

# 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.

Cross-references. - For constitutional provisions as to executive department, see N.M. Const., art. V, §§ 1 to 14. As to elected officials generally, see Chapter 8 NMSA 1978. As to 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 14-3-24, 14-3-25, 14-4-1 to 14-4-9 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.

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.

Cross-references. - As to 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 and 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.

Cross-references. - As to appointment of directors, see 9-3-6 NMSA 1978. As to 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, 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 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.

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

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.

Cross-references. - As to 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.

Cross-references. - As to 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 setting 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.

Cross-references. - As to 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.

Cross-references. - As to substitution of successor to public officer as party, see Rule 1-025D, N.M.R. Civ. P.

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.

## **Article 2**

### **Commerce and Industry Department**

(Repealed by Laws 1983, ch. 297, § 33.)

Sec.

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 Repealed.

§§ 9-2-1 to 9-2-13. Repealed.

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 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 personnel and training 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 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.

Cross-references. - As to executive cabinet, see 9-1-3 NMSA 1978. As to delinquent and neglected children, see the Youth Authority, 9-20-1 et seq. NMSA 1978. As to law enforcement generally, see Chapter 29 NMSA 1978. As to probation and parole generally, see 31-21-3 to 31-21-26 NMSA 1978. As to correctional institutions generally, see Chapter 33 NMSA 1978.

The 1988 amendment, effective July 1, 1989, deleted former Subsection B which read "the adult maximum security division" and former Subsection C which read "the juvenile facilities division"; redesignated former Subsections D, E, F, and G as present Subsections B, C, D, and E, respectively; substituted "adult probation and parole division" for "field services division" in Subsection B; substituted "personnel" for "education" in Subsection C; substituted "secretary of corrections" for "secretary of the department" at the end of Subsection D; and deleted "preceding" preceding "divisions" and inserted "to them" in 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.

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.

Cross-references. - As to executive cabinet, see 9-1-3 NMSA 1978. As to 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 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.

Cross-references. - As to appointment of directors, see 9-3-6 NMSA 1978. As to state budgets, see 6-3-1 to 6-3-22 NMSA 1978. As to public officers and employee generally, see Chapter 10 NMSA 1978.

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

Applicability of 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.

Cross-references. - As to 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.

Cross-references. - See same catchline under 9-3-5 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.

Federal Omnibus Crime Control and Safe Streets Act. - The Federal Omnibus Crime Control and Safe Streets Act of 1968, referred to in Subsection C, is compiled as 5 U.S.C. §§ 5314 to 5316, 7313; 18 U.S.C. §§ 921 to 928, 2510 to 1520, 3103a, 3501, 3502, 3731; 40 U.S.C. § 484; 42 U.S.C. §§ 3334, 3701, 3711, 3721 to 3726, 3731 to 3739, 3741 to 3747, 3750 to 3774, 3781, 3791 to 3793, 3795, 3796-3796c; and 47 U.S.C. § 605.

Juvenile Justice and Delinquency Prevention Act. - The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in Subsection C, is compiled as 5 U.S.C. § 5108 and 18 U.S.C. §§ 4351 to 4353, 5031 to 5042 and 42 U.S.C. §§ 3701, 3723, 3733, 3758, 3772 to 3774, 3811 to 3814, 3821, 3882, 3883, 3888, 5601 to 5603, 5611 to 5619, 5631 to 5639, 5651 to 5661, 5671, 5672, 5701, 5702, 5711 to 5716, 5731, 5732, 5741, 5751.

### **§ 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 justice coordinating council; creation; membership; duties.**

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

B. The criminal justice coordinating council shall be composed of not less than fifteen nor more than twenty members. All members except the automatic members shall be appointed by the governor. 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. Until mandated otherwise by federal law or regulation as a condition to receiving federal funds, the council shall consist of:

(1) the governor or his designated representative, who shall serve as the chairman;

(2) five representatives of state government consisting of:

(a) the chief justice of the supreme court, or a member of the judicial department designated by him;

(b) the attorney general;

(c) the chief of the New Mexico state police;

(d) the secretary of corrections; and

(e) the secretary of health and environment, or his counterpart; or such other similar agency heads;

(3) five representatives of units of general local government, representative of local law enforcement or criminal or juvenile justice agencies or elected policy-making or executive officials of local governments; and

(4) five representatives of the general citizenry.

C. The criminal justice coordinating council shall have the following duties:

(1) advise the administrative services division and the secretary of corrections on policy matters;

(2) recommend goals and standards, including amendments for New Mexico's criminal justice system, and timetable for their implementations;

(3) review the comprehensive plan and submit its recommendations regarding the plan to the governor and the secretary of corrections; and

(4) adopt guidelines for the internal organization and operation of the council.

D. The members of the criminal justice coordinating council who are not representing governmental entities shall be paid pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] shall receive no other perquisite, compensation or allowance.

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.

### **§ 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.

## **Article 4**

## **Educational Finance and Cultural Affairs Department**

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

Sec.

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

§§ 9-4-1 to 9-4-7. Repealed.

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.)

Sec.

§§ 9-5-1 to 9-5-8. Repealed.

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 park and recreation 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.

Cross-references. - As to parks and recreation, see Chapter 16 NMSA 1978. As to game and fish, see Chapter 17 NMSA 1978. As to forestry, see Chapter 68 NMSA 1978. As to mines, see Chapter 69 NMSA 1978. As to oil conservation, see Chapter 70 NMSA 1978. As to energy and minerals generally, see Chapter 71 NMSA 1978.

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.

Operation of concessions. - The state park commission (now the state park and recreation 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 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.

Access: power of park commission to directly regulate or prohibit abutter's access to street or highway, 73 A.L.R.2d 671.

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 and soil and water conservation 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 shall develop, maintain, manage and supervise all state parks and state-owned or state-leased recreation areas.

History: Laws 1987, ch. 234, § 4.

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 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.

### **§ 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.

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

### **§ 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.

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.

## **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.

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.

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.

Cross-references. - As to annexation of territory by municipalities, see 3-7-1 to 3-7-18 NMSA 1978. As to municipal street improvement funds, see 3-34-1 to 3-34-4 NMSA 1978. As to regional planning, see 3-56-1 to 3-56-9 NMSA 1978. As to planning districts, see 4-58-1 to 4-58-6 NMSA 1978. As to public finances generally, see Chapter

6 NMSA 1978. As to financial control division, see 6-2-1, 6-5-1 to 6-5-9 NMSA 1978. As to state budgets, see 6-3-1 to 6-3-22 NMSA 1978. As to local government finances, see 6-6-1 to 6-6-18 NMSA 1978. As to investment of public money, see 6-8-1 to 6-8-18 NMSA 1978. As to administration of government generally, see Chapter 15 NMSA 1978. As to statewide post-secondary educational planning, see 21-2-1 to 21-2-9 NMSA 1978.

The 1988 amendment, effective May 18, 1988, deleted former Subsection B, which read " The department shall include the office of education" and redesignated succeeding subsections accordingly.

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".

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.

Effective dates. - Laws 1988, ch. 64 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

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.**

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.

Cross-references. - As to 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

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

Cross-references. - As to state budgets, see 6-3-1 to 6-3-22 NMSA 1978. As to appointment of director of state budget division, see 6-3-2 NMSA 1978. As to 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.

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.

Cross-references. - As to governor's office of policy and planning, see Article 14 of this chapter.

### **§ 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.

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 international space hall of fame division; and
- F. the historic preservation division.

History: Laws 1980, ch. 151, § 54; 1983, ch. 296, § 16.

Cross-references. - As to creation and duties of arts division, see 18-5-6 and 18-5-7 NMSA 1978. As to libraries and museums, see Chapter 18 NMSA 1978.

## **§ 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: Laws 1980, ch. 151, § 56.

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**

### **Health and Environment Department**

#### **§ 9-7-1. Short title.**

Sections 1 through 15 [9-7-1 to 9-7-9, 9-7-11, 9-7-12 NMSA 1978] of this act may be cited as the "Health and Environment Department Act".

History: 1978 Comp., § 9-7-1, enacted by Laws 1977, ch. 253, § 1.

Compiler's notes. - Sections 5, 14 and 15 of the Health and Environment Department Act (Laws 1977, ch. 253, §§ 5, 14 and 15) enact temporary provisions and have therefore not been compiled. They are set out or described in the notes to 9-7-15 NMSA 1978.

#### **§ 9-7-2. Definitions.**

As used in the Health and Environment Department Act [9-7-1 to 9-7-9, 9-7-11, 9-7-12 NMSA 1978]:

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

B. "secretary" means the secretary of the department.

History: 1978 Comp., § 9-7-2, enacted by Laws 1977, ch. 253, § 2.

### **§ 9-7-3. Purpose.**

The purpose of the Health and Environment Department Act [9-7-1 to 9-7-9, 9-7-11, 9-7-12 NMSA 1978] is to establish a single, unified department to administer the laws and exercise the functions relating to health and environment and formerly administered and exercised by various organizational units of state government, including the state health agency, the environmental improvement 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.

History: 1978 Comp., § 9-7-3, enacted by Laws 1977, ch. 253, § 3.

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

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

A. the public health division;

B. the behavioral health services division; and

C. the environmental improvement division.

All references in the law to the "health services division" shall be construed to be references to the "public health division."

History: 1978 Comp., § 9-7-4, enacted by Laws 1977, ch. 253, § 4; 1989, ch. 54, § 1.

Cross-references. - As to executive cabinet, see 9-1-3 NMSA 1978. As to health and hospital records, see 14-6-1, 14-6-2 NMSA 1978. As to state health institutions generally, see Chapter 23 NMSA 1978. As to health and safety generally, see Chapter 24 NMSA 1978. As to 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. As to vital statistics, see 24-14-1 to 24-14-31 NMSA 1978. As to establishment of vital statistics bureau, see 24-14-3 NMSA 1978. As to food generally, see Chapter 25 NMSA 1978. As to Drug Abuse Act, see 26-2-1 to 26-2-14 NMSA 1978. As to controlled

substances, see 30-31-1 to 30-31-40 NMSA 1978. As to occupational health and safety, see 50-9-1 to 50-9-25 NMSA 1978. As to pharmacy regulation and licensing, see 61-11-1 to 61-11-29 NMSA 1978. As to environmental improvement generally, see Chapter 74 NMSA 1978. As to organization of environmental improvement division, see 74-1-6 NMSA 1978. As to Rural Infrastructure Act, see Chapter 75, Article 1 NMSA 1978.

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 1988, ch. 101, § 49 provides that on July 1, 1989, all appropriations, records and contractual obligations attributable to the first offenders program and the wilderness experience program shall be transferred from the health and environment department to the youth authority.

Appropriations. - Laws 1988, ch. 47, § 1, effective March 4, 1988, appropriates \$96,000 from the general fund to the health and environment department for the seventy-sixth and seventy-seventh fiscal years for the purpose of funding competitive sports events for the developmentally disabled and provides that any unexpended or unencumbered balance of the appropriation remaining at the end of the seventy-sixth and seventy-seventh fiscal years shall revert to the general fund.

Laws 1988, ch. 140, § 1, effective May 18, 1988, appropriates \$90,000 from the general fund to the health and environment department for expenditure in the seventy-seventh fiscal year for the purpose of conducting a statewide ground water quality investigation and education program 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 1988, ch. 160, § 1, effective March 9, 1988, appropriates \$50,000 from the general fund to the health and environment department to develop a statewide mental health action plan for expenditure in the seventy-sixth and seventy-seventh fiscal years, 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 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.

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

A. The administrative head of the health and environment department is the "secretary of health and environment," 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.

Cross-references. - As to executive cabinet, see 9-1-3 NMSA 1978. As to appointment and removal power of governor, see N.M. Const., art. V, § 5.

### **§ 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 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, 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 [for] 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) 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;

(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 such bonds; and

(11) require performance bonds of such department employees and officers as he deems necessary, as provided in the Surety bond [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 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 Health and Environment Department Education Act [24-3B-1 to 24-3B-4 NMSA 1978]. He shall notify the state 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.

F. 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

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

Cross-references. - As to appointment of directors, see 9-7-8 NMSA 1978. As to cooperation with federal financial or other participation in programs, see 9-7-12 NMSA 1978. As to state budgets, see 6-3-1 to 6-3-22 NMSA 1978. As to public officers and employees generally, see Chapter 10 NMSA 1978.



Meaning of "this act". - The words "this act," appearing in Subsection B(1), refer to Laws 1977, ch. 253. See Table of Disposition of Acts in Volume 13.

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 health and environment 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 health and environment 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 health and environment 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.

### **§ 9-7-7. 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 [9-7-6 NMSA 1978] of the Health and Environment 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., § 9-7-7, enacted by Laws 1977, ch. 253, § 8.

Cross-references. - See cross-references under 9-7-4 NMSA 1978.

### **§ 9-7-8. Directors.**

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: 1978 Comp., § 9-7-8, enacted by Laws 1977, ch. 253, § 9.

Cross-references. - As to appointment of directors, see 9-7-6B(9) NMSA 1978.

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 Health and Environment Department Act [9-7-1 to 9-7-9, 9-7-11, 9-7-12 NMSA 1978]. He shall employ a "chief" to be the administrative head of such [each] bureau. The chief [chiefs] 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.

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

### **§ 9-7-10. Repealed.**

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 health and environment department 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.

### **§ 9-7-11. Advisory committees.**

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 setting policy unless specified by law. Such 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.

### **§ 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 and 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 health or 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 health or environmental 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 or 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: 1978 Comp., § 9-7-12, enacted by Laws 1977, ch. 253, § 13.

### **§ 9-7-13. Environmental improvement board; exemptions from authority of secretary of health and environment.**

The environmental improvement board shall receive staff support from the environmental improvement division of the health and environment department. All powers, duties and responsibilities of the environmental improvement board under

Sections 25-2-4 through 25-2-9, 25-2-11 through 25-2-13, 25-2-15 through 25-2-18, 25-5-4 through 25-5-8, 50-9-7, 50-9-11 through 50-9-13, 50-9-18, 74-1-4, 74-1-5, 74-1-8, 74-1-9, 74-2-3, 74-2-5 through 74-2-9, 74-2-11 through 74-2-13, 74-2-15, 74-2-16, 74-3-5, 74-3-8 through 74-3-11, 74-3-15, 75-1-3 and 75-1-4 NMSA 1978 and the provisions of the Petroleum Storage Cleanup Act [74-4D-1 to 74-4D-7 NMSA 1978] are hereby explicitly exempted from the authority of the secretary under the provisions of Subsection B of Section 9-7-6 NMSA 1978.

History: 1978 Comp., § 9-7-13, enacted by Laws 1977, ch. 253, § 76; 1988, ch. 70, § 13.

The 1988 amendment, effective July 1, 1988, rewrote the section to the extent that a detailed analysis is impracticable. For former provisions, see 1987 Replacement Pamphlet.

"Staff support" should not include lawyers from the environmental improvement division of the health and environment department. *Kerr-McGee Nuclear Corp. v. New Mexico Env'tl. Imp. Bd.*, 97 N.M. 88, 637 P.2d 38 (Ct. App. 1981).

Board not represented by division attorneys in public hearing. - Whenever parliamentary rules are involved in a public hearing, the environmental improvement board should not seek the advice of, nor seek to be represented by, attorneys of the environmental improvement division of the health and environment department. Where this occurs, the environmental improvement board becomes an opposing party instead of an independent quasi-judicial body. *Kerr-McGee Nuclear Corp. v. New Mexico Env'tl. Imp. Bd.*, 97 N.M. 88, 637 P.2d 38 (Ct. App. 1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity of legislation permitting administrative agency to fix permissible standards of pollutant emission, 48 A.L.R.3d 326.

### **§ 9-7-14. Water quality control commission; exemptions from authority of secretary of health and environment.**

The water quality control commission shall receive staff support from the environmental improvement division of the health and environment department. 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 [9-7-6 NMSA 1978] of the Health and Environment Department Act.

History: 1978 Comp., § 9-7-14, enacted by Laws 1977, ch. 253, § 77.

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.

## **§ 9-7-15. Occupational health and safety review commission; exemptions from authority of secretary of health and environment.**

The occupational health and safety review commission shall review [receive] staff support from the environmental improvement division of the health and environment department. All powers, duties and responsibilities of the occupational health and safety review commission under Sections 50-9-9, 50-9-17 and 59-9-24 [50-9-24] NMSA 1978 are hereby explicitly exempted from the authority of the secretary of health and environment under provisions of Subsection B of Section 7 [9-7-6 NMSA 1978] of the Health and Environment Department Act.

History: 1978 Comp., § 9-7-15, enacted by Laws 1977, ch. 253, § 78.

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.

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.

Cross-references. - As to executive cabinet, see 9-1-3 NMSA 1978. As to public assistance generally, see Chapter 27 NMSA 1978. As to human rights generally, see Chapter 28 NMSA 1978. As to veterans services, see 28-13-1 to 28-13-16 NMSA 1978. As to delinquent, abused and neglected children, see 32-1-1 to 32-1-59 NMSA 1978. As to adoption generally, see 40-7-29 to 40-7-65 NMSA 1978. As to human rights, see 28-1-1 to 28-1-15 NMSA 1978.

Temporary provisions. - Laws 1988, ch. 101, § 48 provides that on July 1, 1989, all contract funds, including both federal funds and general fund appropriations, funds for contract administration, records and staff for all programs for children in need of supervision shall be transferred from the human services department to the youth authority, and all existing contracts and agreements in effect for the human services department for programs for children in need of supervision shall be binding and effective on the youth authority.

Appropriations. - Laws 1988, ch. 97, § 1, effective May 18, 1988, appropriates \$150,000 from the general fund to the human services department for expenditure in the seventy-seventh fiscal year for the purpose of funding an additional fourteen full-time equivalent client service agent positions to provide home care services to frail elderly and disabled adults in areas of the state where there are long waiting lists for such services 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 1988, ch. 122, § 2, effective May 18, 1988, allocates the \$1,200,000 appropriated in the General Appropriations Act of 1988 which is to be used for day-care reimbursements and transportation and other client reimbursement costs related to participation in mainstream employment and training programs, provides for the use of funds by the human services department, 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 1988, ch. 138, § 1, effective May 18, 1988, appropriates \$25,000 from the general fund to the human services department for expenditure in the seventy-seventh fiscal year for the purpose of providing a program consultant to design and implement a hospice house program in Santa Fe county 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 1988, ch. 143, § 1, effective March 9, 1988, appropriates \$150,000 from the general fund to the social services division of the human services department for expenditure in the seventy-sixth and seventy-seventh fiscal years for the purpose of acquiring and making necessary improvements to or constructing facilities to provide shelter for the homeless to be located in Albuquerque 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 1988, ch. 146, § 1, effective May 18, 1988, appropriates \$300,000 from the general fund to the human services department for expenditure in the seventy-seventh fiscal year for the purpose of increasing the rates for medicaid reimbursement to physicians and other health care practitioners reimbursed on a fee for service basis and provides that any unexpended or unencumbered funds remaining at the end of the seventy-seventh fiscal year shall revert to the general fund.

Laws 1988, ch. 150, § 1, effective March 9, 1988, appropriates \$150,000 from the general fund to the human services department for expenditure in the seventy-seventh fiscal year for the purpose of funding the three emergency crisis shelter group homes serving abused and neglected children 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 1988, ch. 151, § 1, effective March 9, 1988, appropriates \$400,000 from the general fund to the human services department for expenditure in the seventy-sixth and seventy-seventh fiscal years for the purposes of contracting for child abuse prevention programs that provide for early intervention with families in which abuse or neglect has occurred or who are at risk for abuse or neglect 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 1988, ch. 152, § 1, effective May 18, 1988, appropriates \$300,000 from the general fund to the human services department for expenditure in the seventy-seventh fiscal year for the purpose of funding eight additional adult protective services full-time equivalent field social worker positions and one central office adult protective services position and providing training for adult protective services personnel 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 1988, ch. 153, § 1, effective March 9, 1988, appropriates \$117,000 from the general fund to the human services department for expenditure in the seventy-sixth and seventy-seventh fiscal years for the purpose of contracting for AIDS clinical services in Santa Fe and Bernalillo counties 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 1988, ch. 154, § 1, effective May 18, 1988, appropriates \$150,000 from the general fund to the human services department for expenditure in the seventy-seventh fiscal year for the purpose of expanding coordinated community in-home care program services to additional frail elderly and physically handicapped persons, 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 1988, ch. 159, § 1, effective May 18, 1988, appropriates \$60,000 from the general fund to the human services department for expenditure in the seventy-seventh fiscal



year for the purpose of creating a program designed to train day-care personnel of licensed day-care facilities in the recognition and treatment of child abuse, and provides that any unexpended or unencumbered balance remaining at the end of the seventy-seventh fiscal year shall revert to the general fund.

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.

Cross-references. - As to executive cabinet, see 9-1-3 NMSA 1978. As to 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, 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.

F. In the event that 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. All rules and regulations shall be filed in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: 1978 Comp., § 9-8-6, enacted by Laws 1977, ch. 252, § 7; 1981, ch. 133, § 1; 1989, ch. 82, § 1.

Cross-references. - As to appointment of directors, see 9-8-9 NMSA 1978. As to cooperation with federal financial or other participation in programs, see 9-8-12 NMSA 1978. As to state budgets, see 6-3-1 to 6-3-22 NMSA 1978. As to public officers and employees generally, see Chapter 10 NMSA 1978.

The 1989 amendment, effective June 16, 1989, in Subsection B, added "except as provided in Section 9-8-9 NMSA 1978" at the end of the last sentence of Paragraph (10), and made minor stylistic changes throughout the subsection.

Personnel Act. - See 10-9-1 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.

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.

Cross-references. - As to human rights commission, see 28-1-3 to 28-1-14 NMSA 1978. As to commission on status of women, see 28-3-1 to 28-3-11 NMSA 1978. As to state agency on aging, see 28-4-4 to 28-4-9 NMSA 1978. As to 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 §§ 63 to 68.

### **§ 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.

Cross-references. - As to appointment of directors, see also 9-8-6B(10) NMSA 1978.

The 1989 amendment, effective June 16, 1989, made minor stylistic changes in the first sentence, and added all of the language of the second sentence beginning with "with the exception".

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.

Cross-references. - See cross-references under 9-8-4 NMSA 1978.

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.

Cross-references. - See cross-references under 9-8-4 NMSA 1978.

### **§ 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.

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;

(4) certify programs in the child care centers that receive funds from or through the human services department; and

(5) 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, child care centers, shelter care homes, group homes, foster homes and other facilities providing assistance, care or other direct services to:

(a) children; or

(b) 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 which may otherwise be specifically granted them by law; and

(b) the right to require annual reports from group homes stating the name, address and telephone number of: 1) their principal office or offices; 2) their residential facilities for the care of children; 3) the membership of their board of directors or other governing body if any; and 4) the person in charge of the group home 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 health and environment department or of its secretary which 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 or groups of children on a twenty-four-hour a day residential basis and which receive no funds as such directly from or through the department; and which is a member of any state or national association which 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 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.

Cross-references. - See cross-references under 9-8-4 NMSA 1978. Responsibility of human services department concerning the abuse or neglect of individual children, see 9-8-14 NMSA 1978.



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.

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 over parental religious objections for child whose life is not immediately endangered, 52 A.L.R.3d 1118.

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.

Children's Code. - See 32-1-1 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.

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.

Cross-references. - As to 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.

Cross-references. - As to division of office of military affairs, see 12-10-3, 20-1-1 NMSA 1978. As to 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.)

Sec.

9-10-1 to 9-10-9. Repealed.

9-10-10.       Recompiled.

9-10-11.       Repealed.

§§ 9-10-1 to 9-10-9. Repealed.

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.**

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.**

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 the department.

History: 1978 Comp., § 9-11-2, enacted by Laws 1977, ch. 249, § 2.

### **§ 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 five program divisions as follows:

- A. the audit and compliance division;
- B. the property tax division;
- C. the revenue processing division;
- D. the motor vehicle division; and
- E. the motor transportation division.

History: 1978 Comp., § 9-11-4, enacted by Laws 1977, ch. 249, § 4; 1986, ch. 20, § 122; 1987, ch. 268, § 3.

Cross-references. - As to executive cabinet, see 9-1-3 NMSA 1978. As to taxation generally, see Chapter 7 NMSA 1978. As to tax administration, see 7-1-1 to 7-1-82 NMSA 1978. As to oil and gas taxation, see 7-29-1 to 7-34-9 NMSA 1978. As to property taxes, see 7-35-1 to 7-38-93 NMSA 1978. As to 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.

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.

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.

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.

Cross-references. - As to executive cabinet, see 9-1-3 NMSA 1978. As to exemption of secretary from Personnel Act, see 9-11-10 NMSA 1978. As to 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 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 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 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, provided that the secretary shall not reduce staff below the full-time equivalent authorized in the applicable portion of the General Appropriation Act of 1987 in the seventy-sixth fiscal year except by transfer, attrition or dismissal for cause and by no other means. Positions already vacant on the effective date of the law shall not be affected;

(5) purchase or lease personal property, purchase services and lease real property for use by the department as he 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, 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;

(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, a secretary may recommend appropriate legislation to 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. Unless otherwise provided by statute, no such 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 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978]. The provisions of this subsection shall not apply to rules and regulations issued pursuant to the Tax Administration Act or the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978].

History: 1978 Comp., § 9-11-6, enacted by Laws 1977, ch. 249, § 7; 1978, ch. 147, § 1; 1987, ch. 268, § 4.

Cross-references. - As to appointment of directors, see 9-11-8 NMSA 1978. As to applicability of Personnel Act to department employees, see 9-11-10 NMSA 1978. As to state budgets, see 6-3-1 to 6-3-22 NMSA 1978. As to public officers and employees generally, see Chapter 10 NMSA 1978.

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.

### **§ 9-11-7. Repealed.**

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.



Cross-references. - As to exemption of directors from Personnel Act, see 9-11-6B(10), 9-11-10 NMSA 1978. As to appointment of directors, see also 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.

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.

Effective dates. - Laws 1988, ch. 24, § 10 makes the act effective on January 1, 1989.

## **Article 12**

### **Transportation Department**

(Repealed by Laws 1985, ch. 49, § 1; Laws 1987, ch. 268, § 43.)

Sec.

9-12-1 to 9-12-8. Repealed.

§§ 9-12-1 to 9-12-8. Repealed.

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.)

Sec.

§§ 9-13-1 to 9-13-7. Repealed.

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.

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.

Cross-references. - As to the local government division of the department of finance and administration, see 9-6-3 NMSA 1978. As to 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.

Transfer of personnel, funds and property. - Laws 1984, ch. 5, § 16, transfers all employees, funds and property used in the administration of the New Mexico Community Assistance Act to the local government division of the department of finance and administration and states the legislature's intention that the staff of the current New Mexico community assistance council be transferred to function as staff of the New Mexico community development council.

## **Article 15**

### **Economic Development and Tourism Department**

#### **§ 9-15-1. Short title.**

Sections 9-15-1 through 9-15-15 NMSA 1978 may be cited as the "Economic Development and Tourism Department Act".

History: Laws 1983, ch. 297, § 1; 1988, ch. 81, § 1.

The 1988 amendment, effective May 18, 1988, substituted "Sections 9-15-1 through 9-15-15 NMSA 1978" for "Sections 1 through 16 of this act".

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 and tourism promotion.

C. The purpose of the Economic Development and Tourism 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 and tourism activities;

(2) provide a data base for local and regional economic development and tourism 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 and tourism 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 to municipalities and counties for economic enhancement projects;

(6) provide for research and development projects as an incentive to industry locating or expanding in the state;

(7) 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; and

(8) provide support and assistance in the creation and operation of development finance mechanisms such as business development corporations and the industrial finance authority in order to insure capital availability for business expansion and economic diversification.

History: Laws 1983, ch. 297, § 2.

### **§ 9-15-3. Definitions.**

As used in the Economic Development and Tourism Department Act [9-15-1 to 9-15-15

NMSA 1978]:

- A. "commission" means the economic development and tourism commission;
- B. "department" means the economic development and tourism department;
- C. "research and development" means any activity which is:
  - (1) a systematic study directed specifically toward applying new knowledge to meet a recognized need;
  - (2) a systematic application of knowledge toward the production of useful materials, devices and systems or methods, including design, development and improvement of prototypes and new processes to meet specific requirements; or
  - (3) development of computer software;
- D. "secretary" means the secretary of economic development and tourism;
- E. "technical excellence" means the further refinement of research and development projects related to technical superiority within New Mexico institutions of higher education and industry; and
- F. "technological innovation" means the further development and commercialization of inventive ideas or products.

History: Laws 1983, ch. 297, § 3; 1988, ch. 81, § 2.

The 1988 amendment, effective May 18, 1988, substituted present Subsection A for the former subsection which read "'board' means the economic development and tourism board".

#### **§ 9-15-4. Department established.**

There is created in the executive branch the "economic development and tourism 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 New Mexico magazine division;

E. the tourism and travel division; and

F. the trade division.

History: Laws 1983, ch. 297, § 4; 1988, ch. 80, § 6.

The 1988 amendment, effective May 18, 1988, substituted "six divisions" for "five divisions" in the second sentence, and added Subsection F and made related changes.

Appropriations. - Laws 1988, ch. 161, § 1, effective May 18, 1988, appropriates \$2,104,400 from the seventy-sixth fiscal year unencumbered balances and the seventy-seventh fiscal year revenues of the New Mexico magazine to the New Mexico magazine division of the economic development and tourism department for expenses during the seventy-seventh fiscal year.

### **§ 9-15-5. Secretary of economic development and tourism; appointment.**

The chief executive and administrative officer of the department is the "secretary of economic development and 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; provided, however, that the secretary currently appointed to the commerce and industry department and whose appointment has been confirmed by the senate may serve as the secretary of economic development and tourism at the pleasure of the governor and without further confirmation.

History: Laws 1983, ch. 297, § 5.

Compiler's notes. - Laws 1983, ch. 297, § 33, abolishes the commerce and industry department.

### **§ 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 and Tourism 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 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 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;

(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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: Laws 1983, ch. 297, § 6; 1988, ch. 81, § 3.

The 1988 amendment, effective May 18, 1988, deleted "subject to any provisions of law requiring or establishing specific organizational units" at the end of Subsection B(3); added "based upon the five-year economic development plan approved by the commissioner" in Subsection B(8); deleted "with the approval of the board" following "appoint" in the first sentence in Subsection B(10); and deleted "with the board's approval" following "receive" in Subsection C.

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, supplanting 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, 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.

### **§ 9-15-7. 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 and Tourism 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 short- and long-term statewide economic development and tourism programs;
- 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 and Tourism Department Act.

History: Laws 1983, ch. 297, § 7; 1988, ch. 81, § 4.

The 1988 amendment, effective May 18, 1988, rewrote the section to the extent a detailed analysis is impracticable. For former provisions, see 1987 Replacement Pamphlet.

#### **§ 9-15-7.1. Additional planning duties of secretary of commerce and industry department [secretary of economic development and tourism].**

The secretary of the commerce and industry department [secretary of economic development and tourism], in addition to other duties, shall:

- A. serve as staff to the governor's rural development council;

B. provide housing information and technical assistance to units of local government and housing development associations;

C. administer the low-income elderly housing rehabilitation program;

D. provide training to groups participating in housing management programs funded to housing and urban development and the farmers home administration; and

E. shall serve as lead agency in coordination of the census program at the state data center.

History: Laws 1983, ch. 296, § 21.

Secretary of commerce and industry department. - Laws 1983, ch. 297, § 33 abolishes the commerce and industry department. As to creation of the economic development and tourism department and the appointment and duties of its secretary, see 9-15-4 to 9-15-7 NMSA 1978.

§§ 9-15-8, 9-15-9. Repealed.

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 6 [9-15-6 NMSA 1978] of the Economic Development and Tourism 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: Laws 1983, ch. 297, § 10.

### **§ 9-15-11. Commission created; membership; administratively attached to the department.**

A. The "economic development and 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 department's five-year economic development and 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. A seventh 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 state senate of New Mexico shall be given exclusive original jurisdiction over proceedings to remove members of the board 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 committee 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.

Repeals and reenactments. - Laws 1988, ch. 81, § 5 repeals former 9-15-11 NMSA 1978, as amended by Laws 1987, ch. 112, § 1, and enacts the above section, effective May 18, 1988. For provisions of former section, see 1987 Replacement Pamphlet.

## **§ 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. assist and promote research and development projects in the state;

C. review, modify and approve annual updates to the five-year economic development and tourism plan generated by the department; and

D. establish such rules and regulations for its own operations as are necessary to achieve the purposes of the Economic Development and Tourism 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: Laws 1983, ch. 297, § 12; 1988, ch. 81, § 6.

The 1988 amendment, effective May 18, 1988, substituted "commission" for "board" in the catchline, the introductory sentence and the second sentence of present Subsection D; in Subsection A, inserted "and recommend" and substituted "program guidance" for "program review and oversight"; in Subsection C, substituted "approve annual updates to the five-year economic development and tourism plan" for "approve the statewide economic development and tourism plans" and deleted "and consider revision of the plans annually" following "generated by the department"; deleted former Subsection D, which read "review, modify and approve the operating and capital budget requests of the department; and", and redesignated former Subsection E as present Subsection D.

### **§ 9-15-12.1. Business development board created; membership; duties.**

A. The "business development board" is created. Members of the board shall be appointed by the governor and shall serve at his pleasure. The board shall consist of nine members, the composition of which shall reflect, to the extent possible, the cultural and economic diversity of the state. Members shall represent expertise and experience in the area of business development. The governor shall designate a chairman of the board from among the nine members.

B. Board members shall serve staggered terms of three years as determined by the governor at the time of their initial appointment. No board member shall serve more than two terms.

C. The primary function of the business development board is to advise the economic

development division of the economic development and tourism department. The division shall provide staff support to the board.

D. The board shall meet at the call of the chairman not less than once each quarter.

E. Board members 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].

History: 1978 Comp., § 9-15-12.1, enacted by Laws 1988, ch. 81, § 7.

Effective dates. - Laws 1988, ch. 81 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

### **§ 9-15-12.2. Tourism board created; membership; duties.**

A. The "tourism board" is created. Members of the board shall be appointed by the governor and shall serve at his pleasure. The board shall consist of nine members, the composition of which shall reflect, to the extent possible, the cultural and economic diversity of the state. Members shall represent expertise and experience in the area of tourism and travel. The governor shall designate a chairman of the board from among the nine members.

B. Board members shall serve staggered terms of three years as determined by the governor at the time of their initial appointment. No board member shall serve more than two terms.

C. The primary function of the tourism board is to advise the tourism and travel division of the economic and tourism department. The division shall provide staff support to the board.

D. The board shall meet at the call of the chairman not less than once each quarter.

E. Board members 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].

History: 1978 Comp., § 9-15-12.2, enacted by Laws 1988, ch. 81, § 8.

Effective dates. - Laws 1988, ch. 81 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 18, 1988.

### **§ 9-15-13. Science and technology commercialization commission.**

A. There is created the "science and technology commercialization commission", which is administratively attached to the department. The science and technology

commercialization commission shall consist of the secretary, the governor's science advisor, hereby created, and seven members, appointed by the governor, who shall have demonstrated experience in science and technology management or science and technology business development. The governor's science advisor shall be the chairman of the science and technology commercialization commission.

B. The science and technology commercialization commission shall meet at the call of the chairman and as necessary to carry out its duties pursuant to the Research and Development Act [9-15-16 to 9-15-26 NMSA 1978]. The appointed members of the science and technology commercialization 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].

C. The science and technology commercialization commission shall:

(1) advise the department on matters relating to science and technology, technological innovation, technical excellence, technology-based new business development, research and development and other science and technology projects conducted at research institutes and institutions of higher education throughout the state, with emphasis on commercialization of such projects and technology transfer for economic development purposes;

(2) act as the governing authority of the New Mexico research and development institute and carry out those duties delegated to the science and technology commercialization commission pursuant to the Research and Development Act; and

(3) advise the governor and other executive agencies on science and technology policy.

History: Laws 1983, ch. 297, § 13; 1986, ch. 38, § 12; 1987, ch. 161, § 1; 1988, ch. 81, § 9.

The 1988 amendment, effective May 18, 1988, rewrote the section to the extent that a detailed analysis is impracticable. For former provisions, see 1987 Replacement Pamphlet.

## **§ 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 which 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.

The 1988 amendment, effective May 18, 1988, substituted "providing personnel administration, financial management, procurement and budget preparation services" for "providing clerical services in the areas of personnel and budget preparation" in Subsection A(2); and substituted "commission" for "board" near the end of Subsection B.

### **§ 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.

### **§ 9-15-16. Short title [; Research and Development Act].**

Sections 9-15-16 through 9-15-26 NMSA 1978 may be cited as the "Research and Development Act".

History: Laws 1986, ch. 38, § 1; 1988, ch. 81, § 11.

The 1988 amendment, effective May 18, 1988, substituted "Sections 9-15-16 through 9-15-26 NMSA 1978" for "Sections 1 through 11 of this act".

### **§ 9-15-17. Findings and purpose.**

A. The legislature finds that a need exists for state support of research and development of new and existing technologies, with emphasis on the commercialization stage of the research and development process. Such support, the legislature finds, will significantly contribute to the expansion of existing businesses and the creation of new businesses and stimulate economic development in New Mexico.

B. The legislature also finds that a need exists for the state to provide enhanced coordination, public information, promotion and cooperation with and among the centers of technical excellence, the technological innovation program, the New Mexico research and development institute and other state organizations engaged in science and technology initiatives to insure that the state funds utilized are leveraged to improve the potential for success of these programs, including their impact on economic development.

C. The legislature further finds that a need exists to allocate in the most effective way scarce state resources through such enhanced coordination, public information, promotion and cooperation to help insure greater economic growth and stability in New Mexico.

D. The purpose of the Research and Development Act [9-15-16 to 9-15-26 NMSA 1978] is to create the New Mexico research and development institute and to develop a comprehensive research and development plan for state support of:

(1) technologies and products which offer the greatest opportunities for growth of technology-related businesses and economic development in the state; and

(2) acquisition of applied research and development funds from sources other than state government.

History: Laws 1986, ch. 38, § 2; 1987, ch. 161, § 2.

### **§ 9-15-18. Definitions.**

As used in the Research and Development Act [9-15-16 to 9-15-26 NMSA 1978]:

A. "commission" means the science and technology commercialization commission;

B. "committee" means the technical advisory committee;

C. "director" means the director of the institute;

D. "institute" means the New Mexico research and development institute; and

E. "secretary" means the secretary of the economic development and tourism department.

History: Laws 1986, ch. 38, § 3; 1988, ch. 81, § 12.

The 1988 amendment, effective May 18, 1988, inserted "commercialization" in Subsection A; added Subsection E; and made minor stylistic changes.

### **§ 9-15-19. New Mexico research and development institute created.**

The "New Mexico research and development institute" is created. The institute shall be governed by the commission and shall be administratively attached, as defined in the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978], to the economic development and tourism department.

History: Laws 1986, ch. 38, § 4.

### **§ 9-15-20. Commission; duties.**

The commission shall:

A. be responsible for the overall operation of the institute;

B. make a quarterly review of all expenditures made by the institute during the preceding calendar quarter and approve expenditures anticipated during the succeeding quarter;

C. review, modify and approve the research and development plan generated by the director and the committee and consider revisions of the plan annually;

D. recommend to the governor and the legislature an annual budget for the institute;

E. review, modify and approve the operating budget for the institute;

F. review and refer reports of the institute's activities to the governor, the legislature and the public;

G. with the approval of the governor and subject to confirmation by the senate, hire a director of the institute. The director shall have a proven and extensive knowledge of and experience in research and development, including product development,

technology-based business activities and the management of such activities, and shall be directly responsible to the commission. His compensation shall be fixed by the commission, and he shall serve at its pleasure;

H. review and approve the annual operating plans and budgets of the centers of technical excellence and the technological innovation program;

I. review and approve the tasks and budgets of entities under contract pursuant to Section 9-15-26 NMSA 1978; and

J. establish such policies, procedures and guidelines as are necessary to carry out the provisions of the Research and Development Act [9-15-16 to 9-15-26 NMSA 1978].

History: Laws 1986, ch. 38, § 5; 1987, ch. 161, § 3.

### **§ 9-15-21. Technical advisory committee; composition; compensation; duties.**

A. A "technical advisory committee" to the institute is created. Members of the committee shall be appointed by the governor and shall serve at his pleasure. The committee shall consist of ten members as follows:

(1) a member from the economic development and tourism department;

(2) a member each from the university of New Mexico, New Mexico state university and New Mexico institute of mining and technology, recommended by the respective presidents of those institutions;

(3) a member of the staff of Sandia national laboratories or Los Alamos national laboratory, recommended by the respective laboratory directors; this membership shall be rotated every two years between such laboratories, beginning with Los Alamos national laboratory;

(4) a member of the staff of the air force weapons laboratory or White Sands missile range, recommended by the respective commanding officers; this membership shall be rotated every two years between such entities, beginning with the air force weapons laboratory;

(5) a member from the financial community who has shown a demonstrated involvement in new technology ventures; and

(6) a member each from three technology-related industries doing business in New Mexico, recommended by the chief operating officers of the corporations selected by the governor to represent each industry.

B. Members selected pursuant to Paragraphs (5) and (6) of Subsection A of this section shall be appointed for terms of three years; provided that initial terms shall be staggered so that no more than two terms become vacant each year.

C. The committee shall elect a chairman and such other officers as it deems necessary. The member from the economic development and tourism department shall not be eligible for elective office. The committee shall meet at the call of the chairman.

D. All members of the committee, except the member from the economic development and tourism department, shall receive per diem and mileage 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.

E. The committee shall review and make recommendations to the director on proposals for research and development. In addition, the committee shall:

(1) at the direction of the commission, assist the commission in hiring the director and the other senior staff positions identified by the commission;

(2) advise the director in formulating the research and development plan;

(3) advise the director in proposing policies to implement the research and development plan; and

(4) provide such advice to the director and the commission as is necessary to accomplish the purposes of the Research and Development Act [9-15-16 to 9-15-26 NMSA 1978].

History: Laws 1986, ch. 38, § 6.

## **§ 9-15-22. Director; duties.**

The director shall be responsible for the overall supervision of institute operations in support of the purposes of the Research and Development Act [9-15-16 to 9-15-26 NMSA 1978] and the policies, procedures and guidelines established by the commission. In addition, the director shall:

A. work with the commission and the committee in formulating and proposing policies to implement a research and development plan for state support of:

(1) technologies and products which offer the greatest opportunities for growth of technology-related businesses and economic development in the state; and

(2) acquisition of applied research and development funds from sources other than state government;

B. develop and be responsible for the operating and capital budgets of the institute;

C. approve proposed projects and contractual arrangements in accordance with policies, procedures and guidelines established by the commission. In doing so, the director may enter into contracts with state, federal or private research entities for research and development projects and may apply for and accept any federal funds or grants for such projects and may accept similar donations and bequests from other sources;

D. develop requests for proposals in research and development areas given priority by the commission in the research and development plan; receive and refer with commentary to the committee 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;

E. prepare an annual report on:

(1) the status of the research and development fund;

(2) the status of the technical excellence center fund;

(3) the status of the technological innovation center fund;

(4) the status of ongoing research and development projects;

(5) the results obtained from completed projects and the dissemination of those results;  
and

(6) other activities of the institute;

F. maintain and update records on the status of all completed and ongoing projects;

G. with the approval of the commission and within the limitations of available funds, employ and fix the compensation of those persons necessary to discharge his duties;

H. request from the centers of technical excellence and the technological innovation centers their annual operating plans and budgets for review and approval by the commission;

I. request from each entity under contract pursuant to Section 9-15-26 NMSA 1978 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 commission in order to further the purposes of the Research and Development Act.

History: Laws 1986, ch. 38, § 7; 1987, ch. 161, § 4.

### **§ 9-15-23. Research and development fund created.**

There is created in the state treasury the "research and development fund". No money appropriated to this fund or accruing to it through cooperative research agreements, gifts, grants or bequests shall be transferred to another fund or encumbered or disbursed in any manner except for activities conducted pursuant to the Research and Development Act [9-15-16 to 9-15-26 NMSA 1978]. The fund shall not revert at the end of a fiscal year. Money in the research and development fund is appropriated to the institute. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his designee for the purpose of paying the cost of activities conducted pursuant to the Research and Development Act; provided that the chairman of the commission may sign vouchers when the position of director is vacant.

History: Laws 1986, ch. 38, § 8; 1989, ch. 324, § 3.

The 1989 amendment, effective April 7, 1989, deleted "and no income earned on the fund" following "grants or bequests" in the second sentence.

Temporary provisions. - Laws 1986, ch. 38, § 13 provides that on the effective date of that section, February 28, 1986, any unexpended or unencumbered balance remaining in or appropriations to the energy research and development institute fund shall be transferred to the research and development fund and also that on February 28, 1986, all contracts, projects, powers and duties, money and appropriations and all records or other information undertaken or held by the New Mexico energy research and development institute pursuant to the Energy Research and Development Institute Act shall be transferred to the New Mexico research and development institute.

### **§ 9-15-24. Proprietary information.**

A. Any information obtained by the institute which 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 Subsection C of Section 14-3-2 NMSA 1978 or be open to inspection under Section 14-2-1 NMSA 1978. The institute 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 or committee shall be closed when proprietary technical or business information is discussed.

History: Laws 1986, ch. 38, § 9.

### **§ 9-15-25. Personnel Act; exemption.**

The director and such other employees of the institute as are identified by the commission are exempt from the provisions of the Personnel Act.

History: Laws 1986, ch. 38, § 10.

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

### **§ 9-15-26. Contractual relationships with existing entities.**

A. The institute may contract, using performance- and incentive-based contracting procedures, with the board of regents of New Mexico state university for applied research and technical assistance, including but not limited to:

- (1) aquaculture technologies utilizing New Mexico saline water resources for commercial purposes;
- (2) renewable energy technologies with potential for commercial applications in New Mexico; and
- (3) incubator facilities associated with technology development programs which offer unique opportunities for economic development in the state, utilizing to the maximum practicable extent the Roswell test facility.

B. State funds for activities in Subsection A of this section shall be included in the budget of the institute.

History: Laws 1978, Comp., § 9-15-26, enacted by Laws 1987, ch. 161, § 5.

Repeals and reenactments. - Laws 1987, ch. 161, § 5, effective April 7, 1987, repeals former 9-15-26 NMSA 1978, as enacted by Laws 1986, ch. 38, § 11 effective April 7, 1987 and enacts the present section. For provisions of the former section see the 1986 Cumulative Supplement.

### **§ 9-15-27. Short title [; New Mexico Trade Promotion Act].**



Sections 1 through 5 [9-15-27 to 9-15-31 NMSA 1978] of this act may be cited as the "New Mexico Trade Promotion Act".

History: Laws 1988, ch. 80, § 1.

Effective dates. - Laws 1988, ch. 80 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 18, 1988.

### **§ 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 purpose of the New Mexico Trade Promotion Act [9-15-27 to 9-15-31 NMSA 1978] 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.

History: Laws 1988, ch. 80, § 2.

Effective dates. - Laws 1988, ch. 80 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 18, 1988.

### **§ 9-15-29. Definitions.**

As used in the New Mexico Trade Promotion Act [9-15-27 to 9-15-31 NMSA 1978]:

A. "department" means the economic development and tourism department;

B. "director" means the director of the trade division of the economic development and tourism department; and

C. "secretary" means the secretary of economic development and tourism.

History: Laws 1988, ch. 80, § 3.

Effective dates. - Laws 1988, ch. 80 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 18, 1988.

### **§ 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.

Effective dates. - Laws 1988, ch. 80 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 18, 1988.

### **§ 9-15-31. Director; duties.**

The director is responsible for the overall supervision of the division's activities in accordance with the purposes of the New Mexico Trade Promotion Act [9-15-27 to 9-15-31 NMSA 1978]. In addition, the director shall:

A. work with individuals and organizations outside of state government to formulate a five-year 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.

Effective dates. - Laws 1988, ch. 80 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 18, 1988.

### **§ 9-15-32. Office established.**

There is established the "office of enterprise development" in the economic development and tourism department.

History: Laws 1989, ch. 205, § 1.

Effective dates. - Laws 1989, ch. 205 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### **§ 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.

Effective dates. - Laws 1989, ch. 205 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### **§ 9-15-34. Duties of the department.**

A. The economic development and tourism 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 database 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.

Effective dates. - Laws 1989, ch. 205 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

## **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.

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.

Cross-references. - As to financial institutions and regulations and securities generally, see Chapter 58 NMSA 1978. As to construction industries and manufactured housing, see Chapter 60, Articles 13 and 14 NMSA 1978.

The 1988 amendment, effective May 18, 1988, substituted "manufactured" for "mobile" in Subsection E; and made minor stylistic changes.

Temporary provisions. - Laws 1987, ch. 329, § 16, effective July 1, 1987, provides for the transfer of all personnel, appropriations, money, equipment and records belonging to the health and environment department for the administration of the Respiratory Care Act, the Speech-Language and Audiology Act, the Athletic Trainer Act and the Hearing Aid Act, as well as existing contracts and agreements, to the regulation and licensing department and further provides that the administration of the respiratory care fund is transferred to the regulation and licensing department.

#### **§ 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: Laws 1983, ch. 297, § 22.

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.

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 are exempt from the Personnel Act.

History: Laws 1983, ch. 297, § 24.

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.

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.

The 1989 amendment, effective July 1, 1989, substituted "commission" for "committee" in the catchline and near the beginning of the section, made minor stylistic changes, and inserted references to the following sections of NMSA 1978: 60-13-13.2, 60-13-23, 60-13-27, 60-13-36, 60-13-43, 60-13-45, 60-13-49, 60-13-53 and 70-5-7; the

amendment also deleted references to 60-13-35, 60-13-48 through 60-13-52, and 70-5-6 NMSA 1978.

### **§ 9-16-13. Mobile 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.

Mobile housing committee. - 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.

### **§ 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 mobile 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 [suspense] accounts to the regulation and licensing department operating fund.

D. Money in the regulation and licensing department operating fund is appropriated to the department for expenditure by the department for the purpose of carrying out the duties of the administrative services division, the construction industries division, the financial institutions division, the securities division and the mobile housing division. On June 30, 1988 and every June 30 thereafter, all money in the regulation and licensing

department operating fund in excess of fifteen percent of the following fiscal year's appropriation to these divisions shall be transferred to the general fund.

History: 1978 Comp., § 9-16-14, enacted by Laws 1987, ch. 298, § 1.

## **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.

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 but not limited to:

- (1) the administrative services division;
- (2) the building services division;
- (3) the information systems division;

(4) the property control division;

(5) the purchasing division; and

(6) the risk management 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 or economy.

History: Laws 1983, ch. 301, § 3; 1984, ch. 64, § 1.

Cross-references. - As to public purchases, see Chapter 13 NMSA 1978. As to information systems division, see 15-1-1 NMSA 1978. As to the creation of the communications division within the general services department, see 15-2-1 NMSA 1978. As to property control, see 15-3-1 et seq. NMSA 1978. As to management of surplus property program by the general services department, see 15-4-2 and 15-4-3 NMSA 1978. As to risk management, see 15-7-2 et seq. NMSA 1978.

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.

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.

#### **§ 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: Laws 1983, ch. 301, § 5.

Temporary provisions. - Laws 1987, ch. 354, § 4, effective June 19, 1987, authorizes the general services department, subject to approval by the state board of finance, to refinance and consolidate existing telecommunications equipment lease purchase agreements not to exceed \$7,500,000 through the issuance of revenue bonds or capital leases for the purpose of reducing current interest rates and minimizing state agency telecommunication costs.

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.

## **Article 18**



## **Labor Department**

### **§ 9-18-1. Short title.**

Sections 1 through 14 [9-18-1 to 9-18-14 NMSA 1978] of this act may be cited as the "Labor Department Act".

History: Laws 1987, ch. 342, § 1.

### **§ 9-18-2. Definitions.**

As used in the Labor Department Act [9-18-1 to 9-18-14 NMSA 1978]:

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 [9-18-1 to 9-18-14 NMSA 1978] 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.

Cross-references. - As to human rights, see 28-1-1 to 28-1-15 NMSA 1978. As to labor law generally, see Chapter 50 NMSA 1978. As to unemployment compensation, see Chapter 51 NMSA 1978. As to workers' compensation and subsequent injury and occupational disease disablement compensation, see Chapter 52 NMSA 1978.

Temporary provisions. - Laws 1987, ch. 342, § 33, effective July 1, 1987, provides for the transfer of funds, personnel, etc., of the employment security department, the workmen's compensation administration, the labor commissioner and the office and staff of the human rights commission to the labor department. All federal program grants and fund allocations or other payments made to the employment security department or other agencies merged into the labor department are transferred to the employment security division or such other designated divisions and shall not be commingled with other funds of the department or used for any purpose except for the administration of the program for which such funds were granted or the administration of the employment security division or such other designated divisions.

### **§ 9-18-5. Agencies abolished.**

On the effective date of the Labor Department Act [9-18-1 to 9-18-14 NMSA 1978], the employment security department, the labor commissioner and the workmen's compensation administration are abolished.

History: Laws 1987, ch. 342, § 5.

### **§ 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 [9-18-1 to 9-18-14 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. 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: Laws 1987, ch. 342, § 7.

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.

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 [9-18-1 to 9-18-14 NMSA 1978]. 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.

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 [9-18-1 to 9-18-14 NMSA 1978].

History: Laws 1987, ch. 342, § 14.

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 1791j.

## **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.

The 1989 amendment, effective July 1, 1989, substituted the present provisions for "Sections 9-18-1 through 9-18-11 NMSA 1978 may be cited as the 'Public Safety Department Act' ".

#### **§ 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.

The 1989 amendment, effective July 1, 1989, substituted "Department of Public Safety Act" for "Public Safety Department Act" in the undesignated introductory paragraph and "department of public safety" for "public safety department" in Subsection A.

#### **§ 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.

The 1989 amendment, effective July 1, 1989, substituted "Department of Public Safety Act" for "Public Safety Act".

### **§ 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, four 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; and
- E. the administrative services division.

History: 1978 Comp., § 9-18-4, enacted by Laws 1987, ch. 254, § 4; 1989, ch. 204, § 4.

Cross-references. - As to state police, see 29-2-1 to 29-2-29 NMSA 1978. As to law enforcement training, see 29-7-1 to 29-7-12 NMSA 1978.

The 1989 amendment, effective July 1, 1989, substituted "department of public safety" for "public safety department" in the first sentence of the undesignated introductory paragraph, inserted "and recruiting" in Subsection C, and substituted "technical and emergency support" for "services" in Subsection D.

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.

### **§ 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: 1978 Comp., § 9-18-6, enacted by Laws 1987, ch. 254, § 6; 1989, ch. 204, § 5.

The 1989 amendment, effective July 1, 1989, in Subsection B deleted "therein" following "conferred upon any division" in the first sentence of the introductory paragraph, substituted "Department of Public Safety Act" for "Public Safety Act" in Paragraph (1), and twice inserted "New Mexico" in Paragraph (11).

Temporary provisions. - Laws 1987, ch. 254, § 11 provides for the creation of the "public safety department oversight committee" to be composed of four members of the senate appointed by the senate committees' committee, no more than two of which shall be of the same political party, and four members of the house of representatives appointed by the speaker, no more than two of which shall be of the same political party. That committee shall have opportunity to review any rules or regulations proposed to be adopted by the secretary prior to their promulgation. The committee shall make a report of its findings and recommendations to the second session of the thirty-eighth legislature with any suggested legislative changes deemed necessary to improve the operation of the department.

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.

Effective dates. - Laws 1989, ch. 72 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### **§ 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.

The 1989 amendment, effective July 1, 1989, made minor stylistic changes in Subsections A and C; substituted "9-19-6" for "9-18-5" in the second sentence of Subsection A; substituted "Department of Public Safety Act" for "Public Safety Department Act" in Subsections B and C; rewrote Subsection D, which formerly read: "The services division shall consist of the civil emergency preparedness division of the office of military affairs, the personnel of the hazardous materials emergency response program or plan and such other functions as legal communications, crime laboratory, records, equipment maintenance and building services"; inserted "and recruiting" and "New Mexico" in Subsection E; substituted "secretary" for "governor" in Subsection F; and deleted the former undesignated last paragraph, which read: "The primary mission of the administrative services division is to assist the New Mexico state police division and the special investigations division in carrying out their responsibilities".

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.

The 1989 amendment, effective July 1, 1989, inserted "New Mexico", and deleted "public safety" preceding "department".

### **§ 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.

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.

The 1989 amendment, effective July 1, 1989, substituted "Department of Public Safety Act" for "Public Safety Department Act" in the first sentence.

### **§ 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.

The 1989 amendment, effective July 1, 1989, in Subsection B deleted "or employee" following "officer" in the first sentence and substituted all of the language of that sentence beginning with "state" for "for demotion, suspension or dismissal, upon the recommendation of the director of the division in which such person is employed", and substituted all of the language of the second sentence following "shall" for "submit its findings and recommendations to the secretary".

Temporary provisions. - Laws 1987, ch. 254, § 13 transfers personnel, property, records and appropriations in the General Appropriation Act of 1987 of the governor's organized crime prevention commission to the special investigations division, makes a similar

transfer from the hazardous materials emergency response program and civil emergency preparedness division of the office of military affairs to the services division, and also makes a transfer from fire fighting and law enforcement training activities to the training division.

Laws 1987, ch. 254, § 14 abolishes the New Mexico state police, the state police board, the alcoholic beverage control department and the alcoholic beverage control commission and transfers their personnel, property and functions, except for licensing provisions of the Liquor Control Act, to the public safety department.

## **Article 20**

### **Youth Authority**

#### **§ 9-20-1. Short title.**

Sections 1 through 16 [9-20-1 to 9-20-16 NMSA 1978] of this act may be cited as the "Youth Authority Act".

History: Laws 1988, ch. 101, § 1.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

#### **§ 9-20-2. Purpose.**

The purpose of the Youth Authority Act [9-20-1 to 9-20-16 NMSA 1978] is to establish a unified agency to administer certain laws and exercise certain functions relating to children and youth formerly administered and exercised by the juvenile facilities division and other units of the corrections department, the human services department, the health and environment department and the juvenile probation offices of the district courts.

History: Laws 1988, ch. 101, § 2.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

#### **§ 9-20-3. Definitions.**

As used in the Youth Authority Act [9-20-1 to 9-20-16 NMSA 1978]:



- A. "authority" means the youth authority; and
- B. "secretary" means the secretary of the authority.

History: Laws 1988, ch. 101, § 3.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

### **§ 9-20-4. Authority created.**

The "youth authority" is created. The authority shall be a cabinet department and shall consist of, but not be limited to, three divisions:

- A. the administrative services division;
- B. the community services division; and
- C. the juvenile facilities division.

History: Laws 1988, ch. 101, § 4.

Cross-references. - As to delinquent and neglected children generally, see Chapter 32 NMSA 1978.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

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 1988, ch. 101, § 47 provides that on July 1, 1989, all appropriations, money, records, property, equipment and supplies of each juvenile probation office in each judicial district shall be transferred to the youth authority; and further provides that on July 1, 1989, all juvenile probation officers, their support staffs and the respective chiefs in each of the thirteen judicial districts transferred from the district courts to the youth authority shall remain in their respective districts and shall be subject only to voluntary transfer, if necessary, that an equalization formula shall be developed to determine the needs and caseloads of each district and shall be applied to all employees who assume

their duties after July 1, 1989, that at the time of transfer the aforementioned groups shall retain their current classification and salary, that benefits including but not limited to annual leave, sick leave, pension and insurance benefits shall be established in accordance with the Personnel Act, provided no accrued benefits shall be forfeited and that those juvenile probation officers and chiefs employed after July 1, 1988 shall be subject to a classification and compensation plan that will be established in accordance with the Personnel Act.

Laws 1988, ch. 101, § 48 provides that on July 1, 1989, all contract funds, including both federal funds and general fund appropriations, funds for contract administration, records and staff for all programs for children in need of supervision shall be transferred from the human services department to the youth authority, and that all existing contracts and agreements in effect for the human services department for programs for children in need of supervision shall be binding and effective on the youth authority.

Laws 1988, ch. 101, § 49 provides that on July 1, 1989, all appropriations, records and contractual obligations attributable to the first offenders program and the wilderness experience program shall be transferred from the health and environment department to the youth authority.

Laws 1989, ch. 171, § 5, effective July 1, 1989, provides that on July 1, 1989, all records, property, equipment and supplies of the human services department relating to the Citizen Substitute Care Review Act [32-7-1 to 32-7-6 NMSA 1978] shall be transferred to the youth authority, that on July 1, 1989, all appropriations, contract funds and funds for contract administration, staff, costs of advisory committee per diem and travel, training and all other costs relating to the Act shall be transferred from the department to the youth authority, and that on July 1, 1989, all existing contracts and agreements in effect with the department for providing a statewide system of local substitute care review boards shall be binding and effective on the youth authority.

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.

### **§ 9-20-5. Secretary of the youth authority; appointment.**

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

B. The secretary shall serve and have all of the duties, responsibilities and authority of that office prior to the confirmation or rejection of his appointment by the senate.

History: Laws 1988, ch. 101, § 5.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

### **§ 9-20-6. Secretary; duties and general powers.**

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

B. To perform his duties, the secretary has every power expressly enumerated in the law, whether granted to the secretary, the authority or any division of the authority, except when any division of the authority 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 Youth Authority Act [9-20-1 to 9-20-16 NMSA 1978], exercise general supervisory and appointing power over all authority employees subject to any applicable personnel laws and regulations;

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

(3) organize the authority into divisions that 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 Youth Authority Act, to assure implementation of and compliance with the provisions of law with the administration or execution of which he is responsible, and by enforcing those orders and instructions by appropriate administrative action in the courts;

(6) conduct research and studies that will improve the operations of the authority and the provision of services to children and youth;

(7) provide for courses of instruction and training for employees of the authority and other persons involved in the administration of programs with the objective of improving the operations, service[,] delivery and efficiency of administration;

(8) prepare an annual budget of the authority;

(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 authority shall provide budgeting, recordkeeping and clerical assistance to administratively attached entities;

(10) select for each division a director;

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

(12) require performance bonds of such authority's employees and officers as he deems necessary, as provided in the Surety Bond Act. The authority 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 authority, any public or private funds including but not limited to United States government funds available to the authority to carry out its programs, duties and services.

D. Where functions assigned to one department could better be performed by the authority, 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 authority 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 authority 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 or proposed amendment or repeal of 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 [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

History: Laws 1988, ch. 101, § 6.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

### **§ 9-20-7. Organizational units of the authority; powers and duties specified by law; access to information.**

Those organizational units of the authority 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 6 [9-20-6 NMSA 1978] of the Youth Authority Act. The agency shall have access to all records, data and information of other state departments that are not specifically held confidential by law.

History: Laws 1988, ch. 101, § 7.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

### **§ 9-20-8. Administratively attached agency.**

The juvenile parole board is administratively attached to the authority in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA].

History: Laws 1988, ch. 101, § 8.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

### **§ 9-20-9. Division directors.**

The secretary shall appoint, with the approval of the governor, "directors" of such divisions as are established within the authority. The positions so appointed are exempt from the Personnel Act.

History: Laws 1988, ch. 101, § 9.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

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

### **§ 9-20-10. Bureaus; chiefs.**

The secretary shall establish, within each division, such bureaus as he deems necessary to carry out the provisions of the Youth Authority Act [9-20-1 to 9-20-16 NMSA 1978]. He shall employ a chief to be administrative head of each bureau. The bureau chiefs and all employees of the authority shall be covered by the Personnel Act unless otherwise provided by law.

History: Laws 1988, ch. 101, § 10.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

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

### **§ 9-20-11. Secretary; additional duties.**

A. The secretary shall provide for the necessary training of juvenile probation and parole officers and correctional officers in accordance with national training standards for such juvenile officers.

B. The secretary shall provide for planning and policy and program development for community services and programs, as well as for a research and evaluation component to determine the most effective programs and services for children in need of supervision and adjudicated delinquents.

History: Laws 1988, ch. 101, § 11.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

### **§ 9-20-12. Community services division.**

A. The secretary shall provide for probation and parole services, community corrections programs, a first offender program, a wilderness experience program, children in need of supervision programs and such other community services as are deemed necessary for children alleged or adjudicated delinquent or in need of supervision.

B. The community services division of the authority shall coordinate its programs with those of the human services department and health and environment department which serve the same children, including but not limited to programs providing medical

assistance, family and individual counseling, substance abuse treatment, substitute care and institutional care.

C. The community services division of the authority shall coordinate its program and services with district court family services and programs addressing the same children and shall work with the courts to develop family services programs throughout the state.

History: Laws 1988, ch. 101, § 12.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

### **§ 9-20-13. Juvenile facilities division.**

A. The purpose of the juvenile facilities division of the authority is to diagnose, supervise, care for, educate and treat children adjudicated to be delinquent and detained by or placed in the custody of the authority pursuant to the Children's Code or other provisions of law.

B. The juvenile facilities under the jurisdiction of the authority at which children are confined pursuant to court order include:

- (1) the New Mexico boys' school in Springer;
- (2) the New Mexico girls' school in Albuquerque;
- (3) the youth diagnostic and development center in Albuquerque;
- (4) the boys' reintegration center in Albuquerque;
- (5) the girls' reintegration center in Albuquerque;
- (6) the Eagle Nest camp;
- (7) the Portales reintegration center;
- (8) the Alamogordo reintegration center;
- (9) the Farmington reintegration center; and
- (10) the Carlsbad reintegration center.

C. The juvenile facilities division shall supervise all facilities operated by the authority.

History: Laws 1988, ch. 101, § 13.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

Children's Code. - See 32-1-1 NMSA 1978 and notes thereto.

### **§ 9-20-14. Children; transfer to another state; notice to judge.**

A. A child placed in the custody of the authority pursuant to a final court commitment may be transferred by the secretary to another state for all or any portion of that commitment if the other state has entered into an interstate compact with New Mexico for the detention of children.

B. The secretary shall provide notice of a transfer pursuant to this section to the judge who ordered the commitment of the child to the authority.

History: Laws 1988, ch. 101, § 14.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

### **§ 9-20-15. Juvenile justice programs; federal grants; advisory committee.**

Any juvenile justice advisory committee appointed pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended, shall be advisory to the authority. All planning, budgeting, evaluation and monitoring and grants administration functions pursuant to that act shall be carried out by the authority.

History: Laws 1988, ch. 101, § 15.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.

Juvenile Justice and Delinquency Prevention Act of 1974. - The federal Juvenile Justice and Delinquency Prevention Act of 1974 appears primarily as 42 U.S.C. § 5601 et seq.

### **§ 9-20-16. Youth authority advisory committee created.**

A. The "youth authority advisory committee" is created within the authority in accordance with the provisions of the Executive Reorganization Act [9-1-1 to 9-1-10 NMSA 1978].



B. The advisory committee shall consist of seven members appointed by the governor with the consent of the senate. Members shall have an interest and involvement in services, particularly those services and programs under the authority. Members shall be appointed so as to provide adequate representation of all ethnic groups and geographic areas of the state.

C. The advisory committee shall meet at least four times a year in a location convenient to the membership. Members shall receive per diem and mileage 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 1988, ch. 101, § 16.

Effective dates. - Laws 1988, ch. 101, § 52 makes the Youth Authority Act effective on July 1, 1989.