofit entities. Such therapy and service shall

be provided without regard to eligibility for federally funded vocational rehabilitation services.

**History:** 1978 Comp., § 9-7-10.1, enacted by Laws 1983, ch. 156, § 1; 1987, ch. 328, § 1; 1991, ch. 25, § 22.

## ANNOTATIONS

**The 1991 amendment**, effective March 29, 1991, substituted "department of health" for "health and environment department" in the first sentence.

### **9-7-11. Advisory committees.**

A. Advisory committees may be created. Advisory means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

B. All members of advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1978 Comp., § 9-7-11, enacted by Laws 1977, ch. 253, § 12; 1991, ch. 25, § 23.

## ANNOTATIONS

**The 1991 amendment**, effective March 29, 1991, made minor stylistic changes throughout Subsection A.

### **9-7-11.1. Findings and purpose.**

A. The legislature finds that good health is among our most cherished desires. To achieve optimal health requires both individual and collective responsibility and action, and therefore, state government must assume a leadership role by establishing and implementing policies in all aspects of health. In order to fulfill its proper leadership obligation within public resource constraints, the state must perform a variety of carefully tailored roles in concert with individuals, the private sector and local, federal and tribal governments.

B. The legislature also finds that health care requires a growing portion of the state's public and private resources and impacts a broad segment of the state's economy; a

need, therefore, exists to establish an entity for research, guidance and recommendations on health policy and planning issues.

C. The purpose of the New Mexico health policy commission is to provide a forum for the discussion of complex and controversial health policy and planning issues and for the creative exploration of ideas, issues and problems surrounding health policy and planning, including the interrelations with education, the environment and economic well-being.

D. It is the policy of the state of New Mexico to promote optimal health; to prevent disease, disability and premature death; to improve the quality of life; and to assure that basic health services are available, accessible, acceptable and culturally appropriate, regardless of financial status. This policy shall be realized through the following organized efforts:

- (1) education, motivation and support of the individual in healthy behavior;
- (2) protection and improvement of the physical and social environments;
- (3) promotion of health services for early diagnosis and prevention of disease and disability; and
- (4) provisions of basic treatment services needed by all New Mexicans.

**History:** Laws 1991, ch. 139, § 1.

### **9-7-11.2. New Mexico health policy commission created; composition; duties.**

A. There is created the "New Mexico health policy commission", which is administratively attached to the department of finance and administration.

B. The New Mexico health policy commission shall consist of eight members appointed by the governor with the advice and consent of the senate to reflect the ethnic, economic, geographic and professional diversity of the state. No member of the commission shall have a pecuniary or fiduciary interest in the health services industry for three years preceding his appointment to the commission. Two members shall be appointed for one-year terms, three members shall be appointed for two-year terms, three members shall be appointed for three-year terms and all subsequent appointments shall be made for three-year terms.

C. The New Mexico health policy commission shall meet at the call of the chairman and shall meet not less than quarterly. The chairman shall be elected from among the members of the commission. Members of the New Mexico health policy commission shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

D. The New Mexico health policy commission shall establish task forces as needed to make recommendations to the commission on various health issues. Task force members may include individuals who have expertise or a pecuniary or fiduciary interest in the health services industry. Voting members of a task force may receive mileage expenses if they:

- (1) are members who represent consumer interests;
- (2) are individuals who were not appointed to represent the views of the organization or agency for which they work; or
- (3) represent an organization that has a policy of not reimbursing travel expenses of employees or representatives for travel to meetings.

E. The New Mexico health policy commission shall:

- (1) develop a plan for and monitor the implementation of the state's health policy;
- (2) obtain and evaluate information from a broad spectrum of New Mexico's society to develop and monitor the implementation of the state's health policy;
- (3) obtain and evaluate information relating to factors that affect the availability and accessibility of health services and health care personnel in the public and private sectors;
- (4) perform needs assessments on health personnel, health education and recruitment and retention and make recommendations regarding the training, recruitment, placement and retention of health professionals in underserved areas of the state;
- (5) prepare and publish an annual report describing the progress in addressing the state's health policy and planning issues. The report shall include a workplan of goals and objectives for addressing the state's health policy and planning issues in the upcoming year;
- (6) distribute the annual report to the governor, appropriate state agencies and interim legislative committees and interested parties;
- (7) establish a process to prioritize recommendations on program development, resource allocation and proposed legislation;
- (8) provide information and analysis on health issues;
- (9) serve as a catalyst and synthesizer of health policy in the public and private sectors; and
- (10) respond to requests by the executive and legislative branches of government.

**History:** Laws 1991, ch. 139, § 2; 1994, ch. 62, § 17.

## ANNOTATIONS

**The 1994 amendment**, effective March 4, 1994, deleted "health and environment" following "attached to the", and inserted "of finance and administration", in Subsection A; inserted "and shall meet", and deleted "and not more than once a month" following "quarterly", in the first sentence of Subsection C; rewrote Subsection D and inserted Paragraphs D(1) to D(3); substituted "monitor the implementation of" for "implement" in Paragraph E(2); inserted "and health care personnel" and made a minor stylistic change in Paragraph E(3); and rewrote Paragraph E(4), which formerly read: "identify the elements necessary to coordinate an effective system to meet the state's need for health care personnel".

**Temporary provisions.** - Laws 1991, ch. 188, § 1, effective April 4, 1991, defines "health care professionals", provides that the New Mexico health policy commission shall contract for a plan to identify and address shortages of health care professionals, lists items to be included in the plan, and provides that the plan shall be presented to the commission on higher education, the state department of public education, the legislative education study committee and the interim health and human services committee.

Laws 1992, ch. 31, §§ 4 and 5, effective May 20, 1992, require the New Mexico health policy commission to establish a task force to design a plan for establishing a more cost-effective medicaid program for submission to the health care financing administration of the federal department of health and human services, describe the composition of that task force, and set out the duties of the task force, including submission of the report, including a copy of the plan, any action taken with respect to the plan and any recommendations relating to the plan, to the New Mexico health policy commission by December 1, 1992 and further provide that the commission shall then present this to the legislative finance committee and the legislative health and human services committee prior to the first session of the forty-first legislature.

Laws 1994, ch. 59, § 16, effective March 4, 1994, provides: "Recommendations from the advisory committee on health information issues shall be presented to the New Mexico health policy commission and the legislative health care task force by October 1, 1994. The commission shall review the advisory committee's recommendations and report the commission's recommendations on health information issues to the legislative health care task force by November 1, 1994."

Laws 1994, ch. 62, § 23, effective March 4, 1994, provides that the health care task force and the health policy commission shall develop health care delivery and payment initiatives to provide universal health care by October 1, 1997. The section details several health care delivery and payment proposals which the health care task force is directed to present to the first session of the forty-second legislature. The section lists

the criteria by which the proposals shall be evaluated and directs several state agencies to assist as requested to fulfill the section's goals.

Laws 1994, ch. 62, § 24, effective March 4, 1994, provides that the health care task force and the health policy commission shall develop a plan to provide health care to all otherwise uninsured children by July 1, 1995. The section defines "uninsured children" and provides that the plan may provide for a sliding co-payment scale or other financial participation by parents or guardians. The section further provides that appropriate cost-containment measures be determined by the task force, and that the task force shall report its plan and legislative recommendations for consideration of the first session of the forty-second legislature.

Laws 1994, ch. 62, § 25, effective March 4, 1994, provides that each "governmental entity" that expends public money providing or contracting for "health-related services" (both terms being defined later in the section) shall review its services and contracts, in relation to those of other government entities, regarding what changes should be made if there is universal health care, in order to identify duplicative expenditures and programs which should be consolidated with others. Each governmental entity shall, by September 1, 1994, report to the health policy commission their justifications for consolidation, elimination or retention of current programs. The section further provides that the health policy commission shall provide the report to the health care task force, which shall recommend legislative changes to the forty-second legislature.

Laws 1994, ch. 62, § 26, effective March 4, 1994, provides that the department of insurance, the risk management division of the general services department, the public school insurance authority and the retiree health care authority shall review the benefits of forming a pool to purchase health insurance or health services coverage for their employees. The section details the issues to be reviewed, provides that the department of insurance shall coordinate the review, and provides that the group shall report its findings and recommendations to the legislative health care task force by September 1, 1994.

Laws 1994, ch. 62, § 27, effective March 4, 1994, provides: "The new staff members of the New Mexico health policy commission who are hired to perform the duties set forth in section 23 of this act are exempt from the provisions of the Personnel Act. The commission may employ temporary, term professional staff to assist in performing the evaluations required in those sections. Term positions filled pursuant to this section shall expire no later than the end of the eighty-third fiscal year."

## **9-7-12. Cooperation with the federal government; authority of secretary; single state agency status.**

A. The department is authorized to cooperate with the federal government in the administration of health programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal



government to implement health programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any health program when such designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any health program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

**History:** 1978 Comp., § 9-7-12, enacted by Laws 1977, ch. 253, § 13; 1991, ch. 25, § 24.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 29, 1991, deleted "and environmental" following "health" in the first sentence in Subsection A and deleted "or environmental" following "health" in the second sentence in Subsection A and in the first and second sentences in Subsection B.

#### **9-7-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1991, ch. 25, § 36 repeals 9-7-13 NMSA 1978, as enacted by Laws 1977, ch. 253, § 76, relating to exemptions of the environmental improvement board from the authority of the secretary of health and environment, effective March 29, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

#### **9-7-14, 9-7-15. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** - In 1991, 9-7-14 and 9-7-15 NMSA 1978, relating to exemptions from the authority of the secretary for the water quality control commission and the occupational health and safety review commission, respectively, were recompiled as 9-7A-13 and 9-7A-14 NMSA 1978.

#### **9-7-16. Rate equalization for community-based service contractors.**

The department of health shall take all measures reasonably necessary to ensure that any funds appropriated to the developmental disabilities division of the department of health for rate equalization for community contract agencies are used to increase

contractor payments to provide equitable rates for community contract agencies based upon the variable cost reimbursement study performed for the department.

**History:** Laws 1992, ch. 82, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 82 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **9-7-17. Substance abuse education fund.**

There is created the "substance abuse education fund" which shall be controlled by the agency. All money collected or received under the state laws for the purpose of substance abuse education shall be paid over to the state treasurer to the credit of the substance abuse education fund, and the fund shall not be transferred to another fund. The money in the fund shall be used for the purpose of providing additional funding for substance abuse educational programs in the local school districts. The drug abuse agency, in coordination with the state department of public education and local school boards, shall:

A. develop and provide funds for substance abuse education curricula and materials for the public school system;

B. provide substance abuse educational programs to public school staff, parents and students; and

C. assist local schools in developing student and faculty support and intervention groups.

**History:** 1978 Comp., § 26-2-4.1, enacted by Laws 1987, ch. 265, § 5; 1989, ch. 324, § 20; 1978 Comp., § 26-2-4.1, recompiled as 1978 Comp., § 9-7-17 by Laws 1999, ch. 270, § 9.

### **ANNOTATIONS**

**The 1989 amendment,** effective April 7, 1989, deleted "including all earned income therefrom" following "and the fund" in the second sentence.

**Recompilations.** - Laws 1999, ch. 270, § 9 recompiles 26-2-4.1 NMSA 1978, relating to the substance abuse education fund, as 9-7-17 NMSA 1978, effective July 1, 1999.

**Effective dates.** - Laws 1987, ch. 265 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 19, 1987.

# **ARTICLE 7A**

## **DEPARTMENT OF ENVIRONMENT**

### **9-7A-1. Short title.**

Sections 1 through 12 [9-7A-1 to 9-7A-12 NMSA 1978] of this act may be cited as the "Department of Environment Act".

**History:** Laws 1991, ch. 25, § 1.

### **9-7A-2. Definitions.**

As used in the Department of Environment Act [9-7A-1 to 9-7A-12 NMSA 1978]:

- A. "board" means the environmental improvement board;
- B. "department" means the department of environment created under the Department of Environment Act; and
- C. "secretary" means the secretary of environment.

**History:** Laws 1991, ch. 25, § 2.

### **9-7A-3. Purpose.**

The purpose of the Department of Environment Act [9-7A-1 to 9-7A-12 NMSA 1978] is to establish a single department to administer the laws and exercise the functions relating to the environment formerly administered and exercised by the health and environment department.

**History:** Laws 1991, ch. 25, § 3.

### **9-7A-4. Department established.**

There is created in the executive branch the "department of environment". The department shall be a cabinet department and shall include, but not be limited to, the programs and functions of the environmental improvement division. All references in the law to the environmental improvement agency or the environmental improvement division of the health and environment department shall be construed to mean the department. All references to the director of the environmental improvement division shall be construed to mean the secretary. The department shall consist of the staff of the environmental improvement division and such other powers, duties and personnel of the former health and environment department as may be assigned by the governor pursuant to executive order.

**History:** Laws 1991, ch. 25, § 4.

## ANNOTATIONS

**Cross references.** - For environmental improvement generally, see Chapter 74 NMSA 1978.

For environmental improvement department, see 74-1-6 NMSA 1978 et seq.

For Rural Infrastructure Act, see 75-1-1 NMSA 1978 et seq.

**Temporary provisions.** - Laws 1991, ch. 25, § 34, effective July 1, 1991, provides that all appropriations, property, equipment, supplies, personnel and money that, prior to March 29, 1991, belonged to or were allocated to the environmental improvement division of the health and environment department, are transferred to the department of environment; that all existing rules and regulations, contracts and agreements in effect as to the division shall be binding and effective in the department; and that, in order to implement the provisions of Chapter 25, Laws 1991, without an increase in general fund appropriations, during the eightieth fiscal year, the governor may by executive order transfer any personnel, functions, powers and duties, contracts, grants, appropriations and funds from the department of health to the department or from the department to the department of health.

Laws 1991, ch. 25, § 35, effective March 29, 1991, provides that, on March 29, 1991, the department of environment shall exist as a department of the executive branch of state government, and the secretary of environment shall have all the powers and duties provided for in the Department of Environment Act, including the authority to negotiate and enter into any contracts and agreements; and that, between March 29 and July 1, 1991, the accounting and financial control functions of the department of environment shall continue being formed by the administrative services division of the department of health, provided, however, that the division shall provide for separate reporting of accounts and finances between the department of environment and the department of health, and shall provide necessary administrative services related to the department of environment resources at the direction of the secretary of environment.

**Appropriations.** - Laws 1992, ch. 64, § 12, effective March 9, 1992, appropriates \$200,000 from the corrective action fund to the department of environment for expenditure in the eighty-first fiscal year for the purpose of carrying out the provisions of the Ground Water Protection Act, provides that the appropriation is contingent upon the department of environment adopting regulations pursuant to this 1992 act during the eighty-first fiscal year, and provides that any unexpended or unencumbered balance remaining at the end of the eighty-first fiscal year shall revert to the corrective action fund.

Laws 1993, ch. 366, § 2Q, effective June 18, 1993, appropriates \$80,000 from the computer systems enhancement fund to the department of environment for expenditure

in the eighty-second fiscal year to purchase hardware and software to enhance the accounting system.

Laws 1993, ch. 366, § 300, effective June 18, 1993, appropriates \$320,000 from the corrective action fund to the department of environment for expenditure in the eighty-first through eighty-third fiscal years to hire an engineer and support staff for environmental activities associated with the Terrero mine cleanup project. Any unexpended or unencumbered balance at the end of the eighty-third fiscal year shall revert to the corrective action fund.

Subsections PP and QQ of Laws 1993, ch. 366, § 3, effective June 18, 1993, appropriate \$25,000 and \$250,000, respectively, from the general fund to the environmental protection division of the department of environment for expenditure in the eighty-first and eighty-second fiscal years to study and prepare plans for establishment of a solid waste transfer station in Rio Arriba county, and to hire a one-year term training coordinator and to fund training and administrative expenses associated with assisting the Indian pueblos with training of staff in knowledge of and compliance with federal and state environmental protection laws. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 3RR, effective June 18, 1993, appropriates \$150,000 from the general fund to the water and waste management division of the department of environment for expenditure in the eighty-first and eighty-second fiscal years to locate and correct ground water contamination affecting the area of the well near Baca street in Santa Fe, in Santa Fe county, including the extent and nature of such contamination, and to conduct sampling and other appropriate scientific studies or analyses of surface or subsurface conditions. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1993, ch. 367, § 45, effective April 8, 1993, appropriates \$220,000 from the capital projects fund to the department of environment for expenditure in the eighty-second through eighty-fourth fiscal years to provide for the first phase of a sewage collection and transmission system for the Dona Ana area in Dona Ana county. Any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the capital projects fund.

Subsections OOOOO to YYYYY of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate various amounts from the general fund to the department of environment for expenditure in the eighty-second through eighty-fourth fiscal years for various purposes. Unexpended or unencumbered balances remaining shall revert to the general fund.

Laws 1994, ch. 147, § 7FF, effective March 9, 1994, appropriates various amounts from the general fund to the department of environment for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 148, § 49C, effective March 9, 1994, appropriates \$350,000 from the general fund to the department of environment for expenditure in the eighty-second and eighty-third fiscal years for the purchase of compactor boxes and appropriate equipment for solid waste in Rio Arriba county, and for construction of facilities for closure of landfills in Rio Arriba county and to assist the development of a regional solid waste authority in the northern Rio Grande region and for constructing a regional landfill to serve the authority, respectively. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 148, § 51, effective March 9, 1994, appropriates various amounts from the general fund to the department of environment for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1995, ch. 222, § 25, effective April 7, 1995, appropriates \$4,540,000 from the general fund to the department of environment for expenditure in fiscal years 1995 through 1999 for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 33, effective April 1, 1997, appropriates \$1,955,000 from the general fund to the department of environment for expenditure in fiscal years 1997 and 1998 for various purposes and making some appropriations contingent upon agreements between certain communities.

**Extension of expenditure period.** - Laws 1994, ch. 148, § 71A, effective March 9, 1994, provides that certain appropriations made by Chapter 366 of Laws 1993 are extended so that they may be expended through the eighty-fourth fiscal year.

**Extension of expenditure period and purpose.** - Laws 1996, ch. 14, § 6, effective March 4, 1996, provides that certain appropriations made by Laws 1993, ch. 367, § 45 from the capital projects fund to the department of environment shall be extended through fiscal year 2000.

Laws 1996, ch. 14, § 7, effective March 4, 1996, provides that certain appropriations made by Laws 1994, ch. 147, § 6 from the general fund to the department of environment shall be extended through fiscal year 2000.

Laws 1996, ch. 14, § 8, effective March 4, 1996, provides that the balance of the proceeds from the appropriation made by Laws 1994, ch. 147, § 6QQQQQ to the department of environment to tie certain sewer lines to the Santa Fe river sewer trunk

line in Santa Fe county may also be expanded to include a feasibility study, engineering design or construction of the project and that the period of time for expenditure shall be extended through fiscal year 1998.

**Change in purpose.** - Laws 1994, ch. 148, § 73, effective March 9, 1994, provides that the appropriation of \$25,000 to the environmental protection division of the department of environment to study and prepare plans for establishment of a solid waste transfer station in Rio Arriba county made by Laws 1993, ch. 366, § 3PP, shall not be expended for that purpose but is appropriated to purchase equipment for a solid waste transfer station in Rio Arriba county. The appropriation may be expended through the eighty-third fiscal year. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1996, ch. 22, § 3, effective March 4, 1996, provides that the balance of the appropriation from the general fund to the state highway and transportation department in § 27T of Chapter 222 of Laws 1995 is reauthorized and appropriated to the department of environment to repair and renovate the Golden Acres well in the village of Milan in Cibola county.

### **9-7A-5. Secretary of environment; appointment.**

A. The administrative head of the department is the "secretary of environment", who shall be appointed by the governor with the consent of the senate and shall serve in the executive cabinet.

B. The secretary shall serve and have all the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** Laws 1991, ch. 25, § 5.

### **9-7A-6. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary, the department or any division of the department, except where authority conferred upon any division is explicitly exempt from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Department of Environment Act [9-7A-1 to 9-7A-12 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating that delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(10) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of those bonds; and

(11) require performance bonds of department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of those bonds.

C. The secretary may apply for and receive, with the governor's approval and in the name of the department, any public or private funds, including, but not limited to, United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying



out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no procedural regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1991, ch. 25, § 6.

## **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-7A-7. Organizational units of the department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 6 [9-7A-6 NMSA 1978] of the Department of Environment Act. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

**History:** Laws 1991, ch. 25, § 7.

### **9-7A-8. Directors.**

The secretary shall appoint with the approval of the governor "directors" of divisions established within the department. The positions so appointed are exempt from the Personnel Act.

**History:** Laws 1991, ch. 25, § 8.

## **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-7A-9. Bureaus; chiefs.**

The secretary shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Department of Environment Act [9-7A-1 to 9-7A-12 NMSA 1978]. He shall employ a "chief" to be the administrative head of each bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act unless otherwise provided by law.

**History:** Laws 1991, ch. 25, § 9.

## **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-7A-10. Advisory committees.**

A. Advisory committees may be created. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

B. All members of advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 1991, ch. 25, § 10.

### **9-7A-11. Cooperation with the federal government; authority of secretary; single state agency status.**

A. The department is authorized to cooperate with the federal government in the administration of environmental programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement environmental programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the

administration of any environmental program when that designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any environmental program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

**History:** Laws 1991, ch. 25, § 11.

### **9-7A-12. Environmental improvement board; exemptions from authority of secretary.**

The environmental improvement board shall receive staff support from the department. All powers, duties and responsibilities of the environmental improvement board under Sections 25-1-1 through 25-1-14, 25-2-1 through 25-2-19, 25-5-1 through 25-5-9, 50-9-1, through 50-9-25, 74-1-1 through 74-1-11, 74-2-1 through 74-2-17, 74-3-1 through 74-3-16, 74-4-1 through 74-4-13, 74-4A-1 through 74-4A-19, 74-6B-1 through 74-6B-11, 74-7-1 through 74-7-8, 7-8-1 through 7-8-3, 74-9-1 through 74-9-42 and 75-1-1 through 75-1-6 NMSA 1978 are explicitly exempt from the authority of the secretary under the provisions of Subsection B of Section 6 [9-7A-6 NMSA 1978] of the Department of Environment Act.

**History:** Laws 1991, ch. 25, § 12.

### **ANNOTATIONS**

**Compiler's notes.** - Section 74-6B-11 NMSA 1978 was repealed in 1993.

Sections 7-8-1 to 7-8-3 NMSA 1978 were repealed in 1997. Comparable provisions may be found in Chapter 7, Article 8A NMSA 1978.

### **9-7A-13. Water quality control commission; exemptions from authority of secretary of environment.**

The water quality control commission shall receive staff support from the department of environment. All powers, duties and responsibilities of the water quality control commission under Sections 47-6-11, 74-6-3 through 74-6-8, 74-6-10 and 74-6-12 NMSA 1978 are hereby explicitly exempted from the authority of the secretary under provisions of Subsection B of Section 6 [9-7A-6 NMSA 1978] of the Department of Environment Act.

**History:** 1978 Comp., § 9-7-14, enacted by Laws 1977, ch. 253, § 77; recompiled as 1978 Comp., § 9-7A-13; 1991, ch. 25, § 25.

## ANNOTATIONS

**The 1991 amendment**, effective March 29, 1991, deleted "health and" preceding "environment" in the catchline; substituted "department of environment" for "environmental improvement division of the health and environment department" in the first sentence; and rewrote the second sentence, which read "All powers, duties and responsibilities of the water quality control commission under Sections 47-6-11, 61-30-4, 61-30-5, 61-30-7 through 61-30-9, 74-6-3 through 74-6-8, 74-6-10 and 74-6-12 NMSA 1978 are hereby explicitly exempted from the authority of the secretary of health and environment under provisions of Subsection B of Section 7 of the Health and Environment Department Act".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity of statute prescribing standard of purity of water furnished for human consumption, 6 A.L.R. 475.

Validity of statute, ordinance or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

### **9-7A-14. Occupational health and safety review commission; exemptions from authority of secretary of environment.**

The occupational health and safety review commission shall receive staff support from the department of environment. All powers, duties and responsibilities of the occupational health and safety review commission under Sections 50-9-9, 50-9-17 and 50-9-24 NMSA 1978 are hereby explicitly exempted from the authority of the secretary under provisions of Subsection B of Section 6 [9-7A-6 NMSA 1978] of The Department of Environment Act.

**History:** 1978 Comp., § 9-7-15, enacted by Laws 1977, ch. 253, § 78; recompiled as 1978 Comp., § 9-7A-14; 1991, ch. 25, § 26.

## ANNOTATIONS

**The 1991 amendment**, effective March 29, 1991, deleted "health and" preceding "environment" in the catchline; in the first sentence, substituted "receive" for "review" and "department of environment" for "environmental improvement division of the health and environment department"; and rewrote the second sentence, which read "All powers, duties and responsibilities of the occupational health and safety review commission under 50-9-9, 50-9-17 and 59-9-24 NMSA 1978 are hereby explicitly exempted from the authority of the secretary of health and environment under provisions of Subsection B of Section 7 of the Health and Environment Department Act".

**Temporary provisions.** - Laws 1977, ch. 253, § 79, provides:

"Section 79. TEMPORARY PROVISIONS - EFFECT OF EXISTING RULES, REGULATIONS, ORDERS AND RULINGS. - The rules, regulations, orders and rulings

of the following persons or entities in effect on the effective date of this act shall remain in full force and effect after the effective date of this act until repealed, replaced, superseded or amended:

"A. the health and social services board, the health and social services department and any of its organizational units and the director of the health and social services department;

"B. the environmental improvement agency and any of its organizational units and the director of the environmental improvement agency; and

"C. the hospital and institutions board, the hospital and institutions department and any of its organizational units or institutional facilities and the secretary of the hospital and institutions department."

## **ARTICLE 8**

### **HUMAN SERVICES DEPARTMENT**

#### **9-8-1. Short title.**

Sections 1 through 14 [9-8-1 to 9-8-12 NMSA 1978] of this act may be cited as the "Human Services Department Act".

**History:** 1978 Comp., § 9-8-1, enacted by Laws 1977, ch. 252, § 1.

#### **ANNOTATIONS**

**Compiler's notes.** - Sections 5 and 14 of the Human Services Department Act (Laws 1977, ch. 252, §§ 5 and 14) enact temporary provisions and have therefore not been compiled.

#### **9-8-2. Definitions.**

As used in the Human Services Department Act [9-8-1 to 9-8-12 NMSA 1978]:

A. "department" means the human services department created under the Human Services Department Act; and

B. "secretary" means the secretary of the department.

**History:** 1978 Comp., § 9-8-2, enacted by Laws 1977, ch. 252, § 2.

#### **9-8-3. Purpose.**

The purpose of the Human Services Department Act [9-8-1 to 9-8-12 NMSA 1978] is to establish a single, unified department to administer laws and exercise functions relating to human services and formerly administered and exercised by the administrative services unit, the state welfare and social services agencies of the health and social services department and the committee on children and youth.

**History:** 1978 Comp., § 9-8-3, enacted by Laws 1977, ch. 252, § 3; 1979, ch. 203, § 7; 1979, ch. 204, § 1; 1979, ch. 280, § 1; 1981, ch. 88, § 1.

#### **9-8-4. Department established.**

There is created in the executive branch the "human services department." The department shall be a cabinet department and shall consist of, but not be limited to, two program divisions, as follows:

- A. the income support division; and
- B. the social services division.

**History:** 1978 Comp., § 9-8-4, enacted by Laws 1977, ch. 252, § 4; 1981, ch. 88, § 2.

#### **ANNOTATIONS**

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For public assistance generally, see Chapter 27 NMSA 1978.

For human rights generally, see Chapter 28 NMSA 1978.

For veterans services, see 28-13-1 to 28-13-16 NMSA 1978.

For delinquent, abused and neglected children, see 32A-2-1 to 32A-2-32 and 32A-4-1 to 32A-4-33 NMSA 1978.

For adoption generally, see 32A-5-1 to 32A-5-45 NMSA 1978.

For Mandatory Medical Support Act, see 40-4C-1 NMSA 1978 et seq.

**Appropriations.** - Laws 1992, ch. 31, § 6, effective May 20, 1992, appropriates \$4,000,000 for the eightieth fiscal year from the county-supported medicaid fund to the human services department for administration and payment of state matching funds for medicaid services, including expansion of medicaid eligibility for pregnant women with income up to 185% of the federal poverty level, provides for allocation of appropriations in the event that the full amount is not available, and provides that any unexpended or unencumbered balance remaining at the end of the eightieth fiscal year shall revert to the county-supported medicaid fund.

Laws 1992, ch. 31, § 6, effective May 20, 1992, appropriates \$7,500,000 for expenditure in the eighty-first fiscal year from the county-supported medicaid fund to the human services department for administration and payment of state matching funds for medicaid services, including expansion of medicaid eligibility for families and children with income up to 60% of the federal poverty level and for pregnant women with income up to 185% of the federal poverty level, provides for allocation of appropriations in the event the full amounts are not available, and provides that any unexpended or unencumbered balance remaining at the end of the eighty-first fiscal year shall revert to the county-supported medicaid fund.

Laws 1992, ch. 31, § 7, effective May 20, 1992, repeals Laws 1991, ch. 212, § 22, which made an appropriation of \$2,500,000 to the human services department from the county-supported medicaid fund.

Laws 1992, ch. 112, § 4, effective May 20, 1992, appropriates \$240,000 to the human services department for expenditure in the eighty-first fiscal year for development of and costs associated with the child support enforcement computer system; and appropriates \$1,888,400 to the human services department for the ISD-2 project, provided, however, that \$95,700 is authorized for expenditure in the eightieth fiscal year and \$1,792,700 is authorized for expenditure in the eighty-first fiscal year.

Laws 1992, ch. 112, § 5, effective May 20, 1992, appropriates \$14,483,000 from the general fund operating reserve to the human services department for expenditure in the eightieth fiscal year, and provides that disbursements are contingent upon certification by the secretary of human services to the secretary of finance and administration that no other funds are available in the eightieth fiscal year for the purpose specified in the appropriation, that the expenditure is absolutely necessary, that the specific program budgets will be exceeded, that all reasonable cost-containment measures have been implemented, and that every effort has been made to shift all appropriate expenses to alternative funding sources.

Laws 1993, ch. 356, § 2, effective July 1, 1993, appropriates \$19,826,100 from the general fund to the following agencies for expenditure in the eighty-second fiscal year in the following amounts for health and human services purposes: \$9,426,100 to the human services department; \$7,100,000 to the department of health; and \$3,300,000 to the children, youth and families department and provides that any unexpended or unencumbered balances remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 2N, effective June 18, 1993, appropriates \$500,000 from the computer systems enhancement fund to the human services department for expenditure in the eighty-first and eighty-second fiscal years to enhance accounting systems and establish two full-time equivalent positions.

Laws 1993, ch. 366, § 4AA, effective June 18, 1993, appropriates \$250,000 from the general fund to the human services department for expenditure in the eighty-second

fiscal year for the COLTS plus computer project to be matched with \$2,250,000 in federal funds. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Subsections T to AA of Laws 1994, ch. 147, § 2, effective March 9, 1994, appropriate various amounts from the computer systems enhancement fund to the human services department for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

Subsections WWWW, XXXX, and ZZZZ of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate various amounts from the general fund to the income support division of the human services department for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6GGGGGG, effective March 9, 1994, appropriates \$130,000 from the general fund to the human services department for expenditure in the eighty-second and eighty-third fiscal years for homeless daycare services. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 7CC, effective March 9, 1994, appropriates various amounts from the general fund to the human services department for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1995, ch. 30, § 4, the General Appropriations Act of 1995, as added by Laws 1996, ch. 5, § 1, provides that, notwithstanding the provisions of Laws 1994, ch. 147, § 6, any unexpended or unencumbered balances from the appropriation made in Paragraph XXXX shall continue to be used for water and sewer hook-ups for low income or indigent New Mexicans by the income support division of the human services department.

Laws 1995, ch. 30, § 4, the General Appropriations Act of 1995, as added by Laws 1996, ch. 5, § 1, provides that, notwithstanding the provisions of Laws 1994, ch. 147, § 7, any unexpended or unencumbered balances from the appropriations made in Paragraph CC, Subsection 5, shall continue to be used by the income support division of the human services department for assisting low-income disabled children in obtaining federal supplemental security income benefits.



Laws 1995, ch. 30, § 4, the General Appropriations Act of 1995, as added by Laws 1996, ch. 5, § 1, provides that, notwithstanding the provisions of Laws 1994, ch. 147, § 2, any unexpended or unencumbered balances from the appropriation made in Paragraph U of § 2 to the administrative services division of the human services department shall continue to be used for interfacing the new accounting system and improving purchasing and vouchers systems.

Laws 1996 (1st S.S.), ch. 9, § 3, effective May 15, 1996, appropriates \$1,000,000 from the general fund to the human services department for expenditure in fiscal year 1997 for the purpose of providing medicaid payments.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 Am. Jur. 2d Welfare Laws §§ 45 to 82.

Construction and application of state social security or unemployment compensation as affected by terms of Federal Social Security Act or judicial or administrative rulings thereunder, 139 A.L.R. 892.

43 C.J.S. Infants §§ 31, 32.

### **9-8-5. Secretary of human services; appointment.**

A. The administrative head of the human services department is the "secretary of human services," who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** 1978 Comp., § 9-8-5, enacted by Laws 1977, ch. 252, § 6.

### **ANNOTATIONS**

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For appointment and removal power of governor, see N.M. Const., art. V, § 5.

### **9-8-6. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted

from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

- (1) except as otherwise provided in the Human Services Department Act [9-8-1 to 9-8-12 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;
- (2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;
- (3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;
- (4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;
- (5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;
- (6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;
- (7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;
- (8) prepare an annual budget of the department;
- (9) provide cooperation, at the request of heads of administratively attached agencies, in order to:
  - (a) minimize or eliminate duplication of services and jurisdictional conflicts;
  - (b) coordinate activities and resolve problems of mutual concern; and
  - (c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;
- (10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary, except as provided in Section 9-8-9 NMSA 1978;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as he deems necessary as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. In the event the secretary anticipates that adoption, amendment or repeal of a rule or regulation will be required by a cancellation, reduction or suspension of federal funds or order by a court of competent jurisdiction:

(1) if the secretary is notified by appropriate federal authorities at least sixty days prior to the effective date of such cancellation, reduction or termination of federal funds, the department is required to promulgate regulations through the public hearing process to be effective on the date mandated by the appropriate federal authority; or

(2) if the secretary is notified by appropriate federal authorities or court less than sixty days prior to the effective date of such cancellation, reduction or suspension of federal funds or court order, the department is authorized without a public hearing to promulgate interim rules or regulations effective for a period not to exceed ninety days. Such interim regulations shall not be promulgated without first providing a written notice twenty days in advance to providers of medical services and beneficiaries of department programs. At the time of the promulgation of the interim rules or regulations, the department shall give notice of the public hearing on the final rules or regulations in accordance with Subsection E of this section.

G. If the secretary certifies to the secretary of finance and administration and gives contemporaneous notice of such certification through the human services register that the department has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary, the secretary may engage in interim rulemaking. Notwithstanding any provision to the contrary in the State Rules Act [Chapter 14, Article 4 NMSA 1978], interim rulemaking shall be conducted pursuant to Subsection E of this section, except:

(1) the period of notice of public hearing shall be fifteen days;

(2) the department shall also send individual notices of the interim rulemaking and of the public hearing to affected providers and beneficiaries;

(3) rules and regulations promulgated under this subsection shall be in effect not less than five days after the public hearing;

(4) rules and regulations promulgated under this subsection shall not be in effect for more than ninety days; and

(5) if final rules and regulations are necessary to replace the interim rules and regulations, the department shall give notice of intent to promulgate final rules and regulations at the time of notice herein. The final rules and regulations shall be promulgated not more than forty-five days after the public hearing filed in accordance with the State Rules Act.

At the time of the promulgation of the interim rules or regulations, the department shall give notice of the public hearing on the final rules or regulations in accordance with Subsection E of this section.

H. All rules and regulations shall be filed in accordance with the State Rules Act.

**History:** 1978 Comp., § 9-8-6, enacted by Laws 1977, ch. 252, § 7; 1981, ch. 133, § 1; 1989, ch. 82, § 1; 1993, ch. 342, § 2.

## ANNOTATIONS

**Cross references.** - For appointment of directors, see 9-8-9 NMSA 1978.

For cooperation with federal financial or other participation in programs, see 9-8-12 NMSA 1978.

For state budgets, see 6-3-1 to 6-3-22 NMSA 1978.

For public officers and employees generally, see Chapter 10 NMSA 1978.

For abandonment or abuse of a child, see 30-6-1 NMSA 1978.

**The 1993 amendment**, effective April 8, 1993, made a stylistic change near the beginning of Subsection F and added present Subsection G, redesignating former Subsection G as Subsection H.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Publication in New Mexico Register.** - Publication of a notice, proposed rule, or adopted rule in the New Mexico Human Services Register does not fulfill the Human Services Department's duty to publish materials required by the New Mexico Register. 1993 Op. Att'y Gen. No. 93-2.

**No responsibility by state records center to determine compliance of promulgated rules with hearing and notice requirements.** - See 1978 Op. Att'y Gen. No. 78-7.

**Law reviews.** - For annual survey of New Mexico law relating to administration law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Admissibility of records or report of welfare department or agency relating to payment to or financial condition of particular person, 42 A.L.R.2d 752.

Confidentiality of records as to recipients of public welfare, 54 A.L.R.3d 768.

### **9-8-7. Organizational units of department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 7 [9-8-6 NMSA 1978] of the Human Services Department Act. The department shall have access to all records, data and information of other state departments,

agencies and institutions, including its own organizational units not specifically held confidential by law.

**History:** 1978 Comp., § 9-8-7, enacted by Laws 1977, ch. 252, § 8.

### **9-8-8. Administratively attached agencies.**

The office of Indian affairs, the commission on the status of women and the state agency on aging are administratively attached to the human services department in accordance with the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

**History:** 1978 Comp., § 9-8-8, enacted by Laws 1977, ch. 252, § 9; 1979, ch. 203, § 8; 1987, ch. 342, § 15.

### **ANNOTATIONS**

**Cross references.** - For human rights commission, see 28-1-3 to 28-1-14 NMSA 1978.

For commission on status of women, see 28-3-1 to 28-3-11 NMSA 1978.

For state agency on aging, see 28-4-4 to 28-4-9 NMSA 1978.

For office of Indian affairs, see 28-12-4 to 28-12-9 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 41 Am. Jur. 2d Indians §§ 47 et seq.; 162 et seq.

### **9-8-9. Directors.**

The secretary shall appoint with the approval of the governor "directors" of divisions established within the department. The positions so appointed are exempt from the Personnel Act with the exception of the director of the child support enforcement division and the director of the medical assistance division who each shall be covered under the Personnel Act.

**History:** 1978 Comp., § 9-8-9, enacted by Laws 1977, ch. 252, § 10; 1989, ch. 82, § 2.

### **ANNOTATIONS**

**Cross references.** - For appointment of directors, see also 9-8-6B(10) NMSA 1978.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-8-10. Bureaus; chiefs.**

The secretary shall establish, within each division, such bureaus as he deems necessary to carry out the provisions of the Human Services Department Act [9-8-1 to 9-8-12 NMSA 1978.] He shall employ a chief to be administrative head of such bureau. The chief and all subsidiary employees of the department shall be covered by the Personnel Act unless otherwise provided by law.

**History:** 1978 Comp., § 9-8-10, enacted by Laws 1977, ch. 252, § 11; 1979, ch. 203, § 9; 1979, ch. 204, § 2; 1979, ch. 280, § 2; 1981, ch. 88, § 3.

## ANNOTATIONS

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For public assistance generally, see Chapter 27 NMSA 1978.

For human rights generally, see Chapter 28 NMSA 1978.

For veterans services, see 28-13-1 to 28-13-16 NMSA 1978.

For delinquent, abused and neglected children, see 32A-2-1 to 32A-2-32 and 32A-4-1 to 32A-4-33 NMSA 1978.

For adoption generally, see 32A-5-1 to 32A-5-45 NMSA 1978.

For Mandatory Medical Support Act, see 40-4C-1 NMSA 1978 et seq.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### 9-8-11. Advisory committees.

A. The governor shall appoint advisory committees to the department's income support division and the social services division. Creation of the advisory committees shall be in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978]. If the existence of a committee, representational membership requirements or other matters are required or specified under any federal law, regulation, rule or order as a condition of receiving federal funding for a particular human services program administered by the department, the governor shall comply with such requirements in the creation of the advisory committee.

B. All members of the advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1978 Comp., § 9-8-11, enacted by Laws 1977, ch. 252, § 12; 1979, ch. 203, § 10; 1981, ch. 88, § 4.

## ANNOTATIONS

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For public assistance generally, see Chapter 27 NMSA 1978.

For human rights generally, see Chapter 28 NMSA 1978.

For veterans services, see 28-13-1 to 28-13-16 NMSA 1978.

For delinquent, abused and neglected children, see 32A-2-1 to 32A-2-32 and 32A-4-1 to 32A-4-33 NMSA 1978.

For adoption generally, see 32A-5-1 to 32A-5-45 NMSA 1978.

For Mandatory Medical Support Act, see 40-4C-1 NMSA 1978 et seq.

### **9-8-12. Cooperation with the federal government; authority of secretary; single state agency status.**

A. The department is authorized to cooperate with the federal government in the administration of human services programs in which financial or other participation by the federal government is authorized or mandated under federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement these human services programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state agency for the administration of any human services program when such designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. Whether or not a federal condition exists the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any human services program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

**History:** 1978 Comp., § 9-8-12, enacted by Laws 1977, ch. 252, § 13.

## ANNOTATIONS

**Transfer of personnel, appropriations, equipment, contracts, etc., and construction of references.** - Laws 1977, ch. 252, § 14, provides that all references in the law to the labor and industrial commission, the employment security commission, the committee on children and youth, the commission on aging and the veterans service



commission mean the employment services division and the social services division, respectively, of the human services department.

The department of human services no longer contains an employment services division. See 9-8-4 NMSA 1978. The functions formerly performed by the employment security bureau of the division are now performed by the employment security division of the labor department. See 9-18-4 NMSA 1978. The functions formerly performed by the labor and industrial bureau of such division are now performed by the labor and industrial commission. See 50-1-1 NMSA 1978. The veterans' service bureau of the social services division has been replaced by the veterans' service commission. See 28-13-2 NMSA 1978. For the aging services bureau of the social services divisions and the state agency on aging, see 28-4-1 to 28-4-9 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Actions under 42 USCS § 1983 for violations of Adoption Assistance and Child Welfare Act (42 USCS §§ 620 et seq. and 670 et seq.), 93 A.L.R. Fed. 314.

81A C.J.S. States § 28.

### **9-8-13. Authority to conduct social services.**

A. The social services division of the department has authority to:

(1) establish, administer and supervise child welfare activities and social services to children, including but not limited to:

(a) children placed for adoption;

(b) homeless, dependent and neglected children;

(c) children in foster family homes or institutions because of dependency or neglect; and

(d) children who because of physical or mental defect may need such services;

(2) establish, administer and supervise social services for adults;

(3) license foster homes; and

(4) prescribe such regulations as it deems necessary to enforce and comply with this section and the Child Placement Agency Licensing Act [40-7A-1 to 40-7A-8 NMSA 1978] and inspect and require reports from all private institutions, boarding homes, shelter care homes, group homes, foster homes and other facilities providing assistance, care or other direct services to children or aged, blind, disabled or other dependent persons.

B. Nothing contained in this section or in the Human Services Department Act [9-8-1 to 9-8-12 NMSA 1978] shall authorize the secretary:

(1) to establish or prescribe standards or regulations for, or otherwise regulate programs for or services to children in group homes excepting only:

(a) the right to inspect and require reports from group homes as may be reasonably necessary to carry out any functions that may otherwise be specifically granted the department by law; and

(b) the right to require annual reports from group homes stating the name, address and telephone number of: 1) their principal offices; 2) their residential facilities for the care of children; 3) the membership of their boards of directors or other governing bodies if any; and 4) the persons in charge of the group homes and of their residential facilities; or

(2) to accept any delegation from or to exercise, perform or participate in any functions or duties, including any investigations or inspections, of the department of health or of its secretary that relate to group homes.

As used in this subsection, "group home" includes any home the principal function of which is to care for a group of children on a twenty-four-hour-a-day residential basis and that receives no funds as such directly from or through the department and that is a member of any state or national association that requires it to observe standards comparable to pertinent recognized state or national group home standards for the care of children, such as the New Mexico christian child care association, the national association of homes for children or the council on accreditation or that is certified by any such organization as complying with such standards.

**History:** 1953 Comp., § 12-34-23, enacted by Laws 1977, ch. 252, § 15; 1981, ch. 171, § 9; 1987, ch. 31, § 1; 1992, ch. 57, § 17.

## ANNOTATIONS

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For responsibility of human services department concerning the abuse or neglect of individual children, see 9-8-14 NMSA 1978.

For public assistance generally, see Chapter 27 NMSA 1978.

For human rights generally, see Chapter 28 NMSA 1978.

For veterans services, see 28-13-1 to 28-13-16 NMSA 1978.

For delinquent, abused and neglected children, see 32A-2-1 to 32A-2-32 and 32A-4-1 to 32A-4-33 NMSA 1978.

For adoption generally, see 32A-5-1 to 32A-5-45 NMSA 1978.

For Mandatory Medical Support Act, see 40-4C-1 NMSA 1978 et seq.

**Repeals and reenactments.** - Laws 1977, ch. 252, § 15, repealed former 12-34-23, 1953 Comp., relating to the authority of the former health and social services department to conduct social services, and enacted a new 12-34-23. 1953 Comp. Former 12-34-23, 1953 Comp., was also repealed by Laws 1977, ch. 252, § 47.

**The 1992 amendment**, effective July 1, 1992, deleted former Subsection A(4), which read: "certify programs in the child care centers that receive funds from or through the human services department"; redesignated former Subsection A(5) as present Subsection A(4); deleted "child care centers" following "boarding homes" in Subsection A(4); substituted "department of health" for "health and environment department" in the first paragraph of Subsection B(2); and made minor stylistic changes throughout the section.

**Severability clauses.** - Laws 1992, ch. 57, § 57 provides for the severability of the act if any part or application thereof is held invalid.

**Dismissals from human services department** were in accordance with law and supported by substantial evidence, which included the failure to promptly report the alleged sexual abuse of a child to the proper authorities. *Perkins v. Department of Human Servs.* 106 N.M. 651, 748 P.2d 24 (Ct. App. 1987).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Communications to social worker as privileged, 50 A.L.R.3d 563.

Power of court or other public agency to order medical treatment for child over parental objections not based on religious grounds, 97 A.L.R.3d 421.

## **9-8-14. Responsibility; abuse or neglect.**

Nothing contained in Sections 9-8-13 or 27-1-3 NMSA 1978 shall affect the responsibility or authority of the human services department as set forth in the Children's Code concerning the abuse or neglect of individual children.

**History:** Laws 1987, ch. 31, § 4.

### **ANNOTATIONS**

**Children's Code.** - See 32A-1-1 NMSA 1978 and notes thereto.

## **ARTICLE 9 MILITARY AFFAIRS**

### **9-9-1. Short title.**

This act may be cited as the "Military Affairs Act".

**History:** 1978 Comp., § 9-9-1, enacted by Laws 1977, ch. 258, § 1.

#### **ANNOTATIONS**

**Meaning of "this act".** - The words "this act" refer to Laws 1977, ch. 258, which enacted this article and amended and added other provisions. For disposition of Laws 1977, ch. 258, in NMSA 1978, see the Table of Disposition of Acts in Volume 13.

### **9-9-2. Purpose.**

The purpose of the Military Affairs Act is to transfer to the adjutant general the administration of all laws and the exercise of all functions formerly exercised by the New Mexico department of civil air patrol.

**History:** 1978 Comp., § 9-9-2, enacted by Laws 1977, ch. 258, § 2.

#### **ANNOTATIONS**

**Cross references.** - For civil air patrol division, see 20-7-1, NMSA 1978.

**Military Affairs Act.** - See 9-9-1 NMSA 1978 and notes thereto.

### **9-9-3. Bureaus; chiefs.**

The adjutant general shall establish, within each division, such "bureaus" as he deems necessary to carry out the provisions of the Military Affairs Act. He shall employ a "chief" to be the administrative head of [any] such bureaus. The chief [chiefs] and all subsidiary employees of the emergency preparedness division of the office shall be covered by the Personnel Act.

**History:** 1978 Comp., § 9-9-3, enacted by Laws 1977, ch. 258, § 4.

#### **ANNOTATIONS**

**Cross references.** - For division of office of military affairs, see 12-10-3, 20-1-1 NMSA 1978.

For adjutant general as head of civil emergency preparedness division, see 12-10-3, 20-1-2 NMSA 1978.

**Military Affairs Act.** - See 9-9-1 NMSA 1978 and notes thereto.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

## **ARTICLE 10**

### **NATURAL RESOURCES DEPARTMENT**

(Repealed by Laws 1982, ch. 10, § 9; Laws 1987, ch. 234, § 84; Recompiled by Laws 1987, ch. 234, § 82.)

#### **9-10-1 to 9-10-9. Repealed.**

##### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 234, § 84 repeals 9-10-1 to 9-10-9 NMSA 1978, as enacted by Laws 1977, ch. 254, §§ 1, 5-9, and 110 and Laws 1985, ch. 143, § 1 and amended by Laws 1982, ch. 10, §§ 1, 2, relating to the natural resources department, effective July 1, 1987. For provisions of the former sections, see the 1983 Replacement Pamphlet and the 1986 Supplement. For present comparable provisions, see 9-5A-1 to 9-5A-7 NMSA 1978.

#### **9-10-10. Recompiled.**

##### **ANNOTATIONS**

**Recompilations.** - Laws 1987, ch. 234, § 82, effective July 1, 1987, recompiled the former 9-10-10 NMSA 1978 as 75-5-1 NMSA 1978; but since Laws 1987, ch. 192, had already enacted Article 5 of Chapter 75, the section has been compiled as 75-6-1 NMSA 1978.

#### **9-10-11. Repealed.**

##### **ANNOTATIONS**

**Repeals.** - Laws 1982, ch. 10, § 9, repeals 9-10-11 NMSA 1978, as enacted by Laws 1977, ch. 254, § 112, relating to the exemption of the interstate stream commission from the authority of the secretary of natural resources, effective July 1, 1982. For provisions of former section, see the 1980 Replacement Pamphlet.

## **ARTICLE 11**

### **TAXATION AND REVENUE DEPARTMENT**

#### **9-11-1. Short title.**

Chapter 9, Article 11 NMSA 1978 may be cited as the "Taxation and Revenue Department Act".

**History:** 1978 Comp., § 9-11-1, enacted by Laws 1977, ch. 249, § 1; 1986, ch. 20, § 121.

### **9-11-2. Definitions.**

As used in the Taxation and Revenue Department Act [this article]:

A. "department" means the taxation and revenue department created under the Taxation and Revenue Department Act; and

B. "secretary" means the secretary of taxation and revenue.

**History:** 1978 Comp., § 9-11-2, enacted by Laws 1977, ch. 249, § 2; 1995, ch. 31, § 1.

### **ANNOTATIONS**

**The 1995 amendment**, effective July 1, 1995, substituted "taxation and revenue" for "the department" in Subsection B.

### **9-11-3. Purpose.**

The purpose of the Taxation and Revenue Department Act [this article] is to establish a single, unified department to administer all laws and exercise all functions relating to taxation, revenue and vehicles charged to the department.

**History:** 1978 Comp., § 9-11-3, enacted by Laws 1977, ch. 249, § 3; 1987, ch. 268, § 2.

### **9-11-4. Department established.**

There is created in the executive branch the "taxation and revenue department". The department shall be a cabinet department and shall consist of, but not be limited to, an administrative services division and four program divisions as follows:

A. the audit and compliance division;

B. the property tax division;

C. the revenue processing division; and

D. the motor vehicle division.

**History:** 1978 Comp., § 9-11-4, enacted by Laws 1977, ch. 249, § 4; 1986, ch. 20, § 122; 1987, ch. 268, § 3; 1998 (1st S.S.), ch. 10, § 2.

## ANNOTATIONS

**Cross references.** - For taxation generally, see Chapter 7 NMSA 1978.

For tax administration, see 7-1-1 to 7-1-82 NMSA 1978.

For oil and gas taxation, see 7-29-1 to 7-34-9 NMSA 1978.

For property taxes, see 7-35-1 to 7-38-93 NMSA 1978.

For executive cabinet, see 9-1-3 NMSA 1978.

For motor transportation division of department of public safety, see 9-19-4 NMSA 1978.

For motor transportation and motor vehicle laws falling under jurisdiction of the Taxation and Revenue Department, see 65-1-1 to 66-8-140 NMSA 1978.

**The 1998 amendment**, effective July 1, 1998, deleted former Subsection E, which read: "the motor transportation division.", and made minor related and stylistic changes.

**Temporary provisions.** - Laws 1987, ch. 268, § 42, effective July 1, 1987, provides for the transfer of all personnel, records, equipment, money, supplies and other property including appropriations of the office of the secretary of transportation to the taxation and revenue department and all such property belonging to the transportation department except for the function of driver's improvement and motorcycle training, to the state highway and transportation department, further provides that all contracts and agreements of the transportation department relating to functions transfer shall be binding and effective and that all rules, regulations, orders and rulings of the office of the secretary of transportation shall remain in force.

Laws 1988, ch. 73, § 57A, effective July 1, 1988, provides that the taxation and revenue department shall administer the provisions of law changed by that act which were in effect immediately prior to July 1, 1988, as if they were still in full force and effect with respect to any transaction which occurred or should have occurred prior to July 1, 1988, and that "transaction" means any act or use that resulted in a tax or fee being due, preparation of any bill or assessment or collection action by the department.

Laws 1989, ch. 360, § 2, effective June 16, 1989, provides that the motor vehicle division of the taxation and revenue department shall report to the second session of the thirty-ninth legislature on higher educational institutions which have requested issuance of special collegiate registration plates, the number of such plates issued, the revenues received from registration plate fees and the costs of issuing the plates under 66-3-416 NMSA 1978.

Laws 1990 (2nd S.S.), ch. 2, § 148, effective January 1, 1991, provides that the taxation and revenue department is authorized to hire five additional full-time equivalents for the purposes of carrying out the provisions of the act.

**Appropriations.** - Laws 1989, ch. 327, § 9, effective July 1, 1989, appropriates \$25,000 from the proceeds of the Controlled Substance Tax to the taxation and revenue department for expenditure in the seventy-eighth fiscal year for the purpose of administering the Controlled Substance Tax Act [7-18A-1 to 7-18A-7 NMSA 1978] and further provides that any unexpended or unencumbered balance remaining at the end of the seventy-eighth fiscal year shall revert to the general fund.

Laws 1990, ch. 124, § 21, effective July 1, 1990, in Subsection A, appropriates \$15,000 from the petroleum storage cleanup fund to the taxation and revenue department for expenditure in the seventy-eighth and seventy-ninth fiscal years, and, in Subsection B, appropriates 1 FTE and \$25,000 from the corrective action fund to the taxation and revenue department for expenditure in the seventy-ninth fiscal year. Paragraph D of that section provides that any unencumbered balances of the appropriations made in Subsections A and B of that section remaining at the end of the seventy-ninth fiscal year shall revert to the corrective action fund.

Subsections C and D of Laws 1993, ch. 366, § 2, effective June 18, 1993, appropriate \$2,750,000 and \$824,800, respectively, from the computer systems enhancement fund to the taxation and revenue department for expenditure in the eighty-first and eighty-second fiscal years to further develop the taxation and revenue information management system, contingent upon the taxation and revenue department coordinating development of this system with the statewide court automation system with respect to motor vehicle records and databases, and to operate the ONGARD service center, provided that positions, furnishings and equipment may be transferred from the energy, minerals and natural resources department.

Laws 1993, ch. 366, § 4D, effective June 18, 1993, appropriates \$315,000 from the general fund to the audit and compliance division of the taxation and revenue department for expenditure in the eighty-second fiscal year to purchase an intelligent automated dialing and skip tracing system to further augment the revenue enhancement and administration program to generate at least an additional \$2,000,000 in the eighty-second fiscal year over and above the amount included in the February, 1993 revenue estimates. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1994, ch. 147, § 2E, effective March 9, 1994, appropriates \$2,500,000 from the computer systems enhancement fund to the taxation and revenue department for expenditure in the eighty-third fiscal year for non-recurring design, development and implementation costs for the taxation and revenue information management system.



Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

Laws 1994, ch. 147, § 2F, effective March 9, 1994, appropriates \$175,000 from the computer systems enhancement fund to the administrative services division of the department of taxation and revenue for expenditure in the eighty-third fiscal year for four term full-time equivalent positions devoted to development and implementation of the taxation and revenue information management system. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

Laws 1994, ch. 147, § 4Q, effective March 9, 1994, appropriates \$70,000 from the DWI program fund to the taxation and revenue department for expenditure in the eighty-second and eighty-third fiscal years for a permanent full-time hearing officer in the office of the secretary. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1998 (1st S.S.), ch. 10, § 12, effective July 1, 1998, appropriates \$1,200,000 from the general fund and \$2,070,000 from the state road fund to the department of public safety for expenditure in fiscal year 1999 to carry out the provisions of that act. Any unexpended or unencumbered balances remaining at the end of fiscal year 1999 shall revert to the general fund.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - What is a property tax as distinguished from excise, license and other taxes, 103 A.L.R. 18.

Rights, in absence of express statute, of one governmental unit, or officers thereof, to compensation for collecting or disbursing special taxes or assessments levied by or owed to another governmental unit, 114 A.L.R. 1098.

81A C.J.S. States § 133.

### **9-11-5. Secretary of taxation and revenue; appointment.**

A. The chief executive and administrative office of the department is the "secretary of taxation and revenue." The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** 1978 Comp., § 9-11-5, enacted by Laws 1977, ch. 249, § 6.

## **ANNOTATIONS**

**Cross references.** - For executive cabinet, see 9-1-3 NMSA 1978.

For exemption of secretary from Personnel Act, see 9-11-10 NMSA 1978.

For appointing and removal power of governor, see N.M. Const., art V, § 5.

### **9-11-6. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform these duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department or any director of any division of the department, except where authority conferred upon any director or division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Taxation and Revenue Department Act [this article], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) purchase or lease personal property, purchase services and lease real property for use by the department as the secretary deems necessary, subject to approval of state agencies if any is required;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as the secretary deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, a secretary may recommend appropriate legislation to the legislature for its approval.

E. The secretary may adopt an official seal for the use of the department or any of its divisions.

**History:** 1978 Comp., § 9-11-6, enacted by Laws 1977, ch. 249, § 7; 1978, ch. 147, § 1; 1987, ch. 268, § 4; 1995, ch. 31, § 2.

## ANNOTATIONS

**Cross references.** - For appointment of directors, see 9-11-8 NMSA 1978.

For applicability of Personnel Act to department employees, see 9-11-10 NMSA 1978.

For state budgets, see 6-3-1 to 6-3-22 NMSA 1978.

For public officers and employees generally, see Chapter 10 NMSA 1978.

**The 1995 amendment**, effective July 1, 1995, deleted provisions in Paragraph B(4) relating to reductions in staff by the secretary, deleted former Subsection E relating to adoption of procedural rules and regulations by the secretary, added Subsection E, and made minor stylistic changes throughout the section.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Tax Administration Act.** - See 7-1-1 NMSA 1978 and notes thereto.

**No responsibility by state records center to determine compliance of promulgated rules with hearing and notice requirements.** - See 1978 Op. Att'y Gen. No. 78-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 72 Am. Jur. 2d State and Local Taxation §§ 881 to 890.

Personal liability of public officer or sureties on his bond to property owner for failure to present or delay in presenting, checks given in payment of taxes, 77 A.L.R. 1034.

84 C.J.S. Taxation §§ 640 to 684.

### **9-11-6.1. Additional powers of secretary.**

In addition to the powers granted to the secretary in Section 9-11-6 NMSA 1978, the secretary is authorized to set, by regulation, after notification to the legislative finance committee, fees to cover the expense of providing additional services for the convenience of the public. Any fee for a service adopted under this section shall not be charged to or payable by any person not taking advantage of the service. Amounts collected pursuant to this section are appropriated to the department to defray the expense of providing the service.

**History:** 1978 Comp., § 9-11-6.1, enacted by Laws 1990, ch. 70, § 1.

### **9-11-6.2. Administrative regulations, rulings, instructions and orders; presumption of correctness.**

A. The secretary is empowered and directed to issue and file as required by law all regulations, rulings, instructions or orders necessary to implement and enforce any provision of any law the administration and enforcement of which the department, the secretary, any division of the department or any director of any division of the department is charged, including all rules and regulations necessary by reason of any

alteration of any such law. In order to accomplish its purpose, this provision is to be liberally construed.

B. Directives issued by the secretary shall be in form substantially as follows:

(1) regulations shall be written statements of the secretary of general application, interpreting and exemplifying the statutes [statutes] to which they relate;

(2) rulings shall be written statements of the secretary, of limited application to one or a small number of persons, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the consequences of a specified set of circumstances;

(3) orders shall be written statements of the secretary or a hearing officer or other delegate of the secretary to implement a decision after a hearing; and

(4) instructions shall be other written statements or directives of the secretary or secretary's delegate not dealing with the merits of any law but otherwise in aid of the accomplishment of the duties of the secretary.

C. To be effective, any ruling or regulation issued by the secretary shall be reviewed by the attorney general or other legal counsel of the department prior to being filed as required by law, and the fact of the review shall be indicated on the ruling or regulation.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the secretary. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested parties may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published at least thirty days prior to the hearing date in a [sic] the New Mexico register and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. After the proposed regulation has been on file for not less than sixty days and a public hearing on the proposed action has been held by the secretary or a hearing officer designated by the secretary, the secretary may issue it as a final regulation by signing the regulation and filing the regulation in the manner required by law. The secretary shall not delegate the authority to sign regulations.

E. In addition to filing copies of regulations with the state records center as required by law, the secretary shall maintain in the office of the secretary a duplicate official set of current and superseded regulations, a set of current and superseded rulings and such additional sets of those regulations and rulings as appear necessary, which duplicate or

additional sets shall be available for inspection by the public, but superseded regulations need be maintained for no longer than ten years from the date of supersession.

F. The secretary shall develop and maintain a file of names and addresses of individuals and professional and industry groups having an interest in the promulgation of new, revised or proposed regulations. At convenient times, the secretary shall distribute to these persons all such regulations and all pertinent rulings, making such charges as will defray the expense incurred in their physical preparation and mailing. Such charges are appropriated to the department to defray the costs of preparing and distributing regulations and rulings.

G. Any regulation, ruling, instruction or order issued by the secretary or order or instruction issued by a hearing officer or other delegate of the secretary is presumed to be a proper implementation of the provisions of the laws that are charged to the department, the secretary, any division of the department or any director of any division of the department.

H. The extent to which regulations, rulings and orders will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

**History:** Laws 1995, ch. 31, § 3.

## ANNOTATIONS

**Bracketed material.** - The bracketed material in Paragraph B(1) and Subsection D was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

**Effective dates.** - Laws 1995, ch. 31, § 8 makes the act effective on July 1, 1995.

**Cross references.** - For state records center, see 14-3-8 NMSA 1978.

For State Rules Act, see Chapter 14, Article 4 NMSA 1978.

**Director (now secretary) has authority to issue regulations interpreting and exemplifying statutes** concerning the possession of nontaxable transaction certificates and he also has such authority as may be fairly implied from the statutory authorization. *Rainbo Baking Co. v. Commissioner of Revenue*, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972)(decided under prior law).

**Presumption of validity overcome by showing regulation void.** - A showing of a void time requirement established by a regulation of the commissioner (now secretary) overcame the presumption of validity stated in former 7-1-5 NMSA 1978. *Rainbo Baking Co. v. Commissioner of Revenue*, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972)(decided under prior law).

**Director (now secretary) reversed for arbitrariness.** - Since the commissioner (now secretary), before arriving at a decision, did not consider all of the evidence presented at the hearing but only that pertaining to the "indicia" under G.R. Regulation 12.5:1, the court could not say that he would have reached the same conclusion had all of "the evidence presented and admitted" been considered as required by 7-1-24 NMSA 1978 and therefore held the ruling reversed for arbitrariness. *Eaton v. Bureau of Revenue*, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972) (decided under prior law).

**Director's (now secretary's) instructions to be in ordinary language.** - To aid in the accomplishment of his duties, instructions issued by the director (now secretary) to every resident individual upon whom an income tax is imposed should be in ordinary, everyday language understood by the man or woman on the street. *Davis v. New Mexico State Bureau of Revenue*, 95 N.M. 218, 620 P.2d 376 (Ct. App. 1980)(decided under prior law).

**Judicial review of rulings.** - The legislature has provided a comprehensive scheme for protesting department of revenue and county actions. In not providing more specifically for judicial review of a ruling, the legislative intent was that the ruling should be applied before it is reviewed, in the absence of some applicable exception. *Grand Lodge of Ancient & Accepted Masons v. Taxation & Revenue Dep't*, 106 N.M. 179, 740 P.2d 1163 (Ct. App. 1987)(decided under prior law).

**Director (now secretary) is a state officer.** *State ex rel. Bureau of Revenue v. MacPherson*, 79 N.M. 272, 442 P.2d 584 (1968), overruled on other grounds *New Mexico Livestock Bd. v. Dose*, 94 N.M. 68, 607 P.2d 606 (1980) (decided under prior law).

### **9-11-6.3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1999, ch. 176, § 2 repeals 9-11-6.3 NMSA 1978, as enacted by Laws 1995, ch. 31, § 4, relating to payment methods of any amount due the state under any law or program administered by the department, effective June 18, 1999. For provisions of former section, see 1998 Cumulative Supplement. For present comparable provisions, see 6-1-14 NMSA 1978.

### **9-11-6.4. Electronic filing.**

The department is authorized to require where practical, in lieu of the filing of paper documents, the filing by electronic or optical means of any return, application, report or other document required under any law or program administered by the department. The department, using reasonable criteria, may require some classes of persons to file electronically or optically while not so requiring others to file in that manner. The date of

filing shall be the date the return, application, report or other document is transmitted to the department in a form able to be processed.

**History:** Laws 1995, ch. 31, § 5.

### **ANNOTATIONS**

**Cross references.** - For electronic authentication and substitution for signature, see 14-3-15.2 NMSA 1978.

**Effective dates.** - Laws 1995, ch. 31, § 8 makes the act effective on July 1, 1995.

### **9-11-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 20, § 136A repeals 9-11-7 NMSA 1978, as enacted by Laws 1977, ch. 249, § 8, relating to exemption of certain subordinates' final decision-making authority from the authority of the secretary, effective July 1, 1986. For provisions of former section, see 1983 Replacement Pamphlet.

### **9-11-8. Division directors.**

Each division in the department, whether established by law or order of the secretary, shall be headed by a "director." Directors shall be appointed by the secretary with the approval of the governor.

**History:** 1978 Comp., § 9-11-8, enacted by Laws 1977, ch. 249, § 9.

### **ANNOTATIONS**

**Cross references.** - For exemption of directors from Personnel Act, see 9-11-6B(10), 9-11-10 NMSA 1978.

For appointment of directors, see 9-11-6B(10) NMSA 1978.

### **9-11-9. Bureaus as organizational units.**

The divisions of the department may have established within them organizational units to be known as "bureaus." Bureaus shall be headed by a "chief" appointed by the secretary.

**History:** 1978 Comp., § 9-11-9, enacted by Laws 1977, ch. 249, § 10.

### **9-11-10. Personnel Act coverage.**



All employment positions in the department, except for the positions of secretary and division director, are covered by and subject to the provisions of the Personnel Act. The secretary is the appointing authority.

**History:** 1978 Comp., § 9-11-10, enacted by Laws 1977, ch. 249, § 11.

## **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-11-11. Legal advisor.**

The attorney general is the legal advisor to the secretary, but the secretary may employ other counsel and, in so doing, shall consult the attorney general.

**History:** 1978 Comp., § 9-11-11, enacted by Laws 1977, ch. 249, § 13.

### **9-11-12. Cooperative agreements among jurisdictions.**

A. The secretary may enter into cooperative agreements with other states, the district [District] of Columbia or with any appropriate authority empowered to administer multistate cooperative agreements for the exchange of information, the reciprocal, joint or common enforcement and administration of revenue or transportation laws of the party jurisdictions or the reciprocal, joint or common collection, remittance and audit of revenues of the party jurisdictions.

B. Funds collected by the department on behalf of another jurisdiction in accordance with an agreement entered into pursuant to this section are not funds of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and regulations and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due other party jurisdictions and for the receipt of funds collected by other party jurisdictions for the account of this state under the terms of a cooperative agreement entered into under the authority of this section.

**History:** 1978 Comp., § 9-11-12, enacted by Laws 1988, ch. 24, § 1.

#### **9-11-12.1. Cooperative agreements with Santa Clara pueblo, Santa Ana pueblo and Laguna pueblo.**

A. The secretary may enter into cooperative agreements with Santa Clara pueblo, Santa Ana pueblo and Laguna pueblo for the exchange of information and the

reciprocal, joint or common enforcement, administration, collection, remittance and audit of gross receipts tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of the pueblo in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and regulations and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due the pueblo and for the receipt of money collected by the pueblo for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the pueblo, taxpayers or transactions that are subject only to the taxing authority of this state, and taxpayers or transactions that are subject to the taxing authority of both party jurisdictions.

D. Nothing in an agreement entered into pursuant to this section shall be construed as authorizing this state or the pueblo to tax persons or transactions that federal law prohibits that government from taxing, or as authorizing a state or pueblo court to assert jurisdiction over persons who are not otherwise subject to that court's jurisdiction or as affecting any issue of the respective civil or criminal jurisdictions of this state or the pueblo. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or the pueblo that the taxes of one have precedence over the taxes of the other when the person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other Indian nation, tribe or pueblo.

E. Nothing in an agreement entered into with Santa Clara pueblo pursuant to this section shall apply to a taxable transaction subject to the taxing authority of a municipality pursuant to a local option gross receipts tax act or distribution to a municipality from gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978, except that such agreement shall apply to such taxable transactions, and related distributions, reported from business locations on Santa Clara pueblo land annexed by a municipality after January 1, 1997.

**History:** 1978 Comp., § 9-11-12.1, enacted by Laws 1997, ch. 64, § 1; 1999, ch. 223, § 1.

## ANNOTATIONS

**Cross references.** - For credit on gross receipts tax paid to Santa Clara Pueblo, see 7-9-88 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, added "Santa Ana pueblo and Laguna pueblo" to the section heading, in Subsection A, substituted "Santa Clara pueblo, Santa Ana pueblo and Laguna pueblo for the exchange of information" for "Santa Clara pueblo and for the exchange of information"; in Subsections B, C, and D, substituted "the pueblo" for "Santa Clara pueblo"; in Subsection E, inserted "with Santa Clara pueblo" near the beginning.

**Effective dates.** - Laws 1997, ch. 64 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **9-11-13. Taxation and revenue department; additional duties.**

The taxation and revenue department shall develop and implement a program to conduct audits and related investigations with respect to royalties paid for oil and gas and other minerals produced from federal lands within New Mexico. Pursuant to the Federal Oil and Gas Royalty Management Act of 1982, the secretary of taxation and revenue shall petition the secretary of the United States department of the interior for a delegation of authority to conduct the audits and related investigations. After the delegation of authority is made, the secretary of taxation and revenue shall seek reimbursement from the United States department of the interior for all costs associated with any activities undertaken pursuant to the delegation.

**History:** Laws 1993, ch. 88, § 1.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 88, § 3 makes the act effective immediately. Approved March 31, 1993.

**Appropriations.** - Laws 1993, ch. 88, § 2, effective March 31, 1993, appropriates \$200,000 from the general fund to the taxation and revenue department for the eighty-first and eighty-second fiscal years for the purpose of carrying out the provisions of 9-11-13 NMSA 1978 and provides that any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

**Federal Oil and Gas Royalty Management Act of 1982.** - The Federal Oil and Gas Royalty Management Act of 1982, referred to in the first sentence, appears as 30 U.S.C. § 1701 et seq.

## **ARTICLES 12 TRANSPORTATION DEPARTMENT**

(Repealed by Laws 1985, ch. 49, § 1; Laws 1987, ch. 268, § 43.)

## **9-12-1 to 9-12-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1985, ch. 49, § 1 and Laws 1987, ch. 268, § 43 repeal 9-12-1 to 9-12-8 NMSA 1978, as enacted by Laws 1977, ch. 250, §§ 1 to 3, 5 to 8, and 10 concerning the transportation department, secretary of transportation, and school bus safety inspections. For provisions of former sections see 1983 Replacement Pamphlet. For present comparable provisions, see 9-11-4, 67-3-6 NMSA 1978.

## **ARTICLE 13 EMPLOYMENT SECURITY DEPARTMENT**

(Repealed by Laws 1987, ch. 342, § 34.)

## **9-13-1 to 9-13-7. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 342, § 34 repeals 9-13-1 to 9-13-7 NMSA 1978, as enacted by Laws 1979, ch. 280, §§ 3 to 9, relating to the employment security department, effective July 1, 1987. For provisions of former sections, see 1983 Replacement Pamphlet.

## **ARTICLE 14 EXECUTIVE PLANNING**

### **9-14-1. Short title.**

Sections 1 through 7 of this act [9-6-5.1, 9-14-1 to 9-14-3 NMSA 1978] may be cited as the "Executive Planning Act".

**History:** Laws 1983, ch. 296, § 1.

### **ANNOTATIONS**

**Compiler's notes.** - Sections 5 and 6 of the Executive Planning Act (Laws 1983, ch. 296, §§ 5 and 6) contained a repealing clause, which repealed 15-6-1 to 15-6-3 NMSA 1978, and a saving clause related to that repeal.

### **9-14-2. Purpose.**

The purpose of the Executive Planning Act [9-6-5.1, 9-14-1 to 9-14-3 NMSA 1978] is to achieve a coordinated and effective planning mechanism by which the executive branch will foster implementation of a comprehensive planning effort for the state of New Mexico through consolidation of the strategic planning effort for the state within the office of the chief executive, and through consolidation of the administrative aspects of state planning efforts within concerned executive agencies.

**History:** Laws 1983, ch. 296, § 2.

### **9-14-3. Governor's office of policy and planning created; powers and duties.**

There is created in the office of the governor and executive planning group, to be called the governor's office of policy and planning. Staff members of the governor's office of policy and planning shall be appointed by the governor, and shall be called governor's policy assistants. The governor's office of policy and planning shall provide overall plans for New Mexico state government in key areas such as, but not necessarily limited to, economic development, education, human and natural resources and energy. These plans will define and set forth ways to implement policies in order to achieve a cohesive direction in key areas. To design the overall plans the governor's office of policy and planning shall:

- A. focus primarily on issue identification, formulation, analysis and follow through in order to develop major policy statements and implementation strategies, thereby achieving a cohesive and effective direction for the state;
- B. define strategic issues where coordination of federal and state government resources is necessary in order to effectively determine and implement a coordinated and cohesive direction for state policy, and in order to ensure responsive and efficient state government.

To implement the overall plans and policies, the governor's office of policy and planning shall:

- A. prepare a governor's policy manual to define the focus of the overall state plans and policies;
- B. coordinate executive implementation of the plans and policies;
- C. prepare legislative proposals which would implement plans and policies;
- D. promote efficient inter-department coordination in the implementation and administration of the plans and policies;
- E. coordinate cabinet meeting to achieve a cohesive direction in the implementation of the plans and policies;

F. serve as staff to the governor's alternate to the southwest border regional association;

G. serve as staff to the governor's alternate to the council of four corners governors;

H. consider emergency preparedness needs in conjunction with the office of military affairs and provide, as necessary, staff to coordinate these needs;

I. conduct ongoing planning studies to identify and analyze emerging planning and policy issues requiring immediate attention, and conduct special planning and policy studies as requested by the governor.

**History:** Laws, 1983, ch. 296, § 3.

#### **9-14-4. Community development block grants.**

A. The community development block grant programs shall be administered by the local government division of the department of finance and administration.

B. The New Mexico community development council shall determine the recipients and amounts of community development block grant awards.

**History:** Laws 1984, ch. 5, § 1.

#### **ANNOTATIONS**

**Cross references.** - For the local government division of the department of finance and administration, see 6-6-2 NMSA 1978.

For New Mexico community development council, see 11-6-4 NMSA 1978.

**Repeals and reenactments.** - Laws 1984, ch. 5, § 1, repeals former 9-14-4 NMSA 1978, as enacted by Laws 1983, ch. 296, § 4, and enacts the above section. For provisions of former section, see 1983 Replacement Pamphlet.

## **ARTICLE 15 ECONOMIC DEVELOPMENT DEPARTMENT**

### **9-15-1. Short title.**

Sections 9-15-1 through 9-15-15 NMSA 1978 may be cited as the "Economic Development Department Act".

**History:** Laws 1983, ch. 297, § 1; 1988, ch. 81, § 1; 1991, ch. 21, § 9.

## ANNOTATIONS

**The 1991 amendment**, effective March 27, 1991, deleted " 'and Tourism' " following " 'Development' " .

**Compiler's notes.** - Laws 1983, ch. 297, § 16, concerning the creation, membership, and duties of the economic development and tourism oversight committee, was vetoed by the governor.

### **9-15-2. Findings and purpose.**

A. The legislature finds that a need exists for economic diversification in the state in order to protect against dramatic changes in the state's economy and to increase revenues to help state government finance the various services it provides to the state's communities and citizens.

B. The legislature further finds that the goal of economic development and diversification can best be accomplished by creating a cabinet-level department which will be concerned solely with the areas of economic development and diversification, business recruitment, expansion and retention.

C. The purpose of the Economic Development Department Act [9-15-1 to 9-15-15 NMSA 1978] is to create a cabinet-level department in order to:

(1) provide a coordinated statewide perspective with regard to economic development activities;

(2) provide a data base for local and regional economic development groups and serve as a comprehensive source of information and assistance to businesses wishing to locate or expand in New Mexico;

(3) actively encourage new economic enterprises to locate in New Mexico and assist existing businesses to expand;

(4) monitor the progress of state-supported economic development activities and prepare annual reports of such activities, their status and their impact;

(5) create and encourage methods designed to provide rapid economic diversification development that will create new employment opportunities for the citizens of the state, including the issuance of grants and loans to municipalities and counties for economic enhancement projects;

(6) provide for technology commercialization projects as an incentive to industry locating or expanding in the state;

(7) support technology transfer programs;

- (8) promote New Mexico as a technology conference center;
- (9) promote and market federal and state technology commercialization programs;
- (10) develop and implement enhanced statewide procurement programs; and
- (11) provide support and assistance in the creation and operation of development finance mechanisms such as business development corporations and the industrial and agricultural finance authorities in order to insure capital availability for business expansion and economic diversification.

**History:** Laws 1983, ch. 297, § 2; 1991, ch. 21, § 10.

### ANNOTATIONS

**The 1991 amendment**, effective March 27, 1991, in Subsection B, inserted "business recruitment, expansion" and substituted "retention" for "tourism promotion"; and, in Subsection C, deleted "and tourism" following "development" in four places, inserted "and loans" in Paragraph (5), substituted "technology commercialization" for "research and development" in Paragraph (6), rewrote Paragraph (7), which read "perform those functions previously exercised by the economic development division and board, the New Mexico magazine division and the tourism and travel division of the commerce and industry department", inserted present Paragraphs (8) to (10), redesignated former Paragraph (8) as present Paragraph (11) and substituted "and agricultural finance authorities" for "finance authority" in Paragraph (11).

### 9-15-3. Definitions.

As used in the Economic Development Department Act [9-15-1 to 9-15-15 NMSA 1978]:

- A. "commission" means the economic development commission;
- B. "department" means the economic development department; and
- C. "secretary" means the secretary of economic development.

**History:** Laws 1983, ch. 297, § 3; 1988, ch. 81, § 2; 1991, ch. 21, § 11; 1993, ch. 101, § 1.

### ANNOTATIONS

**The 1991 amendment**, effective March 27, 1991, deleted "and Tourism" following "Development" in the introductory language and "and tourism" following "development" in Subsections A and B; deleted former Subsections C, E and F, which defined "research and development", "technical excellence" and "technological innovation", respectively; redesignated former Subsection D as present Subsection C; and, in



Subsection C, substituted "the economic development department" for "economic development and tourism".

**The 1993 amendment**, effective June 18, 1993, deleted "and tourism" following "development" in Subsection A and, in Subsection C, deleted "department" following "development" and made a minor stylistic change.

#### **9-15-4. Department established.**

There is created in the executive branch the "economic development department". The department shall be a cabinet department and shall consist of, but not be limited to, six divisions as follows:

- A. the administrative services division;
- B. the economic development division;
- C. the New Mexico film division;
- D. the technology enterprise division;
- E. the trade division; and
- F. the office for space commercialization.

**History:** Laws 1983, ch. 297, § 4; 1988, ch. 80, § 6; 1991, ch. 21, § 12; 1994, ch. 127, § 7; 1995, ch. 77, § 1; 1998, ch. 63, § 1.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, deleted " 'and tourism' " following " 'development' " in the first sentence; substituted "seven" for "six" in the second sentence; deleted former Subsections D and E, listing the New Mexico film and New Mexico magazine divisions; added present Subsections D and F; redesignated former Subsection F as present Subsection E; and made a related stylistic change.

**The 1994 amendment**, effective March 8, 1994, added Subsection G and made related changes.

**The 1995 amendment**, effective April 5, 1995, in Subsection G, substituted "office for space commercialization" for "office of space".

**The 1998 amendment**, effective July 1, 1998, substituted "six" for "seven" in the introductory language; added "and" at the end of Subsection E; deleted former Subsection F relating to the state housing authority, and redesignated Subsection G as Subsection F.

**Appropriations.** - Laws 1990, ch. 2, § 1, effective February 6, 1990, appropriates \$200,000 from the general fund to the economic development and tourism department for the seventy-eighth and seventy-ninth fiscal years for promoting New Mexico products in Bloomingdales retail department store contingent upon the expenditure of no less than \$30,000 in matching funds from other sources and the expenditure of \$200,000 by Bloomingdales to promote New Mexico products and provides that any unexpended or unencumbered balance remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 4Q, effective June 18, 1993, appropriates \$36,000 from the general fund to the film division of the economic development department for expenditure in the eighty-second fiscal year to hire a film development representative II. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1994, ch. 147, § 6XXX, effective March 9, 1994, appropriates \$20,000 from the general fund to the film division of the economic development department for expenditure in the eighty-second and eighty-third fiscal years for one full-time equivalent position. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 7T, effective March 9, 1994, appropriates \$854,000 from the general fund to the economic development department for expenditure in the eighty-second and eighty-third fiscal years to provide matching funds for technology-based proposals submitted to the federal government and to plan and operate an Indian film festival in Santa Fe. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 148, § 49G, effective March 9, 1994, appropriates \$50,000 from the general fund to the economic development department for expenditure in the eighty-second and eighty-third fiscal years to acquire land and make site improvements and for funding a program that trains low-income families to build their own homes and homes for other low-income families in Taos county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1995, ch. 5, § 1, effective February 22, 1995, appropriates \$150,000 from the general fund to the tourism department in fiscal years 1995 and 1996 for conducting organizational and promotional activities associated with "America Japan Week 1995", a cultural exchange program occurring in Albuquerque, Santa Fe, Rio Rancho and Los Alamos in May and June of 1995, and provides that any unexpended or unencumbered balance remaining at the end of fiscal year 1996 shall revert to the general fund.

Laws 1995, ch. 222, § 43, effective April 7, 1995, appropriates \$100,000 from the general fund to the economic development department for fiscal years 1995 through 1999, for a wood pellet fuel manufacturing plant at Silver City.

Laws 1996, ch. 9, § 1, effective May 15, 1996, appropriates \$1,000,000 from the general fund to the economic development department for expenditure in fiscal year 1997 for the purpose of providing funding for several special projects to be conducted by the department.

Laws 1999, ch. 201, § 1A(1), effective April 6, 1999, appropriates \$160,000 from the general fund to the economic development department for expenditure in fiscal year 1999 and subsequent fiscal years to assist companies in rural areas in applying for and using in-plant training and other state development training resources.

### **9-15-5. Secretary of the economic development department; appointment.**

The chief executive and administrative officer of the department is the "secretary of economic development". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet; provided, however, that the secretary appointed to serve as the secretary of economic development and tourism and whose appointment has been confirmed by the senate may serve as the secretary of the economic development department at the pleasure of the governor and without further confirmation.

**History:** Laws 1983, ch. 297, § 5; 1991, ch. 21, § 13.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, substituted "the economic development department" for "economic development and tourism" in the catchline and the third sentence; deleted " 'and tourism'" at the end of the first sentence; and substituted "appointed to serve as the secretary of economic development and tourism" for "currently appointed to the commerce and industry department" in the third sentence.

### **9-15-6. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted

from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Economic Development Department Act [9-15-1 to 9-15-15 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide for courses of instruction and practical training for employees of the department and other persons involved in the administration of programs, with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department based upon the five-year economic development plan approved by the commission. The economic development plan shall be updated and approved annually by the commission;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;

(10) appoint a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary, unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1983, ch. 297, § 6; 1988, ch. 81, § 3; 1991, ch. 21, § 14; 1993, ch. 101, § 2.

## ANNOTATIONS

**Cross references.** - For Border Development Act, see 58-27-1 NMSA 1978 et seq.

**The 1991 amendment,** effective March 27, 1991, in Subsection B, deleted "and Tourism" following "Department" in Paragraph (1), deleted "or actions" following "action" in Paragraph (5) and, in Paragraph (8), inserted "and tourism" in the first sentence and added the second sentence.

**The 1993 amendment,** effective June 18, 1993, deleted "and tourism" following both occurrences of "economic development" in Subsection B(8).

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Classified personnel retain status upon transfer to successor department.** - If classified personnel of the former commerce and industry department are transferred to the new economic development and tourism department, the personnel retain the same classified status and position that they held in the former department and are within the coverage of the Personnel Act if a classified position is to become exempt from the provisions of the Personnel Act, then it must first become vacant. 1983 Op. Att'y Gen. No. 83-3 (rendered prior to 1991 amendment).

### **9-15-7. Secretary; additional duties.**

In addition to the secretary's responsibility for the overall supervision of the department's operation in support of the purposes of the Economic Development Department Act [9-15-1 to 9-15-15 NMSA 1978], the secretary shall:

- A. work with and provide staff support to the commission in formulating and implementing the state's five-year economic development plan;
- B. advise the commission of proposed rules, regulations, projects and contractual arrangements;
- C. enter into contracts with state, federal or private entities, apply for and accept any state, federal or private funds or grants for such projects and accept similar donations and bequests from any source;
- D. maintain and update records on the status of all completed and ongoing projects of the department;
- E. develop, maintain and provide economic and demographic information; and
- F. perform such other duties as requested by the commission in order to further the purposes of the Economic Development Department Act.

**History:** Laws 1983, ch. 297, § 7; 1988, ch. 81, § 4; 1991, ch. 21, § 15; 1993, ch. 101, § 3.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, deleted "and Tourism" following "Development" in the introductory paragraph and in Subsection F and, in Subsection A, substituted "the state's five-year" for "short-and long-term statewide" and "plan" for "programs".

**The 1993 amendment**, effective June 18, 1993, deleted "and tourism" following "development" in Subsection A.

### **9-15-7.1. Additional planning duties of secretary.**

The secretary, in addition to other duties, shall serve as lead agency in coordination of the census program at the state data center.

**History:** Laws 1983, ch. 296, § 21; 1991, ch. 21, § 16; 1998, ch. 63, § 2.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, substituted "the economic development" for "commerce and industry" in the catchline and for "the commerce and industry" in the introductory paragraph.

**The 1998 amendment**, effective July 1, 1998, deleted "of the economic development department" from the section heading and rewrote this section to the extent that a detailed comparison is impracticable.

### **9-15-8, 9-15-9. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1988, ch. 81, § 13 repeals 9-15-8 and 9-15-9 NMSA 1978, as enacted by Laws 1983, ch. 297, §§ 8, 9, relating to establishment of bureaus within each division, and exemption from the Personnel Act, effective May 18, 1988. For provisions of former sections, see 1987 Replacement Pamphlet.

### **9-15-10. Organizational units of department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-15-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law. Any information obtained by the department that is proprietary technical information or related to the possible relocation or expansion of a business shall be deemed confidential and withheld from inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

**History:** Laws 1983, ch. 297, § 10; 1991, ch. 21, § 17; 1997, ch. 169, § 1.

#### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, substituted "9-15-6 NMSA 1978" for "6 of the Economic Development and Tourism Department Act" at the end of the second sentence.

**The 1997 amendment** added the last sentence. Laws 1997, ch. 169 does not contain an effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **9-15-11. Economic development commission created; membership; administratively attached to the department.**

A. The "economic development commission" is created. The commission shall be a planning commission administratively attached to the department. The commission shall provide advice to the department on policy matters. The commission shall be responsible for the annual approval and update of the state's five-year economic development plan. The commission shall consist of nine members who shall be qualified electors of the state, no more than five of whom at the time of their appointment shall be members of the same political party and at least one of whom shall be a Native American. Members shall be appointed by the governor and confirmed by the senate. Seven members shall be appointed from their respective planning districts, the eighth member shall be a Native American and represent the interests of the Indian tribes and pueblos and the ninth member shall represent the public at large.

B. Appointments shall be made for five-year terms expiring on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointment. Annually, the governor shall designate a chairman of the commission from among the members.

C. The commission shall meet at the call of the chairman, not less than once each quarter, and shall invite representatives of appropriate legislative committees, other state agencies and interested persons to its meetings for the purpose of information exchange and coordination.

D. Commission members shall not vote by proxy. A majority of the members constitutes a quorum for the conduct of business.

E. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office; provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given the member being removed. The senate shall be given exclusive original jurisdiction over proceedings to remove members of the commission under such rules as it may promulgate. The senate's decision in connection with such matters shall be final. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.



F. Commission members shall not be paid, but shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1978 Comp., § 9-15-11, enacted by Laws 1988, ch. 81, § 5; 1991, ch. 21, § 18; 1993, ch. 101, § 4; 1997, ch. 172, § 1.

## ANNOTATIONS

**Repeals and reenactments.** - Laws 1988, ch. 81, § 5 repealed former 9-15-11 NMSA 1978, as amended by Laws 1987, ch. 112, § 1, and enacted a new 9-15-11 NMSA 1978, effective May 18, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

**The 1991 amendment,** effective March 27, 1991, in Subsection A, inserted "economic development department and the tourism" in the second sentence, substituted "state's" for "department's" in the fourth sentence, "nine members" for "seven members" and "five of whom" for "four of whom" in the fifth sentence and "Two members" for "A seventh member" at the beginning of the eighth sentence and added the last two sentences; and, in Subsection E, substituted "commission" for "board" in the third sentence and for "committee" in the last sentence.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, deleted "and tourism" following "economic development" in the first and fourth sentences, deleted "and the tourism department" following "department" in the second sentence, substituted "seven" for "nine" and "four" for "five" in the fifth sentence, deleted the former seventh sentence, which read "Two members shall be appointed from the state at large", substituted "seventh" for "ninth" in the eighth sentence, and added the last sentence; and, in Subsection E, in the third sentence, deleted "state" preceding "senate" and deleted "of New Mexico" following "senate."

**The 1997 amendment,** in Subsection A, substituted "nine members" for "seven members" and "five of whom" for "four of whom" in the fourth sentence, deleted three sentences relating to the appointment of two members from each of the three congressional districts and the appointment and duties of the governor's science advisor, added the last sentence, and made stylistic changes; and substituted "five-year terms" for "seven-year terms" in the first sentence of Subsection B. Laws 1997, ch. 172 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **9-15-12. Commission; powers and duties.**

The commission shall:

A. develop and recommend policies and provide policy and program guidance for the department;

B. review, modify and approve annual updates to the state's five-year economic development plan generated by the department;

C. advise, assist and promote the department on matters relating to technology, technology-based new business development and technology commercialization projects;

D. review federal technology-based programs requiring state matching funds and authorize any expenditure or pledge of the state match fund for such programs; and

E. establish such rules and regulations for its own operations as are necessary to achieve the purposes of the Economic Development Department Act [9-15-1 to 9-15-15 NMSA 1978]. Rules and regulations of the commission shall be adopted in the same procedural manner as rules and regulations of the department are adopted and shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1983, ch. 297, § 12; 1988, ch. 81, § 6; 1991, ch. 21, § 19; 1993, ch. 101, § 5; 1994, ch. 113, § 1.

## ANNOTATIONS

**Cross references.** - For state match fund, see 9-15-19.1 NMSA 1978.

**The 1991 amendment,** effective March 27, 1991, inserted "economic development department and the tourism" in Subsection A; deleted former Subsection B, which read "assist and promote research and development projects in the state"; redesignated former Subsection C as present Subsection B and inserted "state's" therein; inserted present Subsection C; and, in Subsection D, deleted "and Tourism" following "Development" and added "and the Tourism Department Act" in the first sentence and substituted "departments" for "department" in the second sentence.

**The 1993 amendment,** effective June 18, 1993, deleted "and the tourism department" following "department" at the end of Subsection A, deleted "and tourism" following "development" in Subsection B, and, in Subsection D, deleted "and the Tourism Department Act" following "Act" at the end of the first sentence and made a minor stylistic change in the second sentence.

**The 1994 amendment,** effective May 18, 1994, deleted "economic development" preceding "department" in Subsection A; added "and" at the end of Subsection C; added present Subsection D; and redesignated former Subsection D as present Subsection E.

**Appropriations.** - Laws 1994, ch. 147, § 7T(1), effective March 9, 1994, appropriates \$800,000 from the general fund to the economic development department for expenditure in the eighty-second and eighty-third fiscal years to provide matching funds for technology-based proposals submitted to the federal government. Any unexpended

or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

### **9-15-12.1 to 9-15-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1991, ch. 21, § 46 repeals 9-15-12.1, 9-15-12.2, 9-15-13 NMSA 1978, as enacted by Laws 1988, ch. 81, §§ 7 and 8 and as amended by Laws 1988, ch. 81, § 9, relating to creation of the business development board, tourism board, and science and technology commercialization commission, respectively, effective March 27, 1991. For provisions of former sections, see 1989 Replacement Pamphlet.

Laws 1991, ch. 230, § 1 also repeals 9-15-12.1 and 9-15-12.2 NMSA 1978, effective June 14, 1991.

### **9-15-14. Administrative services division; duties.**

A. The administrative services division of the department shall provide administrative services to the department, including:

- (1) keeping all official records of the department;
- (2) providing personnel administration, financial management, procurement and budget preparation services; and
- (3) providing clerical, record-keeping and administrative support to agencies administratively attached to the department.

B. The division shall, in addition to its other duties, administer programs and grants that have been assigned generally to the department by the governor or the commission or by statute.

**History:** Laws 1983, ch. 297, § 14; 1988, ch. 81, § 10; 1991, ch. 21, § 20; 1995, ch. 163, § 1.

#### **ANNOTATIONS**

**The 1991 amendment,** effective March 27, 1991, added Subsection C.

**The 1995 amendment,** effective July 1, 1995, deleted Subsection C and made a minor stylistic change in Subsection B.

**Temporary provisions.** - Laws 1991, ch. 21, § 45B, effective March 27, 1991, provides that between March 27 and July 1, 1991, the accounting and financial control functions of the tourism department shall continue to be performed by the administrative services

division of the economic development department; provided, however, that the division shall provide for separate reporting of accounts and finances between the two departments and shall provide necessary administrative services related to the tourism department at the direction of the secretary of tourism.

Laws 1995, ch. 163, § 3, effective July 1, 1995, provides that thirty percent of all appropriations and a portion of the personnel, property, and assets of the administrative services division of the economic development department shall be transferred to the tourism department.

**Appropriations.** - Laws 1994, ch. 147, § 2P, effective March 9, 1994, appropriates \$300,000 from the computer systems enhancement fund to the administrative services division of the economic development department for expenditure in the eighty-second and eighty-third fiscal years for data processing equipment, professional services and supplies in accordance with the approved eighty-third fiscal year information systems plan. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the computer systems enhancement fund.

### **9-15-15. Department cooperation with local and regional development agencies.**

The department shall cooperate with local and regional development agencies, including:

- A. coordinating activities of the department and local or regional development agencies;
- B. assisting in gathering information on local and regional assets;
- C. assisting in the establishment of procedures for handling potential clients;
- D. assisting in the development of a plan for the expansion of the local or regional economic base;
- E. assisting in the establishment of programs to attract new labor forces or training local labor forces; and
- F. identifying barriers to local or regional economic development and developing plans to overcome such barriers.

**History:** Laws 1983, ch. 297, § 15.

### **ANNOTATIONS**

**Cross references.** - For the Local Economic Development Act, see Chapter 5, Article 10 NMSA 1978.

## **9-15-16. Technology enterprise division created.**

The "technology enterprise division" is created as a division of the economic development department. The division shall:

A. enhance the business climate to encourage the start-up, relocation, development and growth of technology-based industry in New Mexico;

B. promote an expanded, diversified technology-based economy, emphasizing areas that:

(1) derive from the state's technological strengths;

(2) provide a commercial advantage;

(3) lend themselves to a distributed technology-based industry network; and

(4) utilize imaginative state, federal and private partnerships; and

C. attain sufficient levels of human, financial and physical resources to support in-state industries and attract new industries to New Mexico.

**History:** 1978 Comp., § 9-15-16, enacted by Laws 1991, ch. 21, § 21.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1991, ch. 21, § 21 repeals former 9-15-16 NMSA 1978, as amended by Laws 1988, ch. 88, § 11, relating to short title of the Research and Development Act, and enacts the above section, effective March 27, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

**Temporary provisions.** - Laws 1991, ch. 21, § 44, effective March 27, 1991, provides that on March 27, 1991, all contracts, projects, powers and duties, personnel, appropriations, money, records property, equipment and supplies in possession of the New Mexico research and development institute are transferred to the technology enterprise division of the economic development department provided all existing contracts and agreements entered into by the institute are continued in effect and shall be binding on the division and further provides that any transfer of federal funds, grants or contracts is contingent upon federal law and regulation.

**Appropriations.** - Laws 1994, ch. 147, § 6WWW, effective March 9, 1994, appropriates \$300,000 from the general fund to the technology enterprise division of the economic development department for expenditure in the eighty-second and eighty-third fiscal years for the office of space. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

## **9-15-17. Director; duties.**

The director of the technology enterprise division is responsible for the overall supervision of the division in accordance with the provisions of Section 9-15-16 NMSA 1978. In addition, the director shall:

A. formulate and submit to the commission a five-year state technology development plan;

B. develop and be responsible for the operating and capital budgets of the division;

C. develop agreements with federal research, development, testing and evaluating organizations and universities to facilitate the transfer and commercialization of technology;

D. recommend to the secretary proposed projects and contracts in accordance with the policies, procedures and guidelines established by the department;

E. subject to the approval of the secretary, apply for and accept any federal funds or grants and private donations;

F. develop requests for proposals in technology commercialization areas given priority by the commission in the state's economic development and tourism plan; receive and refer with commentary to the secretary proposals submitted in response to requests for proposals; confer with research investigators to assist them when needed; monitor progress on state-funded research and development projects; maintain contact with research and development offices of the universities, federal laboratories and private research operations; and receive reports of individual projects;

G. prepare an annual report on:

(1) the status of the technology enterprise division;

(2) the status of ongoing research and development projects;

(3) the results obtained from completed projects and the dissemination of those results;  
and

(4) other activities of the division;

H. maintain and update records on the status of all completed and ongoing projects;

I. request from each entity under contract with the division a detailed description of tasks and associated budgets for review and approval by the commission; and

J. perform such other duties as are assigned to him by the secretary in order to further the purposes of Section 9-15-17 NMSA 1978.

**History:** 1978 Comp., § 9-15-17, enacted by Laws 1991, ch. 21, § 22.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1991, ch. 21, § 22 repeals former 9-15-17 NMSA 1978, as amended by Laws 1987, ch. 161, § 2, relating to findings and purpose of the Research and Development Act, and enacts the above section, effective March 27, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

### **9-15-18. Proprietary information.**

A. Any information obtained by the technology enterprise division that is deemed by the director to be proprietary technical or business information shall be held in confidence. Proprietary technical or business information shall not be deemed a public record under the Public Records Act [Chapter 14, Article 3 NMSA 1978] or be open to inspection under Section 14-2-1 NMSA 1978. The technology enterprise division shall take such steps as are necessary to safeguard the confidentiality of the information.

B. Notwithstanding Sections 10-15-1 through 10-15-4 NMSA 1978 or any other law requiring meetings of public bodies to be open to the public, meetings of the commission shall be closed when proprietary technical or business information is discussed.

**History:** 1978 Comp., § 9-15-18, enacted by Laws 1991, ch. 21, § 23.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1991, ch. 21, § 23 repeals former 9-15-18 NMSA 1978, as amended by Laws 1988, ch. 81, § 12, relating to definitions in the Research and Development Act, and enacts the above section, effective March 27, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

### **9-15-19. Technology enterprise fund created.**

There is created in the state treasury the "technology enterprise fund". No money appropriated to this fund or accruing to it through cooperative research and technology transfer agreements, gifts, grants or bequests shall be transferred to another fund or encumbered or disbursed in any manner except for activities conducted pursuant to Sections 9-15-16 through 9-15-19 NMSA 1978. The fund shall not revert at the end of a fiscal year. Money appropriated to the research and development fund is appropriated to the technology enterprise fund provided any existing agreement to be paid from funds appropriated to the research and development fund shall be paid from the technology enterprise fund. Disbursements from the fund shall be made only upon warrant drawn

by the secretary of finance and administration pursuant to vouchers signed by the secretary or his designee for the purpose of paying the cost of activities conducted pursuant to Sections 9-15-16 through 9-15-19 NMSA 1978.

**History:** 1978 Comp., § 9-15-19, enacted by Laws 1991, ch. 21, § 24.

## **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1991, ch. 21, § 24 repeals former 9-15-19 NMSA 1978, as enacted by Laws 1986, ch. 38, § 4, relating to creation of New Mexico research and development institute, and enacts the above section, effective March 27, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

**Temporary provisions.** - Laws 1991, ch. 21, § 44, effective March 27, 1991, provides that, on March 27, 1991, any unexpended funds remaining in, or appropriated to, the research and development fund, the technical excellence center fund and the technological innovation center fund are transferred and appropriated to the technology enterprise fund, provided contracts entered into prior to March 27, 1991 that are to be paid from such funds shall be paid out of the technology enterprise fund and provides further that any transfer of federal funds, grants or contracts is contingent upon federal law and regulation.

### **9-15-19.1. State match fund created.**

A. The "state match fund" is created in the state treasury. Money in the fund is appropriated to the economic development department for the purpose of providing a pool of matching funds for technology-based proposals submitted to the federal government on behalf of the state. Money in the fund shall only be expended upon review and approval of the economic development commission.

B. No money in the fund appropriated to it or accruing to it in any manner shall be transferred to another fund or encumbered or dispersed in any manner except for the purposes set forth in this section; provided, money in the fund may be invested by the state treasurer in the manner provided for other state funds. Money in the fund shall revert at the end of the fiscal year.

C. Disbursements from the fund shall only be made upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or his designee.

**History:** 1978 Comp., § 9-15-19.1, enacted by Laws 1994, ch. 113, § 2.

## **ANNOTATIONS**

**Effective dates.** - Laws 1994, ch. 113 contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1994, 90 days after adjournment of



the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Appropriations.** - Laws 1994, ch. 147, § 7T(1), effective March 9, 1994, appropriates \$800,000 from the general fund to the economic development department for expenditure in the eighty-second and eighty-third fiscal years to provide matching funds for technology-based proposals submitted to the federal government. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

### **9-15-20. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 101, § 12 repeals 9-15-20 NMSA 1978, as amended by Laws 1987, ch. 161, § 3, relating to duties of the economic development and tourism commission, effective June 18, 1993. For provisions of former section, see 1991 Replacement Pamphlet.

### **9-15-21 to 9-15-27. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1991, ch. 21, § 46 repeals 9-15-21 to 9-15-27 NMSA 1978, as enacted by Laws 1986, ch. 38, §§ 6, 9 and 10, Laws 1987, ch. 161, § 5, Laws 1988, ch. 80, § 1 and as amended by Laws 1987, ch. 161, § 4, and Laws 1989, ch. 324, § 3, relating to technical advisory committee, duties of director, research and development fund, proprietary information, exemption from the Personnel Act, contractual relationships with existing entities, and short title of the New Mexico Trade Promotion Act, respectively, effective March 27, 1991. For provisions of former sections, see 1989 Replacement Pamphlet.

### **9-15-28. Findings and purpose.**

A. The legislature finds that the sale of New Mexico products and services to consumers outside New Mexico will enhance the general welfare of the state by expanding business enterprise and creating a stronger and healthier economy.

B. The legislature finds that a need exists for a coordination center within state government to promote New Mexico products and services.

C. The legislature finds that a need exists for a central registry of New Mexico businesses desiring to market their products and services outside the state and that a need exists to disseminate public information about New Mexico products and services.

D. The legislature finds that a need exists for the state to obtain and use funding and resources from organizations and individuals outside of state government, to identify opportunities for marketing New Mexico products and services to those outside the state and to coordinate and facilitate the promotion of New Mexico products and services.

E. The "trade division" of the economic development department is created to promote New Mexico products and services.

**History:** Laws 1988, ch. 80, § 2; 1991, ch. 21, § 25.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, rewrote Subsection E, which read "The purpose of the New Mexico Trade Promotion Act is to foster economic development within New Mexico by creating a 'trade division' of the economic development and tourism department to promote New Mexico products and services".

### **9-15-29. Definitions.**

As used in Sections 9-15-28 through 9-15-34 NMSA 1978:

A. "department" means the economic development department;

B. "director" means the director of the trade division of the economic development department; and

C. "secretary" means the secretary of the economic development department.

**History:** Laws 1988, ch. 80, § 3; 1991, ch. 21, § 26.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, substituted "Sections 9-15-28 through 9-15-34 NMSA 1978" for "the New Mexico Trade Promotion Act" in the introductory paragraph; deleted "and tourism" following "development" in Subsections A and B; and substituted "the economic development department" for "economic development and tourism" in Subsection C.

### **9-15-30. Trade division created; duties.**

A. The "trade division" is created as a division of the department.

B. The division shall promote New Mexico products and services. The division is created to:

- (1) promote New Mexico products and services to potential domestic and international consumers;
- (2) establish a central registry for New Mexico products and services;
- (3) develop, maintain and use a data base of potential domestic and international consumers of New Mexico products and services; and
- (4) foster, coordinate and support the efforts of individuals and organizations involved in the promotion of New Mexico products and services to consumers.

**History:** Laws 1988, ch. 80, § 4.

### **9-15-31. Director; duties.**

The director is responsible for the overall supervision of the division's activities in accordance with the purposes of Sections 9-15-28 through 9-15-34 NMSA 1978. In addition, the director shall:

- A. work with individuals and organizations outside of state government to formulate a trade promotion plan for inclusion in the department's five-year economic development and tourism plan;
- B. establish and annually update the New Mexico trade registry of New Mexico businesses and the products and services they offer to consumers;
- C. develop and maintain a data base of trade opportunities;
- D. work with individuals and organizations outside of state government to promote New Mexico trade; and
- E. prepare an annual report on the activities of the division.

**History:** Laws 1988, ch. 80, § 5; 1991, ch. 21, § 27.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, substituted "Sections 9-15-28 through 9-15-34 NMSA 1978" for "the New Mexico Trade Promotion Act" in the first sentence and deleted "five-year" before "trade promotion plan" in Subsection A.

### **9-15-32. Office established.**

There is established the "office of enterprise development" in the economic development department.

**History:** Laws 1989, ch. 205, § 1; 1991, ch. 21, § 28.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, deleted "and tourism" following "development".

#### **9-15-33. Purpose.**

The purpose of the office of enterprise development shall be to provide information and assistance to businesses wishing to relocate to New Mexico or to expand within New Mexico by providing a centralized information service and assistance center.

**History:** Laws 1989, ch. 205, § 2.

#### **9-15-34. Duties of the department.**

A. The economic development department shall establish the office of enterprise development. Within the office of enterprise development, the department shall:

(1) develop and maintain a comprehensive statewide business information data base and referral service;

(2) establish a mechanism for advertising the existence of the office and its referral service;

(3) provide professional assistance and information regarding licensing, permitting and taxation procedures; and

(4) establish a reporting procedure to monitor the success of the referral service.

B. The department shall develop a budget and hire a staff to operate the office of enterprise development.

**History:** Laws 1989, ch. 205, § 3; 1991, ch. 21, § 29.

### **ANNOTATIONS**

**The 1991 amendment**, effective March 27, 1991, deleted "and tourism" following "development" in the first sentence in Subsection A.

#### **9-15-35. Program created; purposes.**

A. The "New Mexico artisans business development program" is created within the economic development and tourism department to promote, in conjunction with the arts division of the office of cultural affairs, the New Mexico artisans industry by establishing

a greater demand for New Mexico artisans' wares and by providing technical and marketing assistance to New Mexico artisans.

B. The purposes of the program shall include, but not be limited to, the following:

- (1) establishment of a not-for-profit organization to carry out the objectives of the New Mexico artisans business development program;
- (2) educational workshops and seminars in cooperation with the small business development centers for artisans to assist the centers in the development of their businesses and marketing of their wares;
- (3) an assessment of a full range of marketing strategies for artisan wares and relating those wares to target markets;
- (4) production of a promotional brochure of New Mexico artisans and their products;
- (5) development and publishing of a marketing catalog of New Mexico artisans;
- (6) establishment of a network of state and national distribution points and gift and trade shows for the promotion and export of New Mexico artisans' wares;
- (7) development of a state and national marketing and exhibitions calendar;
- (8) participation in state and national promotional shows by New Mexico artisans; and
- (9) development of a marketing network with private-sector distributors, catalog producers and retailers.

**History:** Laws 1991, ch. 27, § 1.

### **9-15-36. Fund created.**

There is created in the state treasury the "New Mexico artisans business development fund". The fund shall consist of money appropriated to the fund by the legislature and any other revenues directed to the fund, such as gifts, donations and grants. The fund shall be administered by the economic development and tourism department and expenditures may be made from the fund upon vouchers signed by the secretary of economic development and tourism and warrants issued by the secretary of finance and administration for the purposes of the New Mexico artisans business development program. Interest earned on balances in the fund shall be credited to the fund.

**History:** Laws 1991, ch. 27, § 2.

### **9-15-37. Short title.**

Sections 1 through 5 [9-15-37 to 9-15-41 NMSA 1978] of this act may be cited as the "Defense Conversion and Technology Act".

**History:** Enacted by Laws 1993, ch. 211, § 1 and by Laws 1993, ch. 216, § 1.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 211, § 6 makes the act effective immediately. Approved April 5, 1993.

Laws 1993, ch. 216, § 7 makes the act effective immediately. Approved April 5, 1993.

**Duplicate law.** - Laws 1993, ch. 211, § 1 and Laws 1993, ch. 216, § 1 enact identical new sections of law. Both have been compiled as 9-15-37 NMSA 1978.

### **9-15-38. Purpose.**

The purpose of the Defense Conversion and Technology Act [9-15-37 to 9-15-41 NMSA 1978] is to designate the economic development department as the lead agency to promote defense conversion technology, coordinate the transfer of defense technology and other technology from federal, state and local government facilities to private sector industries and promote private-public partnership and business development programs.

**History:** Enacted by Laws 1993, ch. 211, § 2 and by Laws 1993, ch. 216, § 2.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 211, § 6 makes the act effective immediately. Approved April 5, 1993.

Laws 1993, ch. 216, § 7 makes the act effective immediately. Approved April 5, 1993.

**Duplicate law.** - Laws 1993, ch. 211, § 2 and Laws 1993, ch. 216, § 2 enact identical new sections of law. Both have been compiled as 9-15-38 NMSA 1978.

### **9-15-39. Definitions.**

As used in the Defense Conversion and Technology Act [9-15-37 to 9-15-41 NMSA 1978]:

A. "commission" means the economic development and tourism commission or any successor commission created in Chapter 9, Article 15 NMSA 1978 to provide program and policy guidance to the department; and

B. "department" means the economic development department.

**History:** Enacted by Laws 1993, ch. 211, § 3 and by Laws 1993, ch. 216, § 3.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 211, § 6 makes the act effective immediately. Approved April 5, 1993.

Laws 1993, ch. 216, § 7 makes the act effective immediately. Approved April 5, 1993.

**Duplicate law.** - Laws 1993, ch. 211, § 3 and Laws 1993, ch. 216, § 3 enact identical new sections of law. Both have been compiled as 9-15-39 NMSA 1978.

#### **9-15-40. Designation as the lead state agency.**

The department is designated as the lead state agency to coordinate or accept federal and state funds appropriated for conversion of defense technologies and to coordinate technology transfer in accordance with the state's technology development plan.

**History:** Enacted by Laws 1993, ch. 211, § 4 and by Laws 1993, ch. 216, § 4.

#### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 211, § 6 makes the act effective immediately. Approved April 5, 1993.

Laws 1993, ch. 216, § 7 makes the act effective immediately. Approved April 5, 1993.

**Duplicate law.** - Laws 1993, ch. 211, § 4 and Laws 1993, ch. 216, § 4 enact identical new sections of law. Both have been compiled as 9-15-40 NMSA 1978.

#### **9-15-41. Defense conversion; department duties.**

A. The department shall coordinate all defense conversion and technology transfer activities of the state. The department is authorized to contract with the appropriate partnership intermediaries to assist in the coordination of defense conversion duties.

B. The department shall:

(1) oversee the activities of the manufacturing productivity center and manufacturing extension programs;

(2) coordinate the activities of small business incubators to encourage the development and viability of technology spin-off companies in the private sector;

(3) coordinate appropriate divisions in the department to provide technology export assistance;

(4) coordinate small business development and assistance programs for new and existing businesses;

(5) work with appropriate entities to identify sources of funding for capital expenditure programs and initial venture programs;

(6) coordinate the development of regional technology clusters; and

(7) provide support and coordination assistance as deemed necessary by the commission and the secretary of the department to assist the state in developing defense conversion industries.

**History:** Enacted by Laws 1993, ch. 211, § 5 and by Laws 1993, ch. 216, § 5.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1993, ch. 211, § 6 makes the act effective immediately. Approved April 5, 1993.

Laws 1993, ch. 216, § 7 makes the act effective immediately. Approved April 5, 1993.

**Appropriations.** - Laws 1993, ch. 216, § 6, effective April 5, 1993, as amended by Laws 1994, ch. 114, § 1, effective May 18, 1994, appropriates \$1,000,000 to the economic development department for expenditure in the eighty-first through eighty-fourth fiscal years for the purpose of carrying out the provisions of the Defense Conversion and Technology Act, and provides that any unexpended or unencumbered balance remaining at the end of the eighty-fourth fiscal year shall revert to the operating reserve.

**Duplicate law.** - Laws 1993, ch. 211, § 5 and Laws 1993, ch. 216, § 5 enact identical new sections of law. Both have been compiled as 9-15-41 NMSA 1978.

### **9-15-42. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1997, ch. 91, § 5 repeals 9-15-42 NMSA 1978, as enacted by Laws 1994, ch. 127, § 1, providing the short title. For provisions of former section, see 1994 Replacement Pamphlet. Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **9-15-43. Definitions.**

As used in Sections 9-15-43 through 9-15-47 NMSA 1978:



- A. "commission" means the space commission;
- B. "director" means the director of the space commercialization division;
- C. "division" means the space commercialization division;
- D. "secretary" means the secretary of economic development;
- E. "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level; and
- F. "spaceport" means an installation and related facilities used for the launching, landing, recovery, servicing and monitoring of vehicles capable of entering or returning from space.

**History:** Laws 1994, ch. 127, § 2; 1995, ch. 77, § 2; 1997, ch. 91, § 1.

### **ANNOTATIONS**

**The 1995 amendment**, effective April 5, 1995, in Subsection C, substituted "office for space commercialization" for "office of space", and in Subsection E, substituted "launching" for "takeoff" and "recovery" for "retrieval", and inserted "or returning from".

**The 1997 amendment** rewrote this section to such an extent that a detailed comparison would be impracticable. Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment dates of Sessions of Legislature" table.

**Emergency clauses.** - Laws 1994, ch. 127, § 8 makes the act effective immediately. Approved March 8, 1994.

### **9-15-44. Space commercialization division created; duties of director.**

- A. The "space commercialization division" is created as a division in the economic development department.
- B. The duties of the division shall be discharged by a director, who shall be hired by the secretary.
- C. The director shall:
  - (1) employ such other staff as is necessary to carry out the work of the division and the commission and the purposes of Sections 9-15-43 through 9-15-47 NMSA 1978;

- (2) discharge the responsibilities of the division in accordance with the policies established and approved by the secretary;
- (3) administer federally funded grants for the purpose of determining the feasibility of developing and operating a regional spaceport and other space development-related activities in the state;
- (4) manage all aspects of the spaceport program;
- (5) coordinate the promotion and marketing of space-related resources of New Mexico and a regional spaceport;
- (6) serve as the interface between New Mexico and national and international users of the regional spaceport;
- (7) schedule user mission support with other elements of the regional spaceport;
- (8) develop a comprehensive inventory of New Mexico's space-related assets;
- (9) cooperate with the commission in performing tasks necessary to establish the criteria for overflight; and
- (10) support the commission in executing the tasks approved by the secretary.

**History:** Laws 1994, ch. 127, § 3; 1995, ch. 77, § 3; 1997, ch. 91, § 2.

### ANNOTATIONS

**The 1995 amendment**, effective April 5, 1995, in the section heading added "duties of director", in the section heading and throughout the section, substituted "office for space commercialization" for "office of space", in Subsection B, deleted "in consultation with the commission" from the end, and rewrote Subsection C.

**The 1997 amendment** substituted "space commercialization division" for "office for space commercialization" in the section heading and in Subsection A; in Subsection A, inserted "economic development"; substituted "division" for "office for space commercialization" in Subsection B and in Paragraphs C(1) and C(2); and, in Subsection C, substituted "Sections 9-15-43 through 9-15-47 NMSA 1978" for "the Spaceport Development Act" in Paragraph (1) and added "and other space development activities in the state" at the end of Paragraph (3). Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Emergency clauses.** - Laws 1994, ch. 127, § 8 makes the act effective immediately. Approved March 8, 1994.

**Appropriations.** - Section 4 of Laws 1994, ch. 6, the General Appropriations Act of 1994, effective February 11, 1994, appropriates \$225,000 and three full-time equivalent positions to the technology enterprise division of the economic development department for the office of space.

Laws 1994, ch. 147, § 6WWW, effective March 9, 1994, appropriates \$300,000 from the general fund to the technology enterprise division of the economic development department for expenditure in the eighty-second and eighty-third fiscal years for the office of space. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1998 (1st S.S.), ch. 11, § 1 and ch. 13, § 1, effective May 11, 1998, appropriate \$8,600,000 from the general fund operating reserve to the space commercialization division of the economic development department for expenditure in fiscal year 1999 or in any succeeding fiscal year to provide matching funds not to exceed ten percent of the costs of designing and constructing roads, runways and other infrastructure for a spaceport site contingent upon receipt of the remaining funds for such design and construction from private or federal sources, and upon selection of New Mexico for development of a spaceport site for reusable aerospace launch vehicles. The disbursement of any amount of the appropriation is contingent upon certification by the secretary of finance and administration and notification of the legislative finance committee that the disbursement represents not more than ten percent of the proposed expenditure; that a matching amount of private or federal funds equal to at least ninety percent of the proposed expenditure is available within twelve months of the disbursement; and that the contracts for the proposed design or construction are pending and can be executed upon receipt of the money. Any unexpended or unencumbered balance remaining from this appropriation on July 1, 2005, shall remain in the general fund operating reserve.

Laws 1999, ch. 264, § 1, effective March 10, 1999, appropriates \$1,810,000 from the general fund operating reserve to the space commercialization division of the economic development department for expenditure in fiscal years 1999 through 2001 for the purpose of developing the southwest regional spaceport to conduct environmental impact studies, obtain water resources and develop a proposal in response to Lockheed Martin's site selection process; provides that expenditure of these funds is contingent upon the state receiving a written commitment from Lockheed Martin that New Mexico is one of three finalists in the competition for site selection; and further provides that any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall remain in the general fund operating reserve.

### **9-15-45. Commission created; membership.**

A. The "space commission" is created. The commission is administratively attached to the department.

B. The commission is composed of up to eleven voting members. Three members shall be ex officio and all others shall be appointed by the governor. The ex-officio members are the secretary, the governor's science adviser and the lieutenant governor. In selecting the appointed members of the commission, the governor shall appoint at least three members knowledgeable of government and commercial space activities. One member shall be a resident of Sierra county, one member shall be a representative of a federal space development project in the state and one member shall be a representative of one of the state's national laboratories.

C. Appointed members of the commission shall serve for terms of three years; provided, when making his initial appointments, the governor shall appoint one member to a term of one year, two members to terms of two years and two members to terms of three years.

D. The governor shall appoint a chairman of the commission from among the appointed members. Other necessary officers shall be elected by the commission from among its membership.

E. Commission members shall meet at the call of the chairman, not less than four times a year. Meetings shall be conducted in different geographic locations in the state on an alternating basis.

F. Members of the commission appointed by the governor shall be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall not receive any other compensation, perquisite or allowance.

**History:** Laws 1994, ch. 127, § 4; 1995, ch. 77, § 4; 1997, ch. 91, § 3.

## ANNOTATIONS

**Cross references.** - For aerospace gross receipts tax deduction, see 7-9-54.1 NMSA 1978.

**The 1995 amendment**, effective April 5, 1995, in Subsection B, substituted "eleven" for "thirteen" in the first sentence, substituted "four" for "six" in the second sentence, deleted "of economic development" following the first "secretary" in the third sentence, substituted "three" for "two", deleted "representative or" following "members", and inserted "commercial" preceding "space" in the fourth sentence, and substituted the last sentence for "The governor of the states of Texas, Colorado, Arizona, and Chihuahua, Mexico can respectively appoint one member each when it is agreed that those states will contribute to operation of the spaceport".

**The 1997 amendment**, in Subsection A, substituted "space commission" for "spaceport commission"; in Subsection B, substituted "all others" for "four" in the second sentence, "governor's science adviser" for "secretary of finance and administration" in the third sentence, and "knowledgeable of government and commercial space activities" for

"knowledgeable of the commercial space industry" in the next-to-last sentence, and, in the last sentence, added the language beginning with the second occurrence of "one member shall" to the end of the sentence; in Subsection C, substituted "two members" for "three members"; in Subsection E, added the second sentence; and, in Subsection F, deleted "of the state of New Mexico" following "by the governor". Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Emergency clauses.** - Laws 1994, ch. 127, § 8 makes the act effective immediately. Approved March 8, 1994.

### **9-15-46. Commission; powers; duties.**

The commission shall:

A. in cooperation with the division, promote the development of a spaceport and other space development-related activities in the state;

B. advise the secretary on methods for soliciting and accepting, on behalf of the state, federal, state, local and private funds for the purpose of developing, constructing, maintaining and operating a regional spaceport and other space development-related projects;

C. act in an advisory capacity to the secretary on matters that pertain to the development and operation of space development-related projects;

D. advise the secretary on methods for providing for the development, construction and acceptance of a regional spaceport; and

E. report annually to the governor and the legislature on the status of the space development-related activities and projects undertaken by the commission.

**History:** Laws 1994, ch. 127, § 5; 1995, ch. 77, § 5; 1997, ch. 91, § 4.

### **ANNOTATIONS**

**The 1995 amendment**, effective April 5, 1995, rewrote Subsection A, deleted former Subsections B and C relating to a regional spaceport and advising the secretary on the hiring of a director of the office of space, rewrote and redesignated former Subsection D as Subsection B, deleted Subsection E, added Subsections C and D, and redesignated former Subsection F as Subsection E.

**The 1997 amendment** rewrote Subsection A; added "and other space development-related projects" at the end of Subsection B; substituted "space development-related projects" for "the regional spaceport" at the end of Subsection C; and substituted "space

development-related" for "regional spaceport and other space-related" in Subsection E. Laws 1997, ch. 91 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Emergency clauses.** - Laws 1994, ch. 127, § 8 makes the act effective immediately. Approved March 8, 1994.

### **9-15-47. Additional powers of the commission.**

The commission may undertake additional specific activities related to monitoring the development, construction, operation and maintenance of the regional spaceport, including:

A. assisting the secretary in defining fees, rents, tolls and charges for the use of a regional spaceport facility or its related services;

B. as directed by the secretary, participating in the acquisition of real and personal property in the name of the state for the purpose of establishing a regional spaceport or space-related facility;

C. as directed by the secretary, initiating environmental, transportation, communication or technical studies necessary or advisable to the establishment of a regional spaceport; and

D. assisting the director in negotiating agreements for the overflight or recovery of space vehicles, rockets, missiles, payloads, boosters, scientific experiments or other space-related materials, debris or parts.

**History:** Laws 1994, ch. 127, § 6; 1995, ch. 77, § 6.

#### **ANNOTATIONS**

**The 1995 amendment**, effective April 5, 1995, in the first paragraph, deleted "also" following "may", inserted "monitoring" and substituted "the regional spaceport" for "a regional spaceport"; in Subsection A, substituted "assisting the secretary in defining" for "imposing"; in Subsection B, substituted "as directed by the secretary, participating in the acquisition of" for "acquire"; in Subsection C, substituted "as directed by the secretary, initiating" for "perform or cause to be performed", and deleted "land use" following "communication"; in Subsection D, substituted "assisting" for "assist"; and deleted former Subsection E relating to financing a regional spaceport.

**Emergency clauses.** - Laws 1994, ch. 127, § 8 makes the act effective immediately. Approved March 8, 1994.

# ARTICLE 15A

## TOURISM DEPARTMENT ACT

### 9-15A-1. Short title.

Chapter 9, Article 15A NMSA 1978 may be cited as the "Tourism Department Act".

**History:** Laws 1991, ch. 21, § 1; 1993, ch. 101, § 6.

#### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, substituted "Chapter 9, Article 15A NMSA 1978" for "Sections 1 through 7 of this act".

### 9-15A-2. Definitions.

As used in the Tourism Department Act [this article]:

- A. "commission" means the tourism commission;
- B. "department" means the tourism department; and
- C. "secretary" means the secretary of tourism.

**History:** Laws 1991, ch. 21, § 2; 1993, ch. 101, § 7.

#### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, deleted "economic development and" preceding "tourism" in Subsection A.

### 9-15A-3. Department established.

There is created in the executive branch the "tourism department". The department shall be a cabinet department and shall consist of, but not be limited to, three divisions as follows:

- A. the travel and marketing division;
- B. the New Mexico magazine division; and
- C. the administrative services division.

**History:** Laws 1991, ch. 21, § 3; 1995, ch. 163, § 2.

## ANNOTATIONS

**The 1995 amendment**, effective July 1, 1995, substituted "three" for "two" preceding "division" in the introductory language, added Subsection C, and made minor stylistic changes in Subsections A and B.

**Temporary provisions.** - Laws 1991, ch. 21, § 44, effective March 27, 1991, provides that on March 27, 1991, all contracts, projects, powers and duties, personnel, appropriations, money, records, property, equipment and supplies of the welcome centers, the New Mexico magazine and the tourism and travel division of the economic development and tourism department are transferred to the tourism department and provides further that any transfer of federal funds, grants or contracts is contingent upon federal law and regulation.

Laws 1995, ch. 163, § 3, effective July 1, 1995, provides that thirty percent of all appropriations and a portion of the personnel, property, and assets of the administrative services division of the economic development department shall be transferred to the tourism department.

Laws 1996 (1st S.S.), ch. 7, § 1, effective July 1, 1996, provides that all personnel, money, appropriations, records, property, equipment and supplies belonging to the intertribal Indian ceremonial association are transferred to the tourism department for the purpose of promoting the annual intertribal Indian ceremonial and preserving traditional rites and ceremonials of Indian tribes and pueblos.

**Appropriations.** - Laws 1994, ch. 147, § 6TTT, effective March 9, 1994, appropriates \$10,000 from the general fund to the tourism department for expenditure in the eighty-third fiscal year for continuing support for the four corners heritage council for heritage tourism development and cultural resource preservation. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6UUU, effective March 9, 1994, appropriates \$25,000 from the general fund to the travel and marketing division of the tourism department for expenditure in the eighty-second and eighty-third fiscal years for promotion and development of the museum of the horse at Ruidoso Downs in Lincoln county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6VVV, effective March 9, 1994, appropriates \$45,000 from the general fund to the tourism department for expenditure in the eighty-second through eighty-fifth fiscal years for constructing and equipping a tourist welcome facility in Raton located in Colfax county. Any unexpended or unencumbered balance remaining at the end of the eighty-fifth fiscal year shall revert to the general fund.



Laws 1994, ch. 147, § 7S, effective March 9, 1994, appropriates \$25,000 from the general fund to the tourism department for expenditure in the eighty-second and eighty-third fiscal years to provide funding for the Velarde apple festival. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1995, ch. 222, § 41, effective April 7, 1995, appropriates \$50,000 from the general fund to the tourism department for fiscal years 1995 through 1999, for the Clayton welcome center in Union county and the Raton welcome center in Colfax county.

Laws 1996, ch. 9, § 2, effective May 15, 1996, appropriates \$1,100,000 from the general fund to the tourism department for expenditure in fiscal year 1997 for the purpose of implementing special marketing plans for the state.

Laws 1996 (1st S.S.), ch. 7, § 1, effective July 1, 1996, appropriates \$345,000 from the subsequent injury fund to the tourism department for expenditure in fiscal years 1997 and 1998 to contract with an association in Gallup for the promotion and operation of the annual intertribal Indian ceremonial and related activities for the preservation and promotion of traditional rites and ceremonials of Indian tribes and pueblos.

#### **9-15A-4. Purpose.**

The purpose of the Tourism Department Act [this article] is to create a cabinet-level department in order to:

- A. provide a coordinated statewide perspective with regard to tourism activities;
- B. provide a data base for local and regional tourism groups and serve as a comprehensive source of information and assistance to tourism-related businesses wishing to locate, expand or do business in New Mexico; and
- C. monitor the progress of state-supported tourism activities and prepare annual reports of such activities, their status and their impact.

**History:** Laws 1991, ch. 21, § 4.

#### **9-15A-5. Secretary of tourism; appointment.**

The chief executive and administrative officer of the department is the "secretary of tourism". The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet.

**History:** Laws 1991, ch. 21, § 5.

#### **9-15A-6. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Tourism Department Act [this article], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide for courses of instruction and practical training for employees of the department and other persons involved in the administration of programs, with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department based upon the five-year tourism plan approved by the commission. This plan shall be updated and approved annually by the commission;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance;

(10) appoint a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors each to give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1991, ch. 21, § 6; 1993, ch. 101, § 8.

## **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, in Subsection B, deleted "or actions" following "administrative action" in Paragraph (5), deleted "economic development and"

following "five-year" in Paragraph (8), and deleted "tourism" preceding "department" in Paragraph (9)(c).

**Temporary provisions.** - Laws 1991, ch. 21, § 45A, effective March 27, 1991, provides that on March 27, 1991, the secretary of tourism shall have all the powers and duties provided for in the Tourism Department Act, including the authority to negotiate and enter into any contract or agreement.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-15A-7. Secretary; additional duties.**

In addition to the secretary's responsibility for the overall supervision of the department's operation in support of the purposes of the Tourism Department Act [this article], the secretary shall:

- A. work with and provide staff support to the commission in formulating and implementing the state's five-year tourism plan;
- B. advise the commission of proposed rules, regulations, projects and contractual arrangements;
- C. enter into contracts with state, federal or private entities, apply for and accept any state, federal or private funds or grants for such projects and accept similar donations and bequests from any source;
- D. maintain and update records on the status of all completed and ongoing projects of the department; and
- E. perform such other duties as requested by the commission in order to further the purposes of the Tourism Department Act.

**History:** Laws 1991, ch. 21, § 7; 1993, ch. 101, § 9.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, deleted "economic development and" preceding "tourism" in Subsection A.

### **9-15A-7.1. Secretary; additional duties; promotion of Indian arts, crafts and culture.**

In addition to the secretary's responsibility for the overall supervision of the department, the secretary shall:

- A. encourage the preservation and development of Indian arts and crafts among the Indian tribes and pueblos of the state;
- B. encourage the preservation of traditional rites and ceremonials of Indian tribes and pueblos to increase knowledge and appreciation of those arts, crafts, rites and ceremonials; and
- C. promote the intertribal Indian ceremonial association, incorporated, located in Gallup.

**History:** Laws 1996, ch. 25, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1996, ch. 25, § 6 makes the act effective on July 1, 1996.

#### **9-15A-8. Tourism commission created; membership; administratively attached to the department.**

A. The "tourism commission" is created. The commission shall be a planning commission administratively attached to the department. The commission shall provide advice to the department on policy matters. The commission shall be responsible for the annual approval and update of the state's five-year tourism plan. The commission shall consist of seven members who shall be qualified electors of the state of New Mexico, no more than four of whom, at the time of their appointment, shall be members of the same political party and at least one of whom shall be a Native American. Members shall be appointed by the governor and confirmed by the senate. Two members shall be appointed from each of the three congressional districts. One member shall be appointed from the state at large.

B. Appointments shall be made for seven-year terms expiring on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointment. Annually, the governor shall designate a chairman of the commission from among the members.

C. The commission shall meet at the call of the chairman, not less than once each quarter, and shall invite representatives of appropriate legislative committees, other state agencies and interested persons to its meetings for the purpose of information exchange and coordination.

D. Commission members shall not vote by proxy. A majority of the members constitutes a quorum for the conduct of business.

E. Members of the commission shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given the member being removed. The senate shall be given exclusive original jurisdiction over

proceedings to remove members of the commission under such rules as it may promulgate. The senate's decision in connection with such matters shall be final. A vacancy in the membership of the commission occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

F. Commission members shall not be paid, but shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1978 Comp., § 9-15A-8, enacted by Laws 1993, ch. 101, § 10.

### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 101 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **9-15A-9. Commission; powers and duties.**

The commission shall:

A. develop and recommend policies and provide policy and program guidance for the department;

B. review, modify and approve annual updates to the state's five-year tourism plan generated by the department; and

C. establish such rules and regulations for its own operations as are necessary to achieve the purposes of the Tourism Department Act [this article]. Rules and regulations of the commission shall be adopted in the same procedural manner as rules and regulations of the department are adopted and shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1978 Comp., § 9-15A-9, enacted by Laws 1993, ch. 101, § 11.

### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 101 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

## **ARTICLE 16**

## **REGULATION AND LICENSING DEPARTMENT**

### **9-16-1. Short title.**

Section 7 through 29 [9-16-1 to 9-16-13 NMSA 1978] of this act may be cited as the "Regulation and Licensing Department Act".

**History:** Laws 1983, ch. 297, § 17.

### **9-16-2. Purpose.**

The purpose of the Regulation and Licensing Department Act [9-16-1 to 9-16-13 NMSA 1978] is to create a single, unified department to administer all laws and exercise all functions formerly administered and exercised by the financial institutions division, the construction industries division and the mobile housing division of the commerce and industry department.

**History:** Laws 1983, ch. 297, § 18.

## **ANNOTATIONS**

**Compiler's notes.** - Laws 1983, ch. 297, § 33, abolishes the commerce and industry department.

### **9-16-3. Definitions.**

As used in the Regulation and Licensing Department Act [9-16-1 to 9-16-13 NMSA 1978]:

- A. "department" means the regulation and licensing department; and
- B. "superintendent" means the superintendent of regulation and licensing.

**History:** Laws 1983, ch. 297, § 19.

### **9-16-4. Department established.**

There is created in the executive branch the "regulation and licensing department". The department shall not be a cabinet department. The department shall consist of but not be limited to five divisions as follows:

- A. the administrative services division;
- B. the construction industries division;
- C. the financial institutions division;

D. the securities division; and

E. the manufactured housing division.

**History:** Laws 1983, ch. 297, § 20; 1985, ch. 173, § 1; 1988, ch. 102, § 1.

## **ANNOTATIONS**

**Cross references.** - For financial institutions and regulations and securities generally, see Chapter 58 NMSA 1978.

For construction industries licensing, see 60-13-1 NMSA 1978 et seq.

For manufactured housing, see 60-14-1 NMSA 1978 et seq.

**Temporary provisions.** - Laws 1997, ch. 181, § 10, effective July 1, 1997, provides that the balance remaining in the journeymen testing revolving fund on June 30, 1997, is appropriated to the construction industries division of the regulation and licensing department for expenditure in fiscal years 1998, 1999, and 2000 and that any unexpended or unencumbered balance remaining at the end of fiscal year 2000 shall revert to the general fund.

### **9-16-5. Superintendent of regulation and licensing; appointment.**

The chief executive and administrative officer of the department is the "superintendent of regulation and licensing." The superintendent shall be appointed by the governor and hold office at the pleasure of the governor.

**History:** Laws 1983, ch. 297, § 21.

### **9-16-6. Superintendent; duties and general powers.**

A. The superintendent is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the superintendent has every power expressly enumerated in the laws, whether granted to the superintendent or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the superintendent's authority by statute. In accordance with these provisions, the superintendent shall:

(1) except as otherwise provided in the Regulation and Licensing Department Act [9-16-1 to 9-16-13 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;



(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for whose administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs, with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the superintendent;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The superintendent may apply for an receive, with the governor's approval, in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. The superintendent may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the superintendent, unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the superintendent or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1983, ch. 297, § 22.

## ANNOTATIONS

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Department to provide administrative services.** - The legislature created the regulation and licensing department to provide general administrative and ministerial services with respect to licensing various autonomous state boards and commissions, including the board of veterinary examiners. Neither the provisions of this article nor any rules and regulations that are promulgated pursuant thereto supersede the specific statutory powers and duties that the legislature has given to those boards and commissions. 1987 Op. Att'y Gen. No. 87-58.

### **9-16-7. Division directors.**

The superintendent shall appoint, with the approval of the governor, "directors" of the divisions established within the department. The positions so appointed are exempt from the Personnel Act.

**History:** Laws 1983, ch. 297, § 23.

#### **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

#### **9-16-8. Bureaus; chiefs.**

The superintendent shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Regulation and Licensing Department Act [9-16-1 to 9-16-13 NMSA 1978]. He shall appoint a "chief" to be the administrative head of any such bureau. The positions so appointed may be exempted from the Personnel Act by action of the superintendent, except for the construction industries division trade bureaus created pursuant to Section 60-13-31 NMSA 1978. The chiefs of those bureaus shall be covered positions under the Personnel Act.

**History:** Laws 1983, ch. 297, § 24; 1997, ch. 181, § 1.

#### **ANNOTATIONS**

**The 1997 amendment**, effective July 1, 1997, rewrote the third sentence which read "The positions so appointed are exempt from the Personnel Act" and added the last sentence.

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

**Classified employees retain status upon transfer to successor department.** - If classified personnel of the former commerce and industry department are transferred to the new, supplanting regulation and licensing department, the personnel retain the same classified status and position that they held in the former department and are within the coverage of the Personnel Act, 10-9-1 NMSA 1978 et seq.; if a classified position is to become exempt from the provisions of the Personnel Act, then it must first become vacant. 1983 Op. Att'y Gen. No. 83-3.

#### **9-16-9. Administrative services division; duties.**

A. The administrative services division of the department shall provide administrative services to the department, including:

- (1) keeping all official records of the department;
- (2) providing clerical services in the areas of personnel and budget preparation; and
- (3) providing clerical, record-keeping and administrative support to agencies administratively attached to the department.

B. The division shall, in addition to its other duties, coordinate long and short-term planning of the department and administer programs and grants which have been assigned generally to the department by the governor or by statute.

**History:** Laws 1983, ch. 297, § 25.

### **9-16-10. Organizational units of department; powers and duties specified by law; access to information.**

Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the superintendent, and he shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 22 [9-16-6 NMSA 1978] of this act. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

**History:** Laws 1983, ch. 297, § 26.

### **9-16-11. Director of financial institutions division; securities division; exemptions from authority of superintendent.**

The responsibilities of the director of the financial institutions division, the director of the securities division and those of the chief of the savings and loan bureau under Sections 58-1-20 through 58-1-22, 58-1-25, 58-1-26, 58-1-28, 58-1-29, 58-1-34, 58-1-38, 58-1-46, 58-1-48, 58-1-54 through 58-1-58, 58-1-61, 58-1-62, 58-1-64, 58-1-65, 58-1-69, 58-1-72 through 58-1-75, 58-1-85, 58-2-5, 58-4-3, 58-4-4, 58-4-7, 58-4-9, 58-4-11, 58-5-2, 58-5-3, 58-7-9, 58-9-7 through 58-9-10, 58-10-11 through 58-10-14, 58-10-16, 58-10-17, 58-10-28, 58-10-32, 58-10-35, 58-10-46, 58-10-53, 58-10-72, 58-10-73, 58-10-76, 58-10-77, 58-10-79 through 58-10-85, 58-10-87, 58-10-92, 58-10-94, 58-10-97, 58-10-101, 58-11-3, 58-11-5, 58-11-6, 58-11-8, 58-11-24, 58-11-26, 58-11-32, 58-12-3, Subsection C of Section 58-12-4, 58-12-7, 58-12-8, 58-12-13, 58-15-5, 58-15-8 through 58-15-13, 58-15-18, 58-15-25, 58-20-1, 61-18-5, 61-18-6, 61-18-16, 61-18-19, 61-18-22, 61-18-33, 61-18-34, 61-18-41, 61-18-46, 61-18-47, 61-18-49, 61-18-50, 61-18-52, 61-18-53 and 61-18-57 NMSA 1978 and Subsections A, B and D of Section 28, Sections 13, 16, 20 through 36, 38, 44, 48, 51, 53 and 56 of the New Mexico Securities Act of 1986 are hereby explicitly exempted from the authority of the superintendent of regulation and licensing as set forth in Subsection B of Section 9-16-6 NMSA 1978.

**History:** Laws 1983, ch. 297, § 27; 1985, ch. 173, § 2; 1986, ch. 7 § 57.

## **ANNOTATIONS**

**Severability clauses.** - Laws 1986, ch. 7, § 60 provides for the severability of the act if any part or application thereof is held invalid.

**Compiler's notes.** - Sections 61-18-5, 61-18-6, 61-18-16, 61-18-19, 61-18-22, 61-18-33, 61-18-34, 61-18-41, 61-18-46, 61-18-47, 61-18-49, 61-18-50, 61-18-52, 61-18-53 and 61-18-57 NMSA 1978, referred to near the end of this section, were repealed by Laws 1987, ch. 252, § 34. Present comparable provisions may be found at 61-18A-1 to 61-18A-33 NMSA 1978.

**New Mexico Securities Act of 1986.** - Subsections A, B and D of Section 28, and Sections 13, 16, 20 through 36, 38, 44, 48, 51, 53 and 56 of the New Mexico Securities Act of 1986, referred to near the end of this section, are compiled as 58-13B-28A, B and D, 58-13B-13, 58-13B-16, 58-13B-20 to 58-13B-36, 58-13B-38, 58-13B-44, 58-13B-48, 58-13B-51, 58-13B-53 and 58-13B-56, respectively.

## **9-16-12. Construction industries commission; exercise of powers and duties exempt from authority of superintendent.**

All responsibilities of the construction industries commission under Sections 60-13-6, 60-13-9 through 60-13-11, 60-13-13.2, 60-13-14 through 60-13-16, 60-13-18, 60-13-23 through 60-13-24, 60-13-27, 60-13-28, 60-13-36, 60-13-38, 60-13-41, 60-13-43, 60-13-44, 60-13-45, 60-13-49, 60-13-53, 60-13-55, 60-13-57, 61-1-1 through 61-1-33, 70-5-3 through 70-5-7, 70-5-11 through 70-5-15 and 70-5-18 NMSA 1978 are hereby explicitly exempted from the authority of the superintendent under the provisions of Subsection B of Section 9-16-6 NMSA 1978.

**History:** Laws 1983, ch. 297, § 28; 1989, ch. 6, § 65.

## **§ 9-16-13 Manufactured housing committee; exercise of powers and duties exempt from authority of superintendent (1994 Repl.)**

### **9-16-13. Mobile [manufactured] housing committee; exercise of powers and duties exempt from authority of superintendent.**

All responsibilities of the mobile [manufactured] housing committee under Sections 60-14-4 through 60-14-9, 60-14-12 and 60-14-14 NMSA 1978 are hereby explicitly exempted from the authority of the superintendent of regulation and licensing under the provisions of Subsection B of Section 22 [9-16-6 NMSA 1978] of this act.

**History:** Laws 1983, ch. 297, § 29.

## **ANNOTATIONS**

**Bracketed material.** - Laws 1983, ch. 295, § 11, changes the name of the mobile housing committee, referred to in this section, to the manufactured housing committee.

See 60-14-5 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

### **9-16-14. Regulation and licensing department operating fund.**

A. There is established in the state treasury the "regulation and licensing department operating fund" to be administered by the department.

B. All money received by the administrative services division, the construction industries division, the financial institutions division, the securities division and the manufactured housing division, other than money earmarked for revolving funds, shall be deposited with the state treasurer and held in a separate suspense account for each division. In the seventy-sixth fiscal year, all money deposited in the suspense accounts shall be transferred monthly to the general fund until the sum of all money transferred to the general fund equals the total amount deposited and transferred to the general fund from those divisions in the seventy-fourth fiscal year. All additional money deposited in the divisions' suspense accounts during the seventy-sixth fiscal year shall be transferred to the regulation and licensing department operating fund on June 30, 1988.

C. In the seventy-seventh fiscal year and each fiscal year thereafter, on the last day of each month, the department shall transfer all money received during the month from the divisions' suspense accounts to the general fund.

**History:** 1978 Comp., § 9-16-14, enacted by Laws 1987, ch. 298, § 1; 1991, ch. 217, § 1.

#### **ANNOTATIONS**

**The 1991 amendment**, effective July 1, 1991, substituted "manufactured" for "mobile" in the first sentence in Subsection B; substituted "general fund" for "regulation and licensing department operating fund" at the end of Subsection C; and deleted former Subsection D, relating to appropriations.

## **ARTICLE 17 GENERAL SERVICES DEPARTMENT**

### **9-17-1. Short title.**

Sections 1 through 7 [9-17-1 to 9-17-6 NMSA 1978] of this act may be cited as the "General Services Department Act".

**History:** Laws 1983, ch. 301, § 1.

#### **ANNOTATIONS**

**Compiler's notes.** - Laws 1983, ch. 301, § 7, is a temporary provision and has not been compiled. See notes following 9-17-6 NMSA 1978.

## **9-17-2. Purpose.**

The purpose of the General Services Department Act [9-17-1 to 9-17-6 NMSA 1978] is to make state government more efficient and responsive through consolidating certain state government service functions; and to establish a single, unified department to administer laws relating to services for governmental entities; and to perform other duties as provided by law.

**History:** Laws 1983, ch. 301, § 2.

## **9-17-3. General services department; creation; transfer and merger of division functions; merger and creation of divisions.**

A. The "general services department" is created. The department shall consist of those divisions created by law or executive order, as modified by executive order pursuant to Subsection C of this section, including:

- (1) the administrative services division;
- (2) the building services division;
- (3) the information systems division;
- (4) the property control division;
- (5) the purchasing division;
- (6) the risk management division; and
- (7) the transportation services division.

B. The secretary of general services is empowered to organize the department and the divisions specified in Subsection A of this section and may transfer or merge functions between divisions in the interest of efficiency and economy.

C. The governor is empowered to merge divisions of the department or to create additional divisions by executive order in the interest of efficiency or economy.

**History:** Laws 1983, ch. 301, § 3; 1984, ch. 64, § 1; 1994, ch. 119, § 12; 1995, ch. 161, § 1.

## **ANNOTATIONS**

**Cross references.** - For public purchases, see Chapter 13 NMSA 1978.

For information systems division, see 15-1-2 NMSA 1978.

For creation of the communications division within the general services department, see 15-2-1 NMSA 1978.

For property control, see 15-3-1 et seq. NMSA 1978.

For management of surplus property program by the general services department, see 15-4-2 and 15-4-3 NMSA 1978.

For risk management, see 15-7-2 et seq. NMSA 1978.

**The 1994 amendment**, effective May 18, 1994, deleted "but not limited to" at the end of Subsection A, added "and" in Paragraph A(6), added Paragraph A(7), and in Subsection B, added "of general services" and deleted "thereof" following "and the divisions."

**The 1995 amendment**, effective June 16, 1995, substituted "transportation services" for "motor pool" in Paragraph (7) in Subsection A.

**Temporary provisions.** - Laws 1989, ch. 324, § 42, effective April 7, 1989, provides that the director of the risk management division of the general services department shall prepare a detailed quarterly report to the legislative finance committee or an appropriate legislative interim committee to be designated by the legislative council, the department of finance and administration and the state treasurer on the unfunded liability of the funds under the supervision of the risk management division, particularly the public liability fund and the workers' compensation retention fund, the recent rate increases and the impact those increases have had on the unfunded liability and the projected need for future rate increases, and provides further that the division shall include in its report an identification of annual pay out rates and all reserves and a description of the adequacy of deficit recovery margins, if any.

Laws 1992, ch. 113, § 40, effective March 10, 1992, authorizes the general services department to sell or exchange a certain parcel of state-owned improved real property presently used as the Taos county alcoholism counseling and detoxification center, provides that the department shall take all actions necessary for the disposition of the real property by sale or exchange at a value received that is not less than the value of the property established by the taxation and revenue department using generally acceptable appraisal techniques, and provides that the proceeds of the sale shall be used for the acquisition, use, construction, equipping and furnishing of a new Taos county alcoholism counseling and detoxification center.

Laws 1994, ch. 62, § 26, effective March 4, 1994, provides that the department of insurance, the risk management division of the general services department, the public



school insurance authority and the retiree health care authority shall review the benefits of forming a pool to purchase health insurance or health services coverage for their employees. The section details the issues to be reviewed, provides that the department of insurance shall coordinate the review, and provides that the group shall report its findings and recommendations to the legislative health care task force by September 1, 1994.

**Appropriations.** - Laws 1989, ch. 126, § 1, effective March 30, 1989, provides that, in addition to the purpose specified in Subsection J of Section 3 of Chapter 10 of Laws 1984(S.S.), the encumbered balance remaining from that appropriation may be used for construction of the multi-purpose cultural center in Taos which includes convention space, a theater, a library, facilities for a senior center and exhibition space.

Laws 1989, ch. 191, § 2, effective April 3, 1989, appropriates \$2,441,800 from depreciation and replacement fees retained in the information systems division operating fund to the information systems division of the general services department for expenditure for operations during the seventy-seventh fiscal year, and appropriates \$2,360,000 from depreciation and replacement fees retained in the information systems division operating fund of the information systems division of the general services department for expenditure during the seventy-seventh fiscal year for operating expenses.

Laws 1989, ch. 192, § 1, effective April 3, 1989, appropriates \$1,459,900 from the communications equipment revolving fund to the information systems division of the general services department for expenditure in the seventy-seventh and seventy-eighth fiscal years for the purchase and installation of communications equipment, as detailed in the five-year plan approved by the information systems council in accordance with Section 15-1-11 NMSA 1978, and provides that unexpended or unencumbered balance remaining at the end of the seventy-eighth fiscal year shall revert to the communications equipment revolving fund.

Laws 1992, ch. 112, § 4, effective May 20, 1992, appropriates \$700,000 to the general services department for the human resources system, provided that \$200,000 is authorized for expenditure in the eightieth fiscal year and \$500,000 is authorized for expenditure in the eighty-first fiscal year.

Laws 1993, ch. 366, § 4P, effective June 18, 1993, appropriates \$1,740,000 from the general fund to the general services department for expenditure in the eighty-second fiscal year to purchase vehicles for state agencies to begin implementation of executive order 92-04 to centralize fleet management. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1994, ch. 147, § 3G, effective March 9, 1994, appropriates \$1,200,000 from the general fund to the general services department for expenditure in the eighty-third fiscal year to purchase vehicles for state agencies and provide for required alternative fuels conversion. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6QQQ, effective March 9, 1994, appropriates \$20,000 from the general fund to the general services department for expenditure in the eighty-second and eighty-third fiscal years for securing equipment within and maintaining utility services to the armory for the arts building. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6SSS, effective March 9, 1994, appropriates \$831,000 from the state road fund to the general services department for expenditure in the eighty-second and eighty-third fiscal years for release of liens on property to be acquired by the general services department adjacent to the border between New Mexico and the Republic of Mexico and deeded by the general services department to the federal government for a port of entry and for environmental and cultural properties remediation expenses associated with the port of entry. This appropriation is contingent upon the state acquiring all rights, title and interest to the land needed for the port of entry for not more than \$631,000. If the state is unable to acquire the property for not more than \$631,000, the general services department shall enter into an agreement with the state highway and transportation department to acquire the property by eminent domain and shall transfer to the state highway and transportation department such amount as may be necessary from this appropriation to obtain immediate right of entry to the land needed for the port of entry. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the state road fund.

Laws 1994, ch. 147, § 7R, effective March 9, 1994, appropriates \$535,000 from the general fund to the general services department for expenditure in the eighty-third fiscal year for operations of state passenger aircraft. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 148, § 52A, effective March 9, 1994, appropriates \$300,000 from the general fund to the general services department for expenditure in the eighty-second and eighty-third fiscal years to purchase, dispose of and maintain vehicles for state agencies' use throughout the state.

Laws 1996 (1st S.S.), ch. 11, § 1, effective March 29, 1996, appropriates from the subsequent injury fund to the general services department \$700,000 for improvements at camp Sierra Blanca, \$400,000 for a special adjustment unit at the youth diagnostic and development center in Albuquerque, and \$400,000 for construction of a new minimum-security facility in Dona Ana county.

**Compiler's notes.** - Laws 1990, ch. 132, § 8, which appropriated \$3,400,000 from the operating reserve to the general services department upon certification by the information systems council that the state's mainframe computer requires major upgrade or replacement and that such upgrade or replacement cannot feasibly be delayed until the next regular legislative session and further provided that the operating reserve fund shall be reimbursed from the data processing equipment revolving fund at a rate of \$70,834 per month over a period of forty-eight months beginning the month following such upgrade or replacement, was repealed by Laws 1994, ch. 100, § 1, effective May 18, 1994.

#### **9-17-4. General services department; secretary; appointment; qualifications.**

The administrative and executive head of the general services department is the "secretary of general services," who shall be a member of the executive cabinet. The secretary shall be appointed by the governor with the advice and consent of the senate. The secretary shall be well versed in administrative services and management.

**History:** Laws 1983, ch. 301, § 4.

#### **9-17-5. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department, or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the General Services Department Act [9-17-1 to 9-17-6 NMSA 1978], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law, including executive orders of the governor, requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with law, to assure implementation of and compliance with the provisions of law for whose administration or execution he is responsible, and to enforce those orders and instructions by appropriate administrative action or action in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to other departments and the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and to other persons involved in the administration of programs, with the objective of improving the operations and efficiency of administration;

(8) prepare the department's annual budget;

(9) cooperate with the heads of administratively attached agencies, and adjunct agencies, at their request, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record-keeping and related clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, one "deputy secretary" and, for each division, a "director." These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978]. The department shall pay the cost of such bond; and

(12) require faithful performance or other fidelity bonds of such department employees and officers as he deems necessary, as provided in the Surety Bond Act. The department shall pay the cost of such bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions or departments overlap or a function assigned to one department could be better performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable administrative and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made written request for advance of hearing. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1983, ch. 301, § 5.

#### **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

#### **9-17-6. General services department; administratively attached agencies.**

A. The personnel board and office are administratively attached to the general services department, as provided in Section 10-9-11 NMSA 1978.

B. The information systems council is administratively attached to the general services department as provided in Section 15-1-5 NMSA 1978.

**History:** Laws 1983, ch. 301, § 6; 1984, ch. 64, § 2.

#### **ANNOTATIONS**

**Compiler's notes.** - Section 15-1-5 NMSA 1978, referred to in Subsection B, now provides for the creation of the commission on information and communication management.

#### **9-17-7. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** - Laws 1998, ch. 22, § 1 recompiled 9-17-7 NMSA 1978, relating to the state alternative fuel program manager, as 9-5A-8 NMSA 1978, effective July 1, 1998.

## **ARTICLE 18 LABOR DEPARTMENT**

### **9-18-1. Short title.**

Chapter 9, Article 18 NMSA 1978 may be cited as the "Labor Department Act".

**History:** Laws 1987, ch. 342, § 1; 1993, ch. 16, § 1; 1993, ch. 25, § 1.

### **ANNOTATIONS**

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 16, § 1, approved March 12, 1993, and Laws 1993, ch. 25, § 1, approved March 15, 1993, both effective June 18, 1993, which substituted "Chapter 9, Article 18 NMSA 1978" for "Sections 1 through 14 of this act". The section is set out above as amended by Laws 1993, ch. 25, § 1. See 12-1-8 NMSA 1978.

### **9-18-2. Definitions.**

As used in the Labor Department Act [this article]:

A. "department" means, unless otherwise specified, the labor department created by the Labor Department Act; and

B. "secretary" means the secretary of labor.

**History:** Laws 1987, ch. 342, § 2.

### **9-18-3. Purpose.**

The purpose of the Labor Department Act [this article] is to establish a single, unified department to administer all laws and exercise all functions formerly administered and exercised by the employment security department, the workmen's compensation administration, the labor commissioner and the office of the human rights commission.

**History:** Laws 1987, ch. 342, § 3.

### **9-18-4. Labor department established.**

There is created in the executive branch the "labor department". The department shall be a cabinet department and shall consist of, but not limited to, five program divisions and one administrative division, as follows:

- A. employment security division;
- B. worker's compensation division;
- C. labor and industrial division;
- D. human rights division;
- E. job training division; and
- F. administrative services division.

**History:** Laws 1987, ch. 342, § 4.

#### **ANNOTATIONS**

**Cross references.** - For human rights, see 28-1-1 to 28-1-15 NMSA 1978.

For labor law generally, see Chapter 50 NMSA 1978.

For unemployment compensation, see Chapter 51 NMSA 1978.

For workers' compensation and subsequent injury and occupational disease disablement compensation, see Chapter 52 NMSA 1978.

**Appropriations.** - Laws 1994, ch. 147, § 7DD, effective March 9, 1994, appropriates \$75,000 from the general fund to the labor department for expenditure in the eighty-second and eighty-third fiscal years to establish a low-income at-risk youth job training pilot project in the south valley of Albuquerque. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

#### **9-18-5. Agencies abolished.**

On the effective date of the Labor Department Act [this article], the employment security department, the labor commissioner and the workmen's compensation administration are abolished.

**History:** Laws 1987, ch. 342, § 5.

#### **ANNOTATIONS**

**Compiler's notes.** - Laws 1987, ch. 342, § 36 makes the Labor Department Act effective on July 1, 1987.

### **9-18-6. Secretary of labor; appointment.**

A. The chief executive and administrative officer of the department is the secretary of labor. The secretary of labor shall also serve as the director of the employment security division. The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold office at the pleasure of the governor and shall serve in the executive cabinet.

B. A secretary who has been appointed but not yet confirmed shall serve and have all the duties, responsibilities and authority assigned by law to that office during the period of time prior to the final action by the senate to confirm or reject his appointment.

**History:** Laws 1987, ch. 342, § 6.

### **9-18-7. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws whether granted to the secretary or the department or any division of the department, except where authority conferred upon the human rights commission is explicitly granted by Section 28-1-4 NMSA 1978 and, except for authority expressly granted to the worker's compensation division, its director or their predecessor entities under the provisions of Chapter 52, Articles 1 through 5 NMSA 1978, and except where authority conferred upon any division therein is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Labor Department Act [this article], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties. The secretary shall not reduce staff below the FTE [fulltime employee] limitations of the applicable



general appropriation act in the seventy-sixth fiscal year except by attrition, transfer, dismissal for cause, and by no other means, except for positions already vacant on the effective date of the law;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law with the administration or execution of which he is responsible, and to enforce those orders and instructions by appropriate administrative action or actions in the court;

(6) conduct research and studies that will improve the operation of the department;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record keeping and related clerical assistance to administratively attached agencies, if any;

(10) appoint, with the governor's consent, for each division, a director. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978] with the department paying the cost of such bonds; and

(12) require performance bonds of such employees and officers as he deems necessary as provided in the Surety Bond Act with the department paying the costs of such bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1987, ch. 342, § 7.

## **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-18-8. Administratively attached agencies.**

The human rights commission and the labor and industrial commission are administratively attached to the labor department in accordance with the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

**History:** Laws 1987, ch. 342, § 8.

### **9-18-9. Directors.**

Except as provided in Subsection A of Section 6 [9-18-6 NMSA 1978] of the Labor Department Act, the secretary shall appoint, with the approval of the governor, directors of such divisions as are established within the department. The positions so appointed are exempt from the Personnel Act.

**History:** Laws 1987, ch. 342, § 9.

## ANNOTATIONS

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-18-10. Bureaus; chiefs.**

The secretary shall establish within each division such bureaus as he deems necessary to carry out the provisions of the Labor Department Act [this article]. He shall employ a chief to be administrative head of each bureau.

**History:** Laws 1987, ch. 342, § 10.

### **9-18-11. Personnel Act coverage.**

All employees and positions in the department, except for the positions of secretary and division director and other positions expressly permitted to be exempt by the Personnel Act, shall be covered by and shall be subject to the provisions of the Personnel Act. The secretary is the appointing authority.

**History:** Laws 1987, ch. 342, § 11.

## ANNOTATIONS

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-18-12. Cooperation with the federal government; authority of secretary; single state agency status.**

A. The department is authorized to cooperate with the federal government in the administration of employment, training and public assistance programs under the jurisdiction of the department in which financial or other participation by the federal government is authorized or mandated under federal laws, regulations, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement employment, training and public assistance programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may designate the department or any organization unit of the department as the single state agency for the administration of any employment, training or public assistance program, either by the governor's or the secretary's own discretion or when such designation is a condition of federal financial or other participation in the program under applicable federal law, regulation, rule or order. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

**History:** Laws 1987, ch. 342, § 12.

### **9-18-13. Advisory committees.**

The secretary, with the consent of the governor, may create advisory committees in accordance with the provisions of Section 9-1-9 NMSA 1978. The secretary shall appoint the members of advisory committees with the consent of the governor. If the existence of an advisory committee, its representational membership requirements or other matters are required or specified under any federal law, regulation, rule or order as a condition for receiving federal funds for any program administered by the department, the secretary and the governor shall comply with such requirements in creating the advisory committee.

**History:** Laws 1987, ch. 342, § 13.

### **9-18-14. Organization units of the department; powers and duties specified by law; access to information.**

A. Those organizational units of the department and the officers of those units specified by law shall have all the powers and duties enumerated in the specific laws assigned to their organizational units for administration. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary and the secretary shall retain the final decision-making authority and responsibility in accordance with the provisions of Subsection B of Section 7 [9-18-7 NMSA 1978] of the Labor Department Act. The department shall have access to all records, data and information of other departments, agencies and institutions, including its own organizational units not specifically held confidential by law.

B. Subject to the provisions of Subsection B of Section 7 of the Labor Department Act:

(1) the employment security division shall have all those powers and duties conferred by law upon the former employment security department and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(2) the worker's compensation division shall have all those powers and duties conferred by law upon the former workmen's compensation administration and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(3) the labor and industrial division shall have all those powers and duties conferred by law upon the former labor commissioner and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(4) the human rights division shall have all those powers and duties conferred by law upon the former executive director of the human rights commission and staff and such

other laws, programs and functions assigned to the division by the secretary with the consent of the governor;

(5) the job training division shall have all those powers and duties conferred upon it by the governor pursuant to the Job Training Partnership Act and such other laws, programs and functions assigned to the division by the secretary with the consent of the governor; and

(6) the administrative services division shall have all those powers and duties conferred upon it by the secretary of labor. The secretary shall have the power, pursuant to Subsection B of Section 7 of the Labor Department Act, to transfer administrative functions and duties formerly conferred upon the chief administrative officer of any agency or department merged into the labor department by the Labor Department Act [this article].

**History:** Laws 1987, ch. 342, § 14.

### ANNOTATIONS

**Job Training Partnership Act.** - The federal Job Training Partnership Act, referred to in Subsection B(5), appears mainly as 29 U.S.C. §§ 1501 to 1792b.

### 9-18-15. Disclosure of information.

To the extent permitted by federal law, upon the written request of a corporation organized pursuant to the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978], the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use such information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose.

**History:** 1978 Comp., § 9-18-15 enacted by Laws 1993, ch. 16, § 2 and by Laws 1993, ch. 25, § 2.

### ANNOTATIONS

**Effective dates.** - Laws 1993, ch. 16 and Laws 1993, ch. 25 both contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Duplicate law.** - Laws 1993, ch. 16, § 2 and Laws 1993, ch. 25, § 2 enact identical new sections of law. Both have been compiled as 9-18-15 NMSA 1978.

# **ARTICLE 19**

## **PUBLIC SAFETY DEPARTMENT**

### **9-19-1. Short title.**

Chapter 9, Article 19 NMSA 1978 may be cited as the "Department of Public Safety Act".

**History:** 1978 Comp., § 9-18-1, enacted by Laws 1987, ch. 254, § 1; 1989, ch. 204, § 1.

### **9-19-2. Definitions.**

As used in the Department of Public Safety Act [this article]:

A. "department" means the department of public safety and

B. "secretary" means the secretary of public safety.

**History:** 1978 Comp., § 9-18-2, enacted by Laws 1987, ch. 254, § 2; 1989, ch. 204, § 2.

### **9-19-3. Purpose.**

The purpose of the Department of Public Safety Act [this article] is to establish a single, unified department to consolidate state law enforcement and safety functions in order to provide better management, real coordination and more efficient use of state resources and manpower in responding to New Mexico's public safety needs and problems and to improve the professionalism of the state's law enforcement and investigative functions and personnel.

**History:** 1978 Comp., § 9-18-3, enacted by Laws 1987, ch. 254, § 3; 1989, ch. 204, § 3.

### **9-19-4. Department established.**

There is created in the executive branch the "department of public safety". The department shall be a cabinet department and shall consist of, but not be limited to, five program divisions and one administrative division, as follows:

A. the New Mexico state police division;

B. the special investigations division;

C. the training and recruiting division;

D. the technical and emergency support division;

E. the administrative services division; and

F. the motor transportation division.

**History:** 1978 Comp., § 9-18-4, enacted by Laws 1987, ch. 254, § 4; 1989, ch. 204, § 4; 1998 (1st S.S.), ch. 10, § 3.

## ANNOTATIONS

**Cross references.** - For state police, see 29-2-1 to 29-2-29 NMSA 1978.

For law enforcement training, see 29-7-1 to 29-7-12 NMSA 1978.

**The 1998 amendment,** effective July 1, 1998, added Subsection F, and made minor related and stylistic changes.

**Appropriations.** - Laws 1989, ch. 244, § 1, effective April 5, 1989, appropriates \$430,600 from the forfeiture revenue cash balances to the public safety department for expenditure in the seventy-seventh and seventy-eighth fiscal years for the purpose of providing four additional full-time equivalent employees to design and implement a comprehensive, statewide drug control program, provides that any unexpended or unencumbered balance remaining at the end of the seventy-eighth fiscal year shall revert to the forfeiture revenue account, provides that the appropriation is void if money for this specific purpose is included in another bill enacted by the first session of the thirty-ninth legislature and signed into law, and provides that the appropriation shall be used to institute a comprehensive, statewide drug control program to address prevention and demand reduction activities, to coordinate law enforcement and supply reduction endeavors, and to invite and encourage the participation of other federal, state and local agencies and private groups.

Subsection A of Laws 1990, ch. 89, § 1 appropriates \$200,000 from the fire protection fund to the state fire marshal for expenditure in the seventy-ninth and eightieth fiscal years to provide for training of firefighters, provides that expenditure of the appropriation is contingent upon the receipt of federal matching funds and provides that any unexpended or unencumbered balance remaining at the end of the eightieth fiscal year shall revert to the fire protection fund. Subsection B of the act provides that the department of public safety shall transfer \$200,000 from the emergency response fund to the state fire marshal for expenditure in the seventy-ninth and eightieth fiscal years to train firefighters and other state and local officials as first responders at hazardous materials accidents on state highways and railroads as provided in the Emergency Management Act, provides that expenditure is contingent upon the receipt of federal matching funds and provides that any unexpended or unencumbered balance remaining at the end of the eightieth fiscal year shall revert to the emergency response fund.

Laws 1993, ch. 366, § 4II, effective June 18, 1993, appropriates \$372,000 from the general fund to the department of public safety for salary increases in the eighty-first

and eighty-second fiscal years for the state police. Subsections JJ and KK of that act appropriate \$1,000,000 and \$1,740,000, respectively, from the general fund to the state police for expenditure in the eighty-second fiscal year to plan, design, construct and equip a training building at the department's training center in Santa Fe county, and to purchase state police pursuit vehicles and other emergency response vehicles. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1994, ch. 147, § 3V, effective March 9, 1994, appropriates \$1,500,000 from the general fund to the department of public safety for expenditure in the eighty-second and eighty-third fiscal years to purchase state police pursuit vehicles and other emergency response vehicles. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 4W, effective March 9, 1994, appropriates \$300,000 from the DWI program fund to the department of public safety for expenditure in the eighty-second and eighty-third fiscal years for five term positions to aid the enforcement of the Liquor Control Act. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 6HHHHHH, effective March 9, 1994, appropriates \$160,000 from the general fund to the department of public safety for expenditure in the eighty-second and eighty-third fiscal years to contract with a nonprofit corporation to operate a community-based anti-drug program in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

Laws 1994, ch. 147, § 7HH, effective March 9, 1994, appropriates various amounts from the general fund to the department of public safety for expenditure in the eighty-second and eighty-third fiscal years for various purposes. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

**Extension of expenditure period.** - Laws 1994, ch. 148, § 71A, effective March 9, 1994, provides that certain appropriations made by Chapter 366 of Laws 1993 are extended so that they may be expended through the eighty-fourth fiscal year.

Laws 1995, ch. 218, § 13, effective April 7, 1995, provides that the period of time for expenditure for the general fund appropriation to the department of public safety to contract with a nonprofit corporation to operate a community-based anti-drug program in Bernalillo county as provided in Laws 1994, ch. 147, § 6HHHHHH is extended through fiscal year 1999.



Laws 1995, ch. 222, § 37, effective April 7, 1995, appropriates \$185,000 from the general fund to the department of public safety for fiscal years 1995 through 1999, for equipment for a narcotics task force in McKinley County, for implementing the Missing Persons Information Act, and for establishing a countywide community-oriented policing program in Sandoval county.

Laws 1996, ch. 14, § 12, effective March 4, 1996, provides that notwithstanding the provisions of Laws 1994, ch. 148, § 71A(9), the period of time in which the appropriation made by 1993, ch. 366, § 4JJ from the general fund to the department of public safety shall be extended through fiscal year 1997.

Laws 1998, ch. 4, § 1, effective February 16, 1998, appropriates \$2,800,000 from the general fund to the department of public safety for expenditure in fiscal year 1999 for recruiting, employing, training and equipping fifty additional state police officers. Any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the general fund.

Laws 1998, ch. 4, § 2, effective February 16, 1998, appropriates \$5,800,800 from the general fund to the department of public safety for expenditure in fiscal years 1998 through 2002 for equipping forty additional state police officers each fiscal year during fiscal years 2000 through 2002. Any unexpended or unencumbered balance remaining at the end of fiscal year 2002 shall revert to the general fund.

Laws 1998 (1st S.S.), ch. 10, § 12, effective July 1, 1998, appropriates \$1,200,000 from the general fund and \$2,070,000 from the state road fund to the department of public safety for expenditure in fiscal year 1999 to carry out the provisions of that act. Any unexpended or unencumbered balances remaining at the end of fiscal year 1999 shall revert to the general fund.

### **9-19-5. Secretary; appointment.**

A. The administrative head of the department is the "secretary of public safety" who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

**History:** 1978 Comp., § 9-18-5, enacted by Laws 1987, ch. 254, § 5.

### **9-19-6. Secretary; duties and general powers.**

A. The secretary is responsible to the governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Department of Public Safety Act [this article], exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations; provided that the secretary shall not reduce positions for the seventy-sixth fiscal year budgeted in the General Appropriation Act of 1987 except for cause, by attrition or by occurrence of a vacancy;

(2) delegate authority to subordinates as he deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units he deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law with the administration or execution of which he is responsible and to enforce those orders and instructions by appropriate administrative action or actions in the court;

(6) conduct research and studies that will improve the operation of the department and examine other entities and functions of state government related to public safety for purposes of possible transfer to the department;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies, if any;

(10) appoint, with the governor's consent, for each division, a director. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) appoint the director of the New Mexico law enforcement academy subject to the approval of the New Mexico law enforcement academy board;

(12) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000), conditioned upon the faithful performance of duties as provided in the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978], with the department paying the cost of such bonds; and

(13) require performance bonds of such employees and officers as he deems necessary as provided in the Surety Bond Act with the department paying the costs of such bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

E. The secretary may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. No rule or regulation promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by him. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

F. All rules and regulations shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1978 Comp., § 9-18-6, enacted by Laws 1987, ch. 254, § 6; 1989, ch. 204, § 5.

## **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

### **9-19-6.1. [Secretary; duty to develop career pay system for state police.]**

In addition to all other duties established in Section 9-19-6 NMSA 1978, the secretary, in consultation with the chief of the New Mexico state police, shall develop a career pay system for the state police. This career pay system shall consist of steps within salary ranges based on objective criteria developed by the secretary. This career pay system shall allow an officer to progress on a career ladder with appropriate salary steps linked to a recognition of additional training, skills acquired and other meritorious performance.

**History:** 1978 Comp., § 9-19-6.1, enacted by Laws 1989, ch. 72, § 1.

### **9-19-7. Organizational units of department; powers and duties specified by law; access to information.**

A. The organizational units of the department and the officers of those units specified by law shall have all the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any such laws as provided in Subsection B of Section 9-19-6 NMSA 1978. The department shall have access to all records, data and information of other state departments, agencies and institutions, including its own organizational units, not specifically held confidential by law.

B. The New Mexico state police division shall consist of the commissioned officers and civilian personnel including all communications equipment operators of the New Mexico state police uniform division and the commissioned officers and civilian personnel of the New Mexico state police criminal division and such other personnel as may be assigned by the secretary or by the governor pursuant to an executive order as authorized in the Department of Public Safety Act [this article].

C. The special investigations division shall consist of the staff of the governor's organized crime prevention commission, the enforcement personnel of the department of alcoholic beverage control and such other personnel as may be assigned by the secretary or by the governor pursuant to an executive order as authorized in the

Department of Public Safety Act. The division is responsible for the enforcement of the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] and the Liquor Control Act.

D. The technical and emergency support division shall consist of the emergency planning and coordination bureau of the department of public safety, the personnel of the hazardous materials emergency response program or plan and such other functions as communications, crime laboratory and records.

E. The training and recruiting division shall consist of the personnel of the New Mexico law enforcement academy, the New Mexico state police training division and all other training personnel and functions of the department as the secretary may transfer to this division.

F. The administrative services division shall consist of the administrative services and services divisions of the New Mexico state police and those administrative support personnel of the other existing departments, divisions or offices as the secretary deems necessary.

**History:** 1978 Comp., § 9-18-7, enacted by Laws 1987, ch. 254, § 7; 1989, ch. 204, § 6.

#### **ANNOTATIONS**

**Liquor Control Act.** - See 60-3A-1 NMSA 1978 and notes thereto.

#### **9-19-8. Administratively attached agencies.**

The governor's organized crime prevention commission and the New Mexico law enforcement academy board are administratively attached to the department in accordance with the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].

**History:** 1978 Comp., § 9-18-8, enacted by Laws 1987, ch. 254, § 8; 1989, ch. 204, § 7.

#### **9-19-9. Directors.**

The secretary shall appoint, with the approval of the governor, directors of the divisions as are established within the department; provided, the director of the New Mexico state police division shall be titled the "chief of the New Mexico state police". The positions so appointed are exempt from the Personnel Act.

**History:** 1978 Comp., § 9-18-9, enacted by Laws 1987, ch. 254, § 9.

#### **ANNOTATIONS**

**Personnel Act.** - See 10-9-1 NMSA 1978 and notes thereto.

#### **9-19-10. Bureaus; chiefs.**

The secretary shall establish, within each division, the bureaus as he deems necessary to carry out the provisions of the Department of Public Safety Act [this article]. He shall employ a chief to be administrative head of each bureau.

**History:** 1978 Comp., § 9-18-10, enacted by Laws 1987, ch. 254, § 10; 1989, ch. 204, § 8.

### **9-19-11. Advisory commission.**

A. There is created the "public safety advisory commission" composed of seven citizens of New Mexico appointed by the governor with the consent of the senate for staggered terms of three years ending on January 1; provided that in making the initial appointments, three members shall be appointed for terms of three years each, two members shall be appointed for terms of two years each and two members shall be appointed for terms of one year each. Thereafter, all appointments shall be made for terms of three years.

B. The commission shall advise the secretary on policy matters respecting the activities of the department and shall conduct disciplinary proceedings for any officer of the department state police division as required by Section 29-2-11 NMSA 1978. The disciplinary hearings shall be a matter of record and shall be conducted in the manner provided for in Section 29-2-11 NMSA 1978. The commission shall serve its findings and conclusions on the secretary for execution.

**History:** 1978 Comp., § 9-18-11, enacted by Laws 1987, ch. 254, § 12; 1989, ch. 204, § 9.

## **ARTICLE 20 YOUTH AUTHORITY**

(Repealed by Laws 1992, ch. 57, § 56.)

### **9-20-1 to 9-20-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1992, ch. 57, § 56 repeals 9-20-1 to 9-20-18 NMSA 1978, as enacted by Laws 1988, ch. 101, §§ 1-16 and Laws 1990, ch. 32, §§ 1-2, relating to the Youth Authority, effective July 1, 1992. For former provisions, see 1991 Replacement Pamphlet. For present comparable provisions, see 9-2A-1 NMSA 1978 et seq.